

[Cite as *State v. Walker*, 2015-Ohio-2760.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101705

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DEUNTA S. WALKER

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-14-583358-A

BEFORE: Celebrezze, A.J., E.A. Gallagher, J., and E.T. Gallagher, J.

RELEASED AND JOURNALIZED: July 9, 2015

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FRANK D. CELEBREZZE, JR., A.J.:

{¶1} Defendant-appellant, Deunta Walker (“Walker”), appeals the consecutive sentence imposed by the trial court after he entered a guilty plea to three counts of unlawful sexual conduct with a minor, one count of attempted promoting prostitution, and one count of corrupting another with drugs. Specifically, Walker argues that the trial court abused its discretion by imposing consecutive sentences without providing a sufficient explanation. For the reasons that follow, we affirm.

I. Factual and Procedural History

{¶2} On June 5, 2014, Walker pleaded guilty to three counts of unlawful sexual conduct with a minor under R.C. 2907.04(A), third-degree felonies, one count of attempted promoting prostitution in violation of R.C. 2923.02 and 2907.22(A)(4), a fourth-degree felony, and one count of corrupting another with drugs pursuant to R.C. 2925.02(A)(4)(a), a fourth-degree felony.

{¶3} On July 10, 2014, the trial court held a sentencing hearing at which Walker’s defense counsel, the prosecutor, and Walker participated. In opting to impose a prison sentence, the trial court stated:

After consideration of the record, the oral statements made today, the presentence report and the purposes and principles of sentencing under Ohio Revised Code Section 2929.11, looking at the seriousness and recidivism factors relevant to the offense and the offender pursuant to the Revised Code Section 2929.12, and the need for deterrence, incapacitation, rehabilitation and restitution, the court finds that a prison term is consistent with the purposes and principles of sentencing set forth in Section 2929.11 of the Revised Code, and finds that the offender is not amenable to an available community control sanction.

Furthermore, the Court has considered the factors set forth in 2929.12 and finds that a prison term is commensurate with the seriousness of the defendant's conduct and its impact on the victim, that it is reasonably necessary to deter the offender to protect the public from future crimes and would not place an unnecessary burden on government resources.

{¶4} Further, the judge remarked:

Now, the Court finds that a consecutive sentence is necessary to protect the public from future crimes or to punish the offender, and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public. And the Court also finds that at least two of these multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflect the seriousness of the offender's conduct. What I mean by that, Mr. Walker, is that I think the actions were pretty bad in this case, and especially thinking about her age and her vulnerability.

{¶5} The trial court proceeded to impose prison terms of two years for each count of unlawful sexual conduct with a minor, one year for attempted promoting prostitution, and one year for corrupting another with drugs. All prison terms for unlawful sexual conduct with a minor were ordered to be served consecutively. The prison terms for attempted promoting prostitution and corrupting another with drugs were ordered to run concurrently to each other, but consecutively with the other prison sentences. Thus, Walker was sentenced to a total of seven years in prison. Walker filed a timely appeal of his sentence, asserting one assignment of error for our review.

II. Analysis

{¶6} Walker avers that the trial court abused its discretion when it imposed consecutive sentences. Initially, we note that "abuse of discretion" is not the appropriate standard of review for an appellate court when assessing the imposition of consecutive

sentences. R.C. 2953.08(G)(2). Rather, an appellate court may reverse, vacate, or modify a consecutive sentence if it “clearly and convincingly” finds that either (1) the record does not support the sentencing court’s findings under R.C. 2929.14(C)(4) or (2) the sentence is “otherwise contrary to law.” *Id.*; see also *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659. A sentence is not clearly and convincingly contrary to law where the trial court considers the purposes and principles of sentencing under R.C. 2929.11, the seriousness and recidivism factors listed in R.C. 2929.12, properly applies postrelease control, and sentences a defendant within the permissible statutory range. *State v. A.H.*, 8th Dist. Cuyahoga No. 98622, 2013-Ohio-2525, ¶ 10, citing *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124.

{¶7} R.C. 2929.14(C)(4) requires the trial court to make specific findings prior to imposing consecutive sentences. First, the court must find that “consecutive service is necessary to protect the public from future crime or to punish the offender.” *Id.* Second, the court must establish that “consecutive sentences are not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public.” *Id.* Finally, as relevant here, the trial court must find that:

At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the offenses was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender’s conduct.

R.C. 2929.14(C)(4)(b).

{¶8} Trial courts are required to make statutory findings as part of the sentencing hearing in order to comply with R.C. 2929.14(C)(4). *Bonnell*, 140 Ohio St.3d 209 at syllabus. However, “a word-for-word recitation of the language of the statute is not required. As long as the reviewing court can discern that the trial court engaged in the correct analysis and can determine that the record contains evidence to support the findings, consecutive sentences should be upheld.” *Id.* at ¶ 29. Furthermore, talismanic incantations of the statute are not required, provided the necessary findings can be found in the record. *Id.* at ¶ 37.

{¶9} Walker concedes that the trial court made the requisite statutory findings under R.C. 2929.11, 2929.12, and 2929.14(C)(4) on the record, but believes the trial court “fell short” by failing to provide an adequate explanation. We find no merit to Walker’s argument because the record clearly and convincingly supports the trial court’s decision to impose consecutive sentences.

{¶10} Walker, a 41-year-old man, admitted to having oral and vaginal intercourse with the 13-year-old victim multiple times over a three-day period, and also acknowledged that he supplied the victim with marijuana. Furthermore, there was evidence that Walker urged the victim to adopt the alias of “Janelle Graves” in the event other tenants in his building questioned her presence, and that Walker suggested that the victim prostitute herself to his friends for money. Walker attempted to explain that the victim claimed to be 19 years old and newly single, that she came up with the alias after

rummaging through his apartment, and that the victim manipulated his offer to help her look for employment.

{¶11} However, the trial judge explained that she doubted Walker’s veracity in light of the fact that the victim was very forthcoming in her statement to authorities. Moreover, the trial judge said she found it difficult to believe Walker did not know the victim was an underage runaway given that she brought no baggage or identification to Walker’s apartment, that she did not look or sound like a 19-year-old, and that she appeared to be homeless at the time. Finally, the trial judge remarked that consecutive sentences were warranted because of the seriousness of Walker’s conduct, especially in light of the victim’s age and vulnerability.

{¶12} Walker contends that the victim’s age and vulnerability were insufficient reasons for supporting consecutive sentences here because the crime of unlawful sexual conduct with a minor, which Walker pleaded guilty to, requires a victim to be between the ages of 13 and 16. Thus, Walker urges us to conclude that the trial court’s reliance on the victim’s “age and vulnerability” was inappropriate because all victims of unlawful sexual conduct with a minor will be young and vulnerable.

{¶13} We disagree, and decline to adopt Walker’s ludicrous position. The record in this case demonstrates that this 13-year-old victim was vulnerable due to the troubled circumstances of her life and her status as a runaway. Walker cites to no case law, statute, or legislation in support of his position. Moreover, adopting Walker’s argument would necessarily open the floodgates to any number of offenders seeking to escape

consecutive sentences whenever a trial court relies on a victim's youth and vulnerability in cases involving sexual misconduct. We highly doubt the Ohio General Assembly intended to shield offenders in these cases from consecutive sentences by preventing trial courts from considering the characteristics of young victims. Thus, Walker's sole assignment is overruled because the record clearly and convincingly supports the trial court's imposition of consecutive sentences

{¶14} 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. 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.

FRANK D. CELEBREZZE, JR., ADMINISTRATIVE JUDGE

EILEEN A. GALLAGHER, J., and
EILEEN T. GALLAGHER, J., CONCUR