

[Cite as *State v. Hill*, 2010-Ohio-1670.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93379

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MILTON HILL

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-511524

BEFORE: Kilbane, J., Rocco, P.J., and Celebrezze, J.

RELEASED: April 15, 2010

**JOURNALIZED:
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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R.

22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

MARY EILEEN KILBANE, J.:

{¶ 1} Appellant, Milton Hill (“Hill”), was sentenced to an aggregate sentence of 30 years of imprisonment for rape and kidnapping, which included a total of 15 years of imprisonment on three repeat violent offender specifications. Hill argues that the trial court was required to find additional facts prior to imposing an additional prison term for each repeat violent offender specifications. After a review of the record and pertinent law, we affirm.

{¶ 2} The following facts give rise to this appeal.

{¶ 3} Q.W.¹ went out of town with her husband from April 12 through April 16, 2008, leaving her two daughters, S.S. and D.S., ages four and five, with her mother-in-law, J.S., and Hill, J.S.’s live-in boyfriend of the past several years. On April 28, 2008, S.S. and D.S. informed Q.W. that while they were staying with J.S. and Hill, Hill had forced them to engage in sexual acts.

{¶ 4} On April 29, 2008, Q.W. took her two daughters, to Hillcrest Hospital for sexual assault examinations. The Cleveland police were contacted, and they interviewed Q.W. and the children. On May 2, 2008, Q.W. took S.S. and D.S. to the Cuyahoga County Department of Children and

¹The children and their family members are referred to by their initials in accordance with this court’s policy of protecting the identities of juveniles.

Family Services where they were questioned by a social worker.

{¶ 5} On June 4, 2008, Hill was charged in an eight-count indictment. Counts 1, 2, 4, 5, 6, and 7 charged Hill with rape, in violation of R.C. 2907.02, felonies of the first degree. Each of the counts contained sexually violent predator, repeat violent offender, and notice of a prior conviction specifications. Specifically, on June 9, 1995, Hill had been convicted of attempted rape, in Case No. CR-320726. Counts 3 and 8 charged Hill with kidnapping, in violation of R.C. 2905.01, felonies of the first degree. Both counts also contained sexual motivation, repeat violent offender specifications, and notice of the prior conviction (also Case No. CR-320726).

{¶ 6} On March 26, 2009, the State amended the complaint to nolle Counts 2, 3, 6, and 7, and to dismiss the sexually violent predator specification on Counts 1, 4, and 5. Hill then pled guilty to three counts of rape, Counts 1, 4, and 5, which included repeat violent offender specifications and a notice of prior conviction, and to one count of kidnapping, Count 8, which included a sexual motivation and repeat violent offender specification and a notice of prior conviction.

{¶ 7} On April 29, 2009, Hill was sentenced to ten years of imprisonment on each of the four counts, with an additional five years of imprisonment imposed on each count for the repeat violent offender specifications, to be served consecutively to the term imposed for the underlying offenses, for a total of 15 years of imprisonment on each count. The trial court then ordered that Counts 4, 5, and 8 would be served concurrently to one another, but consecutive to the term imposed on Count 1, for an aggregate sentence of 30 years of imprisonment.

{¶ 8} Hill filed the instant appeal, asserting one assignment of error for our review.

“The plain language of the RVO sentencing scheme requires that, for an enhanced sentence, the sentencing court must make certain factual findings. Those findings violate the defendant’s right to a trial by jury.”

{¶ 9} Hill argues that the trial court violated his Sixth Amendment rights when it imposed an additional five years of imprisonment on each of the repeat violent offender specifications without making findings of fact. We disagree.

{¶ 10} In *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, the Ohio Supreme Court determined that statutes requiring factfinding prior to imposing maximum, nonminimum, or consecutive sentences are unconstitutional. The sections of the Ohio Revised Code that required

factfinding were excised. *State v. Castellon*, Cuyahoga App. No. 92733, 2010-Ohio-360, at ¶11, citing *Foster*. Therefore, trial courts are now permitted to impose any sentence within the statutory range without making factual findings. *Id.*

{¶ 11} Recently, the Ohio Supreme Court specifically addressed repeat violent offender specifications in light of *Foster*, supra, when it decided *State v. Hunter*, 123 Ohio St.3d 164, 2009-Ohio-4147, 915 N.E.2d 292. In *Hunter*, the court reasoned that the portions of the repeat violent offender statute requiring a trial court to make judicial findings were unconstitutional. Therefore, those portions of the statute are simply excised and the trial court may impose an additional prison term pursuant to a repeat violent offender specification without conducting any judicial factfinding.

{¶ 12} Following the court's rationale on this specific issue in *Hunter*, Hill's sole assignment of error is overruled.

{¶ 13} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated.

A certified copy of this entry shall constitute the mandate pursuant to Rule

27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, JUDGE

KENNETH A. ROCCO, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR