

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Patricia A. Delaney, P.J.
Plaintiff-Appellee	:	Hon. Craig R. Baldwin, J.
	:	Hon. Earle E. Wise, Jr., J.
-vs-	:	
	:	
JOHN D. GREINER	:	Case No. CT2019-0003
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas, Case No. CR2018-0596

JUDGMENT: Affirmed

DATE OF JUDGMENT: September 3, 2019

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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Wise, Earle, J.

{¶ 1} Defendant-Appellant, John D. Greiner, appeals his December 26, 2018 sentence by the Court of Common Pleas of Muskingum County, Ohio. Plaintiff-Appellee is the state of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶ 2} On September 19, 2018, the Muskingum County Grand Jury indicted appellant on twenty-eight counts of rape in violation of R.C. 2907.02, eight counts of kidnapping in violation of R.C. 2905.01, and four counts of gross sexual imposition in violation of R.C. 2907.05. The indictment also included seven sexual motivation specifications pursuant to R.C. 2941.147. Said charges arose from various incidents over the course of many years between appellant and the victim starting when the victim was under ten years of age.

{¶ 3} On November 9, 2018, appellant pled guilty to sixteen total counts, thirteen counts of rape and three amended counts of kidnapping, all felonies of the first degree. The remaining counts were dismissed. By entry filed November 13, 2018, the trial court determined that certain counts would merge for sentencing, resulting in four sets containing four counts each. By entry filed December 26, 2018, the trial court sentenced appellant to the maximum sentence of eleven years on each of the four counts elected by the state (rape counts), to be served consecutively, for a total aggregate term of forty-four years in prison. Also, the trial court classified appellant as a Tier III sex offender.

{¶ 4} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

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{¶ 5} "THE TRIAL COURT UNLAWFULLY ORDERED JOHN GREINER TO SERVE MAXIMUM CONSECUTIVE SENTENCES, IN VIOLATION OF HIS RIGHTS TO DUE PROCESS, GUARANTEED BY SECTION 10, ARTICLE I OF THE OHIO CONSTITUTION AND THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION."

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{¶ 6} In his sole assignment of error, appellant claims the trial court erred in sentencing him to maximum consecutive sentences. We disagree.

{¶ 7} Pursuant to R.C. 2953.08(A)(1), appellant is entitled to appeal as of right the maximum sentences imposed on his convictions. Pursuant to R.C. 2953.08(G)(2), we may either increase, reduce, modify, or vacate a sentence and remand for resentencing where we clearly and convincingly find that either the record does not support the sentencing court's findings under R.C. 2929.13(B) or (D), 2929.14(B)(2)(e) or (C)(4), or 2929.20(I), or the sentence is otherwise contrary to law. *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231; *State v. Howell*, 5th Dist. Stark No. 2015CA00004, 2015-Ohio-4049.

{¶ 8} "Clear and convincing evidence is that measure or degree of proof which is more than a mere 'preponderance of the evidence,' but not to the extent of such certainty as is required 'beyond a reasonable doubt' in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be

established." *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

{¶ 9} As noted by this court in *State v. Taylor*, 5th Dist. Richland No. 17CA29, 2017-Ohio-8996, ¶ 16:

A trial court's imposition of a maximum prison term for a felony conviction is not contrary to law as long as the sentence is within the statutory range for the offense, and the court considers both the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the seriousness and recidivism factors set forth [in] R.C. 2929.12. *State v. Keith*, 8th Dist. Cuyahoga Nos. 103413 and 103414, 2016-Ohio-5234, ¶ 10, 16.

{¶ 10} R.C. 2929.11 governs overriding purposes of felony sentencing. Under R.C. 2929.11(A), a trial court shall be guided by the overriding purposes of felony sentencing which are: (1) "to protect the public from future crime by the offender and others," (2) "to punish the offender," and (3) "to promote the effective rehabilitation of the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources."

{¶ 11} R.C. 2929.12 governs factors to consider in felony sentencing in relation to the seriousness of the offenses and the likelihood of recidivism. Subsection (B) states the following in relevant part:

(B) The sentencing court shall consider all of the following that apply regarding the offender, the offense, or the victim, and any other relevant factors, as indicating that the offender's conduct is more serious than conduct normally constituting the offense:

(1) The physical or mental injury suffered by the victim of the offense due to the conduct of the offender was exacerbated because of the physical or mental condition or age of the victim.

(2) The victim of the offense suffered serious physical, psychological, or economic harm as a result of the offense.

(6) The offender's relationship with the victim facilitated the offense.

{¶ 12} The trial court shall also consider in relevant part the offender's prior criminal history and whether the offender shows any remorse. R.C. 2929.12(D).

{¶ 13} "In order to impose consecutive terms of imprisonment, a trial court is required to make the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and incorporate its findings into its sentencing entry, but it has no obligation to state reasons to support its findings." *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, syllabus. R.C. 2929.14(C)(4) states:

(4) If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is

necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds any of the following:

(a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.

(b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.

(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

{¶ 14} During the November 9, 2018 plea hearing, the trial court heard a detailed recitation of various incidents appellant perpetrated upon the victim spanning a number of years starting when the victim was nine years old. T. at 15-19.

{¶ 15} Appellant pled guilty to thirteen counts of rape and three amended counts of kidnapping, all felonies of the first degree, but was sentenced on four counts of rape due to merging. Pursuant to R.C. 2929.14(A)(1)(b), felonies of the first degree are

punishable by "three, four, five, six, seven, eight, nine, ten, or eleven years." By entry filed December 26, 2018, the trial court sentenced appellant to the maximum, eleven years, on each count, to be served consecutively.

{¶ 16} During the December 21, 2018 sentencing hearing, the trial court was told of the physical and mental injuries suffered by the victim as a result of appellant's actions. T. at 7-9. The incidents "were particularly violent and involved threats." T. at 9. Appellant "was somebody that was entrusted to protect and take care" of the victim, and instead "destroyed her trust in people that are supposed to be taking care of her." *Id.* The trial court also heard how appellant did not have a felony record, accepted responsibility for his actions, and was remorseful. T. at 12-13. The trial court had the benefit of a presentence investigation report and reviewed it thoroughly. T. at 15. After considering the facts and circumstances of the case, the trial court found appellant committed "the worst form of the offense that was repeatedly over year, after year, after year; nine, 10, 11, 12, 13, 14, 15. At least seven years. You were supposed to protect her." T. at 15. The trial court noted the following in ordering consecutive sentences (T. at 16):

The Court finds that consecutive sentences are necessary to protect the public and punish the offender, and consecutive sentences are not disproportionate to the seriousness and conduct and danger posed to the public.

Additionally, the Court finds at least two or more of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by these offenses so committed were so great or unusual

that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of your conduct.

{¶ 17} In its December 24, 2018 entry on sentencing, the trial court stated it considered "the record, all statements * * * as well as the principles and purposes of sentencing under Ohio Revised Code §2929.11 and its balance of seriousness and recidivism factors under Ohio Revised Code §2929.12." The trial court noted it "made judicial findings that this was the worst form of the offense and occurred over several years." The trial court included its findings on consecutive sentencing cited above.

{¶ 18} Upon review, we find the sentence imposed is not clearly and convincingly contrary to law. The individual sentences are within the statutory range for felonies of the first degree, the trial court considered the R.C. 2929.11 and 2929.12 factors, and the record supports the trial court's findings under R.C. 2929.14(C)(4).

{¶ 19} The sole assignment of error is denied.

{¶ 20} The judgment of the Court of Common Pleas of Muskingum County, Ohio is hereby affirmed.

By Wise, Earle, J.

Delaney, P.J. and

Baldwin, J. concur.

EEW/db