[Cite as *State v. Blashaw*, 2010-Ohio-4673.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93943

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JUSTIN BLASHAW

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-524897

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

RELEASED AND JOURNALIZED: September 30, 2010

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MELODY J. STEWART, J.:

{¶ 1} Defendant-appellant, Justin Blashaw, appeals from consecutive, maximum sentences imposed after he pleaded guilty to counts of aggravated vehicular assault, endangering children, driving under the influence, and obstructing official business. The counts arose when an intoxicated Blashaw crashed his car and caused severe injuries to his two children who were passengers in the car, and then lied to the police about being the driver of the car. In this appeal, he complains that the court failed to justify the imposition of maximum, consecutive prison terms for the aggravated

vehicular assault counts and that it should have merged the aggravated vehicular assault counts.

I

{¶ 2} Blashaw first argues that the record does not adequately support the court's decision to order consecutive eight-year prison terms for the second degree felony counts of aggravated vehicular assault. He challenges the court's reliance on three different factors when deciding on the proper sentence: the emotional impact of the injuries sustained by his children; his criminal history; and his lack of remorse. He disputes the court's conclusion from each of these factors, thus arguing that the length of his sentence is not supported by the record.

{¶ 3} In *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, the supreme court held that "[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 their reasons for imposing maximum, consecutive, or more than the minimum sentences." Id. at paragraph seven of the syllabus.

{¶ 4} The courts must "carefully consider" the statutes that apply to every felony case, including the factors set forth in R.C. 2929.11 and 2929.12, *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1, at ¶39. They are vested with full discretion to impose a prison term within the statutory range after consideration of those factors and are not required to

give reasons for imposing maximum, consecutive, or more than the minimum sentences. Id. at paragraph three of the syllabus; *State v. Elmore*, 122 Ohio St.3d 472, 480, 2009-Ohio-3478, 912 N.E.2d 582, at ¶33.

{¶ 5} Both of the children in the car at the time Blashaw lost control and crashed were injured. One child fractured her foot; the other suffered catastrophic spinal injuries that rendered her a quadriplegic and left her with a 50 percent chance of requiring the use of a ventilator for the rest of her life. When the police arrived on the scene, Blashaw was in the back seat of the car with the severely injured child. He told the police that a man named "Steve" had been driving the car, but would not cooperate with the police in locating this person because "he did not want to give these people up." The police confirmed that Blashaw drove the car after discovering that blood found on the steering wheel belonged to him. Blood testing confirmed that Blashaw was not only over the legal limit for alcohol, but that he had been using opiates and marijuana at the time of the crash.[1]

{¶ 6} The court also detailed Blashaw's extensive criminal history dating back to his youth. Although many of his offenses were misdemeanors

[1]When emergency personnel found the paralyzed child, they noticed that her pants had been pulled down and her vagina was exposed. DNA testing of her underwear showed that Blashaw could not be excluded as the source of DNA on the underwear based on a profile match of one in 19,240 unrelated individuals. These findings were apparently referenced in the presentence investigation report, but the court acknowledged that the results of DNA testing were "not complete," so it deleted the result section with respect to the DNA and simply incorporated the DNA report itself.

committed in other states, those crimes included drug use, criminal trespassing, failure to stay at an accident, burglary, DUI, disobeying a police officer, and driving while under suspension. His Ohio offenses included a 2001 conviction for possession of drug paraphernalia and carrying a concealed weapon; a 2002 conviction for resisting arrest; a 2002 conviction for driving under the influence; a 2003 conviction for operating a vehicle while intoxicated; a 2003 conviction for driving while under suspension; a 2004 conviction for driving while under suspension; a 2004 conviction for disorderly conduct; a 2006 conviction for disorderly conduct; a 2006 conviction for criminal damaging; and a 2006 conviction for possession of drug paraphernalia.

{¶ 7} Finally, the court could consider Blashaw's lack of remorse in the way that he initially denied being the driver of the car but refused to assist in locating the driver, even though that driver would have been at fault in causing the devastating injuries to the child. Indeed, a police detective told the court that emergency crews responding to the scene said that Blashaw appeared more upset that his jacket had been cut in order to treat him ("that was a good jacket, man") than with the well-being of his child. It also appears that Blashaw's conversations and telephone calls were monitored while he was held in custody. In one of those conversations, he admitted

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The state did not charge Blashaw with any sexual offenses.

crashing the car but said that he knew children under the age of ten had a good chance of surviving, "so he wasn't too concerned."

{¶ 8} Taken together, these factors amply justify the court's decision to impose maximum, consecutive sentences. Blashaw's criminal history, standing alone, might have been sufficient to justify the length of sentence as a means of protecting the public. But the attempt to cover up his responsibility for his actions and his callous disregard for the well-being of his own children indicated a need to punish him.

{¶ 9} Blashaw maintains that his act of pleading guilty showed his remorse, in contravention of the court's finding. We disagree. A guilty plea is simply an admission of charged conduct and can be entered without any remorse; for example, a defendant can enter an *Alford* plea — a guilty plea made despite claiming innocence. See *N. Carolina v. Alford* (1970), 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162. The evidence against Blashaw was overwhelming and, in light of his extensive criminal history, it may be that Blashaw hoped a guilty plea would cause the court to exercise lenity. If so, this simply confuses self-interest for remorse. We find no abuse of discretion in the court's decision to order maximum sentences on the second degree felony counts of aggravated vehicular assault and to order those sentences to be served consecutively.

II

{¶ 10} Blashaw next argues that the court erred by failing to merge the aggravated vehicular assault counts. The grand jury charged Blashaw with four counts of aggravated vehicular assault: two counts against each child under R.C. 2903.08(A)(1) [counts 1 and 3] and two counts against each child under R.C. 2903.08(A)(2) [counts 2 and 4]. The state conceded that the multiplicitous counts for conduct against the individual children merged and the court agreed, merging counts 1 and 2, and counts 3 and 4. The state elected to have Blashaw sentenced on counts 1 and 3. Blashaw contends that these remaining counts were committed with the same animus and should likewise have merged into a single count of aggravated vehicular assault under R.C. 2903.08(A)(1).

{¶ 11} We summarily overrule this assignment of error. Two separate counts of aggravated vehicular assault existed because there were two separate victims. See *State v. Lawrence,* 180 Ohio App.3d 468, 2009-Ohio-33, 905 N.E.2d 1268, ¶18-19; *State v. Jordan,* 8th Dist. No. 91869, 2009-Ohio-3078, at ¶14. The court did not err by refusing to merge the remaining counts.

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.

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MELODY J. STEWART, JUDGE

SEAN C. GALLAGHER, A.J., and
PATRICIA ANN BLACKMON, J., CONCUR