

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENITH JEROME CALHOUN,

Defendant-Appellant.

UNPUBLISHED
November 28, 2017

No. 334254
Wayne Circuit Court
LC No. 16-002917-01-FC

Before: METER, P.J., and BORRELLO and RIORDAN, JJ.

PER CURIAM.

Defendant appeals as of right from his jury-trial convictions of three counts of first-degree criminal sexual conduct (CSC-I) (person under 13), MCL 750.520b(2)(b), and one count of second-degree criminal sexual conduct (CSC-II) (person under 13), MCL 750.520c(1)(a) and (2)(b). Defendant was sentenced to consecutive terms of 25 to 40 years' imprisonment for the first two counts of CSC-I, a concurrent term of 25 to 40 years' imprisonment for the third count of CSC-I, and a concurrent term of 10 to 15 years' imprisonment for the single count of CSC-II. Defendant's appeal relates solely to sentencing. We affirm.

This case arose from the sexual assault of a nine-year-old girl on January 31, 2015. Along with non-penetrative touching, the assault included vaginal-penile, vaginal-digital, and oral-penile penetration.

Defendant argues that the trial court abused its discretion by imposing a consecutive sentence under MCL 750.520b(3)¹ instead of imposing four concurrent sentences. "[W]hen a statute grants a trial court discretion to impose a consecutive sentence, the trial court's decision to do so is reviewed for an abuse of discretion, i.e., whether the trial court's decision was outside the range of reasonable and principled outcomes." *People v Norfleet*, 317 Mich App 649, 654; 897 NW2d 195 (2016).

¹ This statute states: "The court may order a term of imprisonment imposed under this section [dealing with CSC-I] to be served consecutively to any term of imprisonment imposed for any other criminal offense arising from the same transaction."

In *Norfleet*, *id.* at 664, this Court, analyzing MCL 333.7401(3), which allows for consecutive sentencing in certain drug cases, stated that “[t]he decision regarding each consecutive sentence is its own discretionary act and must be separately justified on the record. The statute clearly provides that a discretionary decision must be made as to each sentence and not to them all as a group.” The sentencing court in *Norfleet* had imposed five consecutive sentences for multiple drug offenses but spoke “only in general terms” and “did not speak separately regarding each consecutive sentence, each of which represents a separate exercise of discretion.” *Id.* at 654, 666. Accordingly, this Court remanded the case for further articulation regarding sentencing. *Id.* at 666.

Contrary to defendant’s preliminary argument, the trial court in the present case did not violate any principle announced in *Norfleet* by failing to make a particularized articulation for the consecutive sentence. The court imposed only *one* consecutive sentence (with the remaining sentences being concurrent), and its remarks at sentencing are properly read, in context, as supporting the decision to impose that consecutive sentence. The trial court spoke at length about its reasons for sentencing defendant as it did. The court stated that the victim had been “at risk” and was taken in by a guardian, whose own brother betrayed her by assaulting the victim, her foster daughter. The court noted that the victim was only nine years old at the time defendant sexually assaulted her. The court expressed disgust at the fact that the victim “cried when [the forensic examiner] had to examine her genitalia so that they could determine the nature of the injury that she sustained here.” The trial court noted that the victim was “guileless” and “respectful” and referred to defendant’s assault of her as “unspeakable.” With regard to this last observation, the court specifically stated:

And what you did to this child, Mr. Calhoun[,] was unspeakable.

So I am going to sentence you on Count I to 25 to 40. I’m going to sentence you [on] Count [] II, 25 to 40 to run consecutive to Count I.

Reading the sentencing transcript as a whole, we find that the trial court complied with any articulation requirement derived from *Norfleet*.

Defendant also argues that the trial court abused its discretion by imposing consecutive sentences in the first place, stating that any rationale for such sentencing was insufficient because “there was no evidence in this case that Mr. Calhoun engaged in protracted sexual encounters with [the victim]. All of the alleged offenses took place within minutes.” This argument plainly misses the purpose of the discretionary sentencing permitted by MCL 750.520b(3) by implying that because defendant only sexually assaulted the victim on one occasion, consecutive sentences should not have been imposed by the trial court. MCL 750.520b(3) allows a court “to impose a CSC-1 sentence that runs consecutively to a sentence imposed for another criminal offense arising from the same transaction” *Ryan*, 295 Mich App at 401. Defendant committed three separate acts of CSC-I against the victim and thus, imposing a consecutive sentence for one of those CSC-I offenses was within the trial court’s discretion.

Defendant argues that this case does not represent a situation where consecutive sentencing was warranted, implying that it does not have characteristics distinguishing it from other CSC-I cases. We conclude, however, that the trial court did not abuse its discretion in

imposing a consecutive sentence, given the very young age of the victim and her vulnerability, given the family dynamics surrounding the crime, and given the suffering the young girl endured. The trial court's decision to impose a consecutive sentence was not outside the range of reasonable and principled outcomes. *Norfleet*, 317 Mich App at 654.

Affirmed.

/s/ Patrick M. Meter
/s/ Stephen L. Borrello
/s/ Michael J. Riordan