DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JORGE MENDOZA-MAGADAN,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D16-1458

[April 26, 2017]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Martin County; Lawrence M. Mirman, Judge; L.T. Case No. 43-2015-CF-001240-AXMX.

Carey Haughwout, Public Defender, and Tatjana Ostapoff, Assistant Public Defender, West Palm Beach, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Melanie Dale Surber, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Juvenile appellant Jorge Luis Mendoza-Magadan was charged and sentenced as an adult for one count of battery on a law enforcement officer, one count of resisting an officer with violence, and one count of resisting an officer without violence. He appeals his sentence, arguing that section 985.565, Florida Statutes (2016) is unconstitutional because it does not require the trial court to make specific findings in support of its decision to impose adult sanctions on a juvenile charged as an adult. We affirm because, as a matter of constitutional law, neither the United States Supreme Court nor the Florida Supreme Court have required trial courts to explain their sentences.

The Florida Legislature has found "that certain juveniles have committed a sufficient number of criminal acts, including acts involving violence to persons, to represent sufficient danger to the community to warrant sentencing and placement within the adult system." § 985.02(4)(b), Fla. Stat. (2016). As such, section 985.565 gives the trial court the power to impose adult sanctions on juveniles charged as adults.

Subsection (1)(b) lists the factors the court "shall consider" in determining whether to impose such sanctions. Subsection (4)(a)4 states that "[a]ny sentence imposing adult sanctions *is presumed appropriate*, and the court is not required to set forth specific findings or enumerate the criteria in this subsection as any basis for its decision to impose adult sanctions." (Emphasis added).

Appellant contends that, without specific findings, an appellate court is unable to review whether the trial court properly considered the required factors in deciding to impose adult sanctions. However, "the power to declare what punishment may be assessed against those convicted of crime is not a judicial power, but a legislative power, controlled only by the provisions of the Constitution." *Booker v. State*, 514 So. 2d 1079, 1081 (Fla. 1987) (quoting *Brown v. State*, 13 So. 2d 458, 461 (Fla. 1943)); *see also Hall v. State*, 823 So. 2d 757, 763 (Fla. 2002), *abrogation on other grounds recognized in State v. Johnson*, 122 So. 3d 856, 862 (Fla. 2013) ("Criminal sentences are a product of legislative decision.").

So long as the sentencing court complies with the statutory requirements, there is nothing for an appellate court to review. *See Henderson v. State*, 61 So. 3d 494 (Fla. 2d DCA 2011); *see also Howard v. State*, 820 So. 2d 337, 339 (Fla. 4th DCA 2002) (explaining that, "when a sentence is within statutory limits, it is not subject to review by an appellate court."). The only exception is "where the facts establish a violation of a specific constitutional right during sentencing." *Howard*, 820 So. 2d at 340. The Florida Supreme Court has not held that the constitution requires a trial court to explain its sentence. Therefore, because appellant does not argue that the trial court failed to follow the statute, his sentence is presumed appropriate.

We also reject appellant's argument that his prior juvenile dispositions should not have been included on his scoresheet to calculate his lowest permissible sentence because such dispositions are rendered without the same procedural safeguards as adult convictions, such as the right to a jury trial. *See Knighton v. State*, 193 So. 3d 115 (Fla. 4th DCA 2016); *Nichols v. State*, 910 So. 2d 863 (Fla. 1st DCA 2005); *United States v. Smalley*, 294 F.3d 1030 (8th Cir. 2002).

Affirmed.

CIKLIN, C.J. and KUNTZ, J., concur.
GROSS, J., concurs specially with opinion.

GROSS, J., concurring specially.

Prior to the enactment of section 985.565(4)(a)4, Florida Statutes (2014), Florida law required transparency in the decision to sentence juveniles as adults. This requirement was a matter of statutory, and not constitutional, law.

Section 39.059(7)(c), Florida Statutes (1991), provided that "[s]uitability or nonsuitability for adult sanctions shall be determined by the court before any other determination of disposition." That section also contained the criteria a trial court was required to consider in making this suitability determination. The decision to impose adult sanctions had to "be in writing and in conformity with each of the above criteria. The court shall render a specific finding of fact and the reasons for the decision to impose adult sanctions." § 39.059(7)(d). Subsection (7)(d) expressly made that order "reviewable on appeal."

Under current law, while there are certain factors the trial court "shall consider" in imposing adult sanctions, the trial court's decision does not have to be supported by specific findings of fact. "Any sentence imposing adult sanctions is presumed appropriate, and the court is not required to set forth specific findings or enumerate the criteria in this subsection as any basis for its decision to impose adult sanctions." § 985.565(4)(a)4; *see also Henderson v. State*, 61 So. 3d 494, 496 (Fla. 2d DCA 2011).

I believe this is bad policy, but under the current case law it is policy that the legislature is entitled to implement. Sentencing is obviously a central focus of a criminal case. Without transparency in the sentencing decision, it cannot be known whether a trial court considered appropriate factors or relied on impermissible ones. Judicial silence operates to conceal sentencing misconduct. *See Alfonso-Roche v. State*, 199 So. 3d 941, 951-52 (Fla. 4th DCA 2016) (Gross, J., concurring). However, the applicable statute does not require transparency and neither the Florida nor the United States Supreme Court have ever established a constitutional basis for requiring it.

Although it is not an argument discussed by the parties, recent case law has acted on the notion that juveniles are "constitutionally different from adults for the purposes of sentencing." *Miller v. Alabama,* 132 S. Ct. 2455, 2464 (2012). Whether that difference compels sentencing transparency in a non-homicide case such as this has not been decided by a higher court.

In this case, as the majority notes, the presumption that section 985.565(4)(a)4 is constitutional carries the day.

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Not final until disposition of timely filed motion for rehearing.