

[Cite as *State v. Phillips*, 2009-Ohio-5564.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92560

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CHARLIE PHILLIPS

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-509825 and CR-516414

BEFORE: Stewart, J., Cooney, A.J., and Gallagher, J.

RELEASED: October 22, 2009

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), is filed within ten (10) 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. II, Section 2(A)(1).

MELODY J. STEWART, J.:

{¶ 1} Defendant-appellant, Charlie Phillips, appeals the sentence imposed by the trial court following his guilty pleas to indictments in two criminal cases. Finding no error, we affirm.

{¶ 2} On May 2, 2008, appellant was indicted in case CR-509825 on 12 counts of importuning, three counts of pandering obscenity, five counts of illegal use of a minor in nudity-oriented material or performance, and one count of possessing criminal tools. On October 8, 2008, appellant was indicted in a second case, CR-516414, and charged with 30 counts of pandering sexually oriented matter involving a minor, a second degree felony. These charges arose from appellant's use of a home computer to download and trade child pornography and to contact someone he believed to be a 12-year-old girl. The "girl" was actually a police detective.

{¶ 3} Appellant entered into a plea agreement regarding the two indictments in which the state agreed to nolle ten counts in the first indictment in return for his entering guilty pleas to all of the remaining counts in the two indictments. Prior to accepting appellant's guilty pleas, the court fully explained the rights appellant was waiving, the charges he was facing, and the maximum penalties for each offense. The court explained that those maximum penalties could be run consecutive to each other. The court advised appellant that on the second case alone he was facing a possibility of 30 separate eight-year prison

terms that the court could order served consecutively. The court further explained that appellant would be subject to postrelease control and would be classified a Tier II sex offender subject to 25 years of registration and community notification requirements. Appellant told the court he understood what the court had explained to him and then proceeded to enter pleas of guilty to the indictments as amended.

{¶ 4} On November 17, 2008, the trial court sentenced appellant. In case CR- 509825, the court imposed the maximum sentence for each count and ordered the sentences be served concurrent to each other and concurrent to the sentences in the second case. In case CR-516414, the court imposed the maximum eight-year sentence for each of the 30 counts. The court ordered the first three sentences to be served consecutive to each other, and the remaining 27 sentences to be served concurrently for an aggregate sentence of 24 years in prison.

{¶ 5} Appellant timely appealed this sentence raising one assigned error for review.

{¶ 6} “1. The trial court committed reversible error in the imposition of sentence upon appellant.”

{¶ 7} Appellant argues that the trial court failed to properly consider and weigh the seriousness and recidivism factors provided in R.C. 2929.12. He argues that had the trial court properly weighed the sentencing factors of R.C. 2929.12, and followed the provisions of R.C. 2929.13, it would have imposed a

community control sanction, including treatment and monitoring, rather than a prison term. Appellant stresses that he is only 21 years old, has no prior record, has strong family support, and has never received any form of treatment. Finally, appellant argues that the trial court was required to impose concurrent sentences pursuant to R.C. 2929.41(A) and could only impose maximum consecutive sentences by first making specific judicial findings as required by R.C. 2929.14(E)(4). As legal support for this argument, appellant cites to a 2003 decision from the Fourth District that found that R.C. 2929.14(C), 2929.14(E)(4), and 2929.19(B)(2)(c) require such findings. *State v. Littlefield*, Washington App. No. 02CA19, 2003-Ohio-863.¹

{¶ 8} In *Foster*, the Ohio Supreme Court held that statutes requiring judicial findings prior to imposition of maximum, non-minimum, or consecutive sentences violated the Sixth Amendment. *Id.* at paragraph one of the syllabus. The *Foster* court found R.C. 2929.14(B) and (C), R.C. 2929.14(E)(4), R.C. 2929.19(B)(2), and R.C. 2929.41(A) unconstitutional and as a remedy, excised those statutes. *Id.* at paragraphs one, two, three, and four of the syllabus. As a result, after *Foster*, “[t]rial courts have full discretion to impose a prison sentence within the statutory range and are no longer required to make findings or give

¹We find appellant’s reliance upon the *Littlefield* decision disturbing in light of the later Ohio Supreme Court decision in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856.

their reasons for imposing maximum, consecutive, or more than the minimum sentences.” Id. at paragraph seven of the syllabus.

{¶ 9} In exercising its discretion in sentencing, the trial court is still required to carefully consider the statutes that apply to every felony case. These include R.C. 2929.11, which specifies the purposes of sentencing, R.C. 2929.12, which provides guidance in considering factors relating to the seriousness of the offense and recidivism of the offender, and any statute that is specific to the case itself. *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855.

{¶ 10} The record reflects that the trial court did consider the seriousness and recidivism factors before reaching its decision. At sentencing, the trial court stated that it had before it for consideration the record, the presentence investigation report (PSI), a sexual offender’s evaluation, a psychological evaluation, and would consider any oral or written statements made at the sentencing hearing. The state called the court’s attention to appellant’s sexual evaluation report. In the report, appellant was diagnosed as a pedophile with a heightened interest in children from eight to ten years old and a moderate to high risk to reoffend. In the PSI, appellant admitted talking to other children and sending pictures of his genitalia to other children in their mid-teens over the internet. The state also presented a letter from the parents of a child in the Cleveland area who was the victim of sexual abuse and whose picture was one of the hundreds found on appellant’s computer. The letter explained how the child,

and her entire family, felt victimized repeatedly by her images being downloaded and traded on the internet.

{¶ 11} Appellant asked the court to recognize that there were moral differences between those who victimize a child by taking the photograph and creating the material, and those, like him, who do not create the images but only trade and view them.

{¶ 12} After hearing from both sides, the court reached its decision. The court referenced the thousands of “chat calls” to what appellant believed was a 12- year-old girl. The court noted that appellant sent pictures of his genitalia to her and asked her to send pictures of her genitalia to him; that appellant said it would be hotter if she was under 12; and that appellant had a high risk of recidivism. The court premised the imposition of a prison sentence on a need to protect the public from appellant.

{¶ 13} While the 24-year prison sentence imposed seems unduly harsh to appellant, it is not contrary to law. Each of the sentences imposed by the trial court are within the statutory range for the offense. By pleading guilty to the indictments as amended, appellant admitted to committing more than 40 separate felony sex offenses relating to children. Appellant’s convictions carried with them a possible prison sentence of 287 years.

{¶ 14} Because the record reflects that the trial court considered the sentencing guidelines and imposed sentences within the statutory range, appellant’s single assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant its 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 Cuyahoga County Court of Common Pleas to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MELODY J. STEWART, JUDGE _____

COLLEEN CONWAY COONEY, A.J., and
SEAN C. GALLAGHER, J., CONCUR