[Cite as *State v. Williams*, 2020-Ohio-1622.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO, :

Plaintiff-Appellee, :

No. 108904

v. :

SEAN E. WILLIAMS, :

Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: April 23, 2020

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-19-636537-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Jennifer A. Driscoll, Assistant Prosecuting Attorney, *for appellee.*

Rufus Sims, *for appellant.*

MARY J. BOYLE, P.J.:

{¶ 1} Defendant-appellant, Sean Williams, appeals his sentence. He raises three assignments of error for our review:

> 1. The trial court abused its discretion by imposing a six[-]year consecutive sentence for a first time offender which was inconsistent with similar first time offenders which constitutes a manifest injustice.
>
> 2. The trial court abused its discretion when sentencing appellant in that the trial judge failed to take into consideration the factors enumerated in [R.C. 2929.12] and by imposing a consecutive sentence.
>
> 3. The court abused its discretion for imposing a consecutive [sentence] on appellant contrary to [R.C.] 2929.14(C).

{¶ 2} Finding no merit to his assignments of error, we affirm the judgment of the trial court.

I. Procedural History and Factual Background

{¶ 3} In October 2018, Williams, a high school teacher and coach, was indicted for six counts of sexual battery in violation of R.C. 2907.03(A)(7), all third-degree felonies: Count 1 for cunnilingus on October 6, 2018; Count 2 for vaginal intercourse on October 6, 2018; Count 3 for fellatio on October 8, 2018, with a school safety zone specification; Count 4 for cunnilingus from October 15 to 19, 2018, with a school safety zone specification; Count 5 for fellatio from October 15 to 19, 2018, with a school safety zone specification; and Count 6 for fellatio on October 24, 2018, with a school safety zone specification.

{¶ 4} The charges stemmed from Williams's sexual involvement with one of his students over the course of several weeks in the fall of 2018. According to the police report, which was included as part of the presentence investigation report, the victim, J.J., was a 15-year-old high school sophomore at the time of the events. The police report stated that in September 2018, J.J. began to spend her free periods doing homework in Williams's classroom. J.J. had known Williams, who was 44

years old at the time, for "a couple of years" because he was her track coach. According to the report, after about a week of J.J. coming to his classroom during free periods, Williams talked with J.J. about her sexual experiences, flirted with her, told her she could be his girlfriend if she were 18-years old, hugged her, grabbed her buttocks, kissed her on the forehead, bought her lunch, ate lunch with her, and told her he would only talk with her at school and never on the phone. The report stated that by the end of September, Williams would kiss J.J. on the lips before she left his classroom. According to the report, on one occasion, Williams told J.J. he had something for her in the closet in his classroom, where she found a bag containing several panties.

{¶ 5} According to the police report, by early October, Williams asked J.J. if she "wanted to hang out with him" after the homecoming dance on October 6, 2018, and J.J. agreed. Williams picked J.J. up after the homecoming dance, took her to a Super 8 Motel, told her to take off her pants, turned out the lights, performed oral sex on her twice, and then had vaginal intercourse with her. She asked him to stop, and he stopped and dropped her off at her friend's house. The report stated that during the week of October 8, 2018, J.J. continued to "hang out" in Williams's classroom, and he told her that it was her turn to perform oral sex on him. Over the next few weeks, they took turns having oral sex in the closet space in his classroom. According to the report, Williams attempted to have vaginal intercourse with J.J. on October 24, 2018, and she told him to stop.

{¶ 6} A few other students became concerned for J.J. and told their parents what was happening. An investigation ensued, and Williams was terminated. According to the police report, Williams's locker at school was searched in November 2018, and the search revealed a pair of men's underwear, a receipt from Tiffany & Company, a hotel room keycard for a La Quinta hotel, and a high school cheerleading skirt.

{¶ 7} In February 2019, Williams pleaded not guilty to all six counts. In June 2019, he retracted his former plea of not guilty and entered a plea of guilty to Counts 1, 2, 4, and 6. Counts 3 and 5 were nolled. The trial court accepted his plea and referred Williams to the Adult Probation Department for a presentence investigation report. Williams denied all sexual involvement with J.J. during the presentence investigation.

{¶ 8} At the sentencing hearing on July 15, 2019, the trial court stated that it had reviewed and considered records from the Department of Children and Family Services, the presentence investigation report, Williams's and the state's sentencing memoranda, relevant cases, letters from the victim's family and friends, a letter from Williams, and letters submitted by community members on behalf of Williams. During the sentencing hearing, the trial court heard statements from J.J. and her parents, arguments from defense counsel, and allocution from Williams. The state stood by its sentencing memorandum, in which it requested a "lengthy" prison term and consecutive sentences.

{¶ 9} J.J. stated that "the things that [Williams] would do to me would make me uncomfortable, but he would always tell me 'you'll get used to it.'" When her classmates found out, she was "severely bullied" at school and on social media. Her grades dropped, she developed low self-esteem, she felt depressed and embarrassed, and she "came home every day crying and exhausted." She explained that she started becoming restless at night and was always angry. She stated that she felt like Williams targeted her because he knew that her brothers were out of the house and because she was young. She said that she will "never forget what happened" to her and "will have to carry it with [her] each and every day." She asked the trial court to punish Williams with prison time.

{¶ 10} J.J.'s mother said that J.J. and her family have been affected "in the most egregious way." She stated that Williams "reduced [J.J.'s] confidence to almost nothing," and "attempted to alter [J.J.'s] views on morality by sharing stories of others who had committed these same acts and turned out okay later on, saying, 'you will get used to it.'" She explained that J.J. feels unsafe, does not want to be left alone, has nightmares, and has been stigmatized, victimized, and publicly humiliated. J.J.'s mother asked the trial court to impose the maximum prison sentence for Williams to punish him, prevent him from hurting other students, and to send a message to others. J.J.'s father expressed his anger that Williams "took advantage of" J.J. when "we sen[d] our kids to school to be looked after and supervised."

{¶ 11} Williams apologized to J.J. and her family. He said that he was currently attending counseling and working to "better [himself] as a person." He could not answer the trial court's questions about why he denied all involvement with J.J. to the presentence investigator, and he further denied buying J.J. lunch and gifting her panties. He stated that he did have oral sex with J.J. in his classroom but maintained that he did not have a separate closet space. He said that the skirt found in his locker was his daughter's, and the La Quinta hotel key was from "a different occasion." Throughout the sentencing hearing, Williams repeatedly stated that he "was not in the right frame of mind" at the time and that he was taking full responsibility for his actions.

{¶ 12} After hearing the statements, the trial court went through the seriousness factors set forth in R.C. 2929.12(B) and told defense counsel those factors weighed "completely 100 percent against" Williams. The trial court explained that Williams was in a position of trust, and the psychological injury to J.J. was exacerbated because of her young age. The trial court also went through the recidivism factors set forth in R.C. 2929.12(D) and acknowledged that Williams was a first-time offender and had a "low level of reoffending based on [the presentence] interview." But the trial court also pointed out that Williams acted multiple times, with deliberation, over a period of multiple weeks. The trial court also acknowledged the cases that Williams had submitted in his sentencing memorandum, but it stated that it did its own research and found that similar cases had varying issues and were not identical. The trial court further noted that the

victims in Williams's cases were all older than the victim here. The trial court recognized that Williams expressed remorse during the sentencing hearing, even though he did not answer the trial court's questions regarding his denial of sexual involvement during the presentence investigation and denied to the trial court that he bought J.J. lunch and panties. The trial court explained to him that each of the four counts carried possible prison terms of one to five years, in six-month increments.

{¶ 13} The trial court sentenced Williams to an aggregate of six years in prison: 3 years each for Counts 1 and 2, to run concurrently with each other; and 3 years each for Counts 4 and 6, to run concurrently with each other and consecutively to Counts 1 and 2.

{¶ 14} The trial court also assessed costs for Williams to pay through community work service while in prison. The trial court determined Williams to be a Tier III Sex Offender/Child Offender Registrant, the highest tier, and notified Williams of the legal obligations that accompany the designation. The trial court informed Williams that when he is released from prison, he must register in person with the sheriff where he lives, works, or attends school every 90 days for the rest of his life. The trial court further imposed five years of mandatory postrelease control and informed Williams of the consequences he would face if he were to violate the terms of his postrelease control. Defense counsel objected to the imposition of consecutive sentences.

{¶ 15} Williams appealed the trial court's sentencing judgment.

II. Law and Argument

{¶ 16} Williams argues that he should not have been sentenced to prison and that his prison sentence was too lengthy. We will address each of his arguments separately.

A. Standard of Review

{¶ 17} "An appellate court must conduct a meaningful review of the trial court's sentencing decision." *State v. McHugh*, 8th Dist. Cuyahoga No. 108372, 2020-Ohio-1024, ¶ 11. For felony sentences, an "appellate court's standard for review is not whether the sentencing court abused its discretion." R.C. 2953.08(G)(2). Instead, R.C. 2953.08(G)(2) provides that appellate courts "may increase, reduce, or otherwise modify a sentence * * * or may vacate the sentence and remand the matter to the sentencing court for resentencing" if the reviewing court "clearly and convincingly" finds that (a) "the record does not support the sentencing court's findings under [R.C. 2929.14(C)(4)]," or that (b) "the sentence is otherwise contrary to law."

{¶ 18} The Ohio Supreme Court has explained that when reviewing consecutive sentences, "R.C. 2953.08(G)(2)(a) directs the appellate court 'to review the record, including the findings underlying the sentence' and to modify or vacate the sentence 'if it clearly and convincingly finds * * * [t]hat the record does not support the sentencing court's findings under'" R.C. 2929.14(C)(4). *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 28, quoting R.C. 2953.08(G)(2)(a).

{¶ 19} As the Ohio Supreme Court has further explained,

> We note that some sentences do not require the findings that R.C. 2953.08(G) specifically addresses. Nevertheless, it is fully consistent for appellate courts to review those sentences that are imposed solely after consideration of the factors in R.C. 2929.11 and 2929.12 under a standard that is equally deferential to the sentencing court. That is, an appellate court may vacate or modify any sentence that is not clearly and convincingly contrary to law only if the appellate court finds by clear and convincing evidence that the record does not support the sentence.

State v. Marcum, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 23.

B. R.C. 2929.11 – Principles and Purposes of Felony Sentencing

{¶ 20} In his first assignment of error, Williams maintains that his six-year sentence is contrary to R.C. 2929.11(B) because it is inconsistent with other factually similar cases.

{¶ 21} The trial court must consider the purposes and principles of felony sentencing set forth in R.C. 2929.11 when sentencing a defendant. *McHugh*, 8th Dist. Cuyahoga No. 108372, 2020-Ohio-1024, at ¶ 12.

{¶ 22} R.C. 2929.11(A) states that when sentencing an offender for a felony, the trial court shall be guided by the overriding purposes of felony sentencing, which are (1) "to protect the public from future crime by the offender and others," (2) "to punish the offender," and (3) "to promote the effective rehabilitation of the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources." To achieve these purposes, "the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime,

rehabilitating the offender, and making restitution to the victim of the offense, the public, or both." *Id.*

{¶ 23} R.C. 2929.11(B) requires trial courts to impose sentences that "shall be reasonably calculated to achieve the three overriding purposes of felony sentencing[.]" The sentences must be "commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim" and be "consistent with sentences imposed for similar crimes committed by similar offenders."

{¶ 24} The trial court made the following statements regarding the purposes and principles of felony sentencing,

> This is serious. As mentioned, the purposes and principles of felony sentencing govern this proceeding. 2929.11 sets forth the overriding purposes of felony sentencing, which is to punish the offender and to protect our community from future crime by the offender using minimum sanctions that the court determines accomplishes those purposes. The principles are to always consider the need for incapacitation, deterrence, rehabilitation, and restitution.
>
> When there is discussion on consistency, it must be consistent with the purposes and principles of felony sentencing and the sentence should be commensurate and not demeaning to the impact on the victim here. The court is not to consider your race, ethnicity, gender, or religion.
>
> * * *
>
> I have considered the statutory sentencing factors, as I mentioned, the DCFS records, the presentence report, the sentencing memorandum, the State's memorandum, the defendant's statements, the letters that were submitted on behalf of both parties. I did consider as well the controlling authority here, which really is statutory, but also cases similar in nature. There [are] all sorts of results that have happened with these types of cases.

{¶ 25} Williams argues, however, that he should have been sentenced to community control sanctions and not prison time, and he enumerates factually analogous cases in which courts sentenced the defendants to community control sanctions. He contends that his six-year prison sentence is inconsistent with sentences of community control sanctions imposed for similar crimes committed by similar offenders. Williams points to the following cases: *State v. Alfred*, Cuyahoga C.P. No. CR-18-627397-A (Aug. 21, 2018) (high school principal who pleaded guilty to four counts of sexual battery was sentenced to community control sanctions); *State v. Marx*, Montgomery C.P. No 2017-CR-03584 (Apr. 19, 2018) (teacher sentenced to five years of community control sanctions for two counts of sexual battery); *State v. Yacobozzi*, Lorain C.P. No. 12 CR 084733 (Aug. 15, 2012) (teacher who pleaded guilty to two counts of sexual battery was sentenced to three years of community control sanctions and 100 hours of community service); *State v. Dattilo*, Butler C.P. No. CR-18-01-0031 (July 31, 2018) (teacher and volleyball coach pleaded guilty to one count of gross sexual imposition and was sentenced to community control sanctions for five years); *State v. Weaver*, Montgomery C.P. No. CR-13-00043 (May 1, 2013) (teacher convicted of three counts of sexual battery sentenced to five years of community control sanctions); *State v. Hartman*, Montgomery C.P. No. CR-12-03482 (Sept. 24, 2013) (teacher convicted of one count of unlawful conduct with a minor sentenced to five years of community control sanctions); *State v. Mastin*, Clark C.P. No. CR-11-0147 (Apr. 18, 2011) (guidance counselor convicted of three counts of sexual battery sentenced to five years of community control

sanctions); *State v. Smith*, Cuyahoga C.P. No. CR-16-603898-A (Sept. 22, 2016) (guidance counselor who pleaded guilty to one count of sexual battery and one count of attempted tampering with evidence was sentenced to one year in prison).

{¶ 26} The state identifies cases that it claims are similar where the defendants were sentenced to prison: *State v. Jones*, Pickaway C.P. No. 2018CR0230 (July 10, 2019) (choir director convicted of three counts of sexual battery sentenced to four years in prison); *State v. Polizzi*, Lake C.P. Nos. 17CR000853 and 17CR1390 (Feb. 4, 2020), *appeal pending*, 11th Dist. Lake Nos. 2020-L-016 and 2020-L-017 (teacher convicted of one count of gross sexual imposition and one count of sexual battery was sentenced to 358 months in prison); *State v. Kressback*, Henry C.P. No. 17CR0023 (June 26, 2017) (teacher convicted of four counts of sexual battery and five counts of unlawful sexual conduct with minor, was sentenced to 22 years in prison); *State v. McKinch*, Lake C.P. No. G-4801-CR-201701508 (June 20, 2017) (teacher who pleaded guilty to one count of sexual battery and three counts of unlawful sexual conduct with a minor was sentenced to three years in prison); *State v. Dugger*, Cuyahoga C.P. No. CR-19-636967 (July 17, 2019) (school security guard pleaded guilty to two counts of sexual battery, one count of importuning, and two counts of gross sexual imposition and was sentenced to four years in prison.); *State v. Reddix*, Cuyahoga C.P. No. CR-17-616467-A (Aug. 16, 2018) (teacher convicted of four counts of gross sexual imposition and three counts of abduction against fellow teachers was sentenced to two years in prison). Both parties identified these cases in their sentencing memorandums, and the trial

court reviewed and considered them as well as conducting its own legal research before sentencing Williams.

{¶ 27} We agree with Williams that the cases he identified are factually analogous to his case and that the defendants in those cases received a sentence of community control sanctions. But other cases similar to Williams's have resulted in a wide range of sentences, including prison sentences shorter and longer than six years. *See State v. Mitchell*, 8th Dist. Cuyahoga No. 105053, 2017-Ohio-6888 (youth minister who pleaded guilty to four counts of sexual battery for sexually abusing a sixteen-year-old youth-ministry member over two months was sentenced to ten years in prison); *State v. Clark*, 8th Dist. Cuyahoga No. 101863, 2015-Ohio-3027 (fifteen-year-old's father-figure sexually abused her on five separate occasions and was sentenced to eight years in prison); *State v. Shipley*, 9th Dist. Lorain No. 03CA008275, 2004-Ohio-434 (high school teacher convicted of six counts of sexual battery with two students was sentenced to ten years in prison); *State v. Hites*, 3d Dist. Hardin No. 6-11-07, 2012-Ohio-1892 (defendant, a teacher's aide and coach, was convicted on two counts of sexual battery for twice digitately penetrating a thirteen-year-old student on school premises and was sentenced to eight years in prison).

{¶ 28} "Moreover, '[a] consistent sentence is not derived from a case-by-case comparison; rather, the trial court's proper application of the statutory sentencing guidelines ensures consistency.'" *State v. Switzer*, 8th Dist. Cuyahoga No. 102175,

2015-Ohio-2954, ¶ 14, quoting *State v. Hall*, 179 Ohio App.3d 727, 2008-Ohio-6228, ¶ 10 (10th Dist.).

{¶ 29} Thus, Williams's first assignment of error is overruled.

C. R.C. 2929.12 – Seriousness and Recidivism Factors.

{¶ 30} In his second assignment of error, Williams contends that he should not have been sentenced to prison at all because the record does not support that his conduct was more serious than conduct normally constituting the offense or that he is likely to engage in future criminal activity.

{¶ 31} When sentencing a defendant, the trial court must consider the seriousness and recidivism factors set forth in R.C. 2929.12. *McHugh*, 8th Dist. Cuyahoga No. 108372, 2020-Ohio-1024, at ¶ 12. R.C. 2929.12 provides a non-exhaustive list of factors that trial courts must consider in relation to the seriousness of the underlying crime and likelihood of recidivism. *State v. Kronenberg*, 8th Dist. Cuyahoga No. 101403, 2015-Ohio-1020, ¶ 26. Factors regarding the likelihood of recidivism include "the defendant's prior criminal record" and "whether the defendant shows any remorse." *Id.*, citing R.C. 2929.12(D). Factors regarding the seriousness of the defendant's conduct include the following:

> (1) The physical or mental injury suffered by the victim of the offense due to the conduct of the offender was exacerbated because of the physical or mental condition or age of the victim.
>
> (2) The victim of the offense suffered serious physical, psychological, or economic harm as a result of the offense.
>
> (3) The offender held a public office or position of trust in the community, and the offense related to that office or position.

> (4) The offender's occupation, elected office, or profession obliged the offender to prevent the offense or bring others committing it to justice.
>
> (5) The offender's professional reputation or occupation, elected office, or profession was used to facilitate the offense or is likely to influence the future conduct of others.
>
> (6) The offender's relationship with the victim facilitated the offense.
>
> * * *

R.C. 2929.12(B).

{¶ 32} Regarding the seriousness factors, Williams argues that there is no evidence in the record to show that J.J. suffered physical or mental injury or that such injury was exacerbated because of her age. The trial court found otherwise:

> [W]hen it comes to the seriousness factors, we have a victim who offers nothing to the crime that was involved here, who is preyed upon by someone who is in a position of trust, that was in a position to make sure this type of crime does not happen, who violated that very, very important sacred trust and those seriousness factors weigh completely 100 percent against him.
>
> * * *
>
> I'll tell you right now, I hope you do well, sir. This is horrible. What you did is terrible. You heard it stated in plain English on the record here today. You violated the type of relationship that we consider important, like we would religious figures, like we would, of course, counselors, teachers, physicians, that type of thing.
>
> * * *
>
> Moving on to the factors that would render your conduct serious statutorily, as I mentioned earlier, here's where the factors, by statute, indicate that your conduct is more serious than conduct that typically constitutes the offense. The injury to the victim is exacerbated because of her tender age. She suffered serious harm. We heard about it. Her family is suffering, too. The harm is psychological. The whole family feels traumatized.

* * *

> Your position of trust, this is a statutory factor, but we heard it in words. The statute is not unlike common sense. It makes sense that your position of trust that is violated makes your conduct more serious. You're not just anybody. You are her coach. Of all people, you are about the last one anybody would expect this from. I don't know you. It is just that you have the benefit of that title and all of the weight and the power it carries and apparently a long-standing reputation, and you violated that. She deserves the same mentoring as these kids that go to the NFL. You want to mentor her? She could be president. She could be whatever she wants to be, but she shouldn't be having oral sex in your classroom or Motel 8 with a teacher three decades her senior.
>
> And this occupation facilitated the offense, also a statutory factor, rendering your conduct more serious. You should have made sure this kind of thing didn't happen. That statutorily makes your conduct more serious.

{¶ 33} The record supports the trial court's findings regarding the seriousness of Williams's conduct. J.J. and her parents described the harm Williams's actions caused J.J., especially because of her young age. J.J. stated that she was bullied at school and on social media as a result of Williams's conduct. Her grades dropped, she developed low self-esteem, she felt depressed and embarrassed, and she "came home every day crying and exhausted." She became restless at night and was always angry. J.J.'s mother stated that J.J. feels unsafe, does not want to be left alone, has nightmares, and has been stigmatized, victimized, and publicly humiliated. The record further shows that Williams, as a teacher and J.J.'s coach was in a position of trust and used that role to facilitate the offenses.

{¶ 34} Williams further argues that he has a low risk of reoffending because he had no prior criminal history and took responsibility for his conduct. The trial

court agreed that Williams was a first-time offender but questioned whether he took responsibility for his actions.

> When it comes to the recidivism factors, it is true, you were found to have a low level of reoffending based on this [presentence investigation] interview. This also indicates that you are a first offender, but, remember, this happened over a period of time. It didn't happen once. It happened multiple times. So, yes, I'm considering all of that when it comes to sentencing.
>
> * * *
>
> The court is required to consider, pursuant to 2929.12, whether you are likely or unlikely to reoffend, and your attorney argued in his pleading and in court today that you don't have a criminal history, of which I'm well aware. I accept that you have had accomplishments in your life. I commend you for the accomplishments that you have had; and when you come to court, that is a part of what we consider, but what you are here for primarily is the harm that you caused to this child.
>
> There was a question, as I told you, as to whether you were truly accepting responsibility after the paragraph on page 2 of the presentence report set forth your version. That's got to come to a stop. A plea of guilty means you take responsibility, but you don't turn around a minute or two or three days later and point the finger at the innocent victim. That's not taking responsibility. That's victim-shaming, and that's not going to happen here.
>
> * * *
>
> Moving on, to address that issue, [defense counsel], your client expressed remorse today. I'll accept that and give it the weight to which it is entitled.
>
> * * *
>
> So when it comes to weighing the statutory sentencing factors, I don't disagree with [defense counsel]. He is right, that there's reason to find you – that weighs in favor of you not recidivating and, of course, being caught stopped this conduct fortunately.

{¶ 35} The record does support that Williams had no prior criminal history. Regarding his remorse, after he pleaded guilty to amended charges, Williams denied all sexual activity with J.J. during the presentence investigation. At the sentencing hearing, he could not answer the trial court's questions about why he denied responsibility after pleading guilty, and he continued to simply repeat that he was taking full responsibility for his actions. He also denied buying J.J. lunch and panties and that he had a closet in his classroom.

{¶ 36} Based upon our meaningful review of the record, we clearly and convincingly find that the record supports the trial court's decision to sentence Williams to prison instead of community control sanctions. We find that the record shows that the trial court imposed a sentence that was reasonably calculated to achieve the purposes of felony sentencing, that Williams's sentence was commensurate with and not demeaning to the seriousness of his conduct, and that his sentence was consistent with those imposed for similar offenders. We further find that the trial court properly considered and weighed the seriousness and recidivism factors.

{¶ 37} Accordingly, Williams's second assignment of error is overruled.

D. Consecutive Sentences

{¶ 38} A defendant can challenge consecutive sentences on appeal in two ways. First, the defendant can argue that consecutive sentences are contrary to law because the court failed to make the necessary findings required by R.C. 2929.14(C)(4). *See* R.C. 2953.08(G)(2)(b); *State v. Nia*, 2014-Ohio-2527, 15 N.E.3d

892, ¶ 16 (8th Dist.). Second, the defendant can argue that the record does not support the court's findings made pursuant to R.C. 2929.14(C)(4). *See* R.C. 2953.08(G)(2)(a); *Nia* at ¶ 16. In his third assignment of error, Williams raises the latter argument.

{¶ 39} "In Ohio, sentences are presumed to run concurrent to one another unless the trial court makes the required findings under R.C. 2929.14(C)(4)." *State v. Gohagan*, 8th Dist. Cuyahoga No. 107948, 2019-Ohio-4070, ¶ 28. Trial courts must therefore engage in the three-tier analysis of R.C. 2929.14(C)(4) before imposing consecutive sentences. *Id.* First, the trial court must find that "consecutive service is necessary to protect the public from future crime or to punish the offender." Second, the trial court must find 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.* Third, the trial court must find that at least one of the following applies:

> (a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.
>
> (b) 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 multiple offenses so 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 reflects the seriousness of the offender's conduct.
>
> (c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

{¶ 40} The failure to make the above findings renders the imposition of consecutive sentences contrary to law. *Gohagan* at ¶ 29. R.C. 2929.14(C)(4) directs that for each step of this analysis, the trial court must "find" the relevant sentencing factors before imposing consecutive sentences. But trial courts do not need to recite the statutory language word for word. *Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, at ¶ 29. "[A]s 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.*

{¶ 41} In this case, the trial court made the following findings at Williams's sentencing hearing:

> I'm making consecutive findings pursuant to 2929.14. It is necessary to protect the public from future crime and it is necessary to punish. * * * This is not disproportionate to the seriousness of your conduct. No single prison term would adequately reflect the seriousness of your conduct, because the harm was so great and so unusual in these four counts.
>
> * * *
>
> I'll just tell you right now, sir, that I have considered this. I have thought long and hard, read every possible document I could. I don't believe that probation is appropriate. It would demean the seriousness of your conduct. There's too much harm here. For all of the reasons that have been said here, you must go to prison. That is the price you have to pay. I hope that this somehow or another assists in a healing process for the victim, and I will say that while there are a lot of people here who are extremely angry with you, I sentence you without anger and hostility. This is statutory. You must go.

{¶ 42} Williams points to *State v. DeAmiches*, 8th Dist. Cuyahoga No. 77609, 2001 Ohio App. LEXIS 768, *32 (Mar. 1, 2001), for the proposition that Ohio

law disfavors consecutive sentencing. We note that there was no majority opinion in *DeAmiches* but nonetheless agree with this statement of law and recognize that sentences are presumed to run concurrently. *Gohagan* at ¶ 28. However, if a trial court makes the findings as required under R.C. 2929.14(C)(4), the trial court may impose consecutive sentences. *Id.*

{¶ 43} Williams also points to *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, which severed provisions of the Ohio sentencing statutes that had created a presumption that the minimum sentence should be imposed for offenders who had never been to prison unless the trial court made certain findings set forth in former R.C. 2929.14(B) and (C). Williams argues that even after *Foster*, trial courts "have consistently imposed the shortest prison term for first-time offenders and reserved longer or consecutive sentences for the most serious and repeat offenders." But as Williams recognizes, trial courts now have more discretion to impose any prison sentence within the statutory range, including the maximum sentence, without making any statutory findings. *Id.* at ¶ 100. Here, the trial court had the authority to sentence Williams from no prison at all (i.e., community control sanctions) to twenty years in prison, and based on her consideration of the sentencing statutes, she chose to sentence him to three years on each count, running two of them consecutively for an aggregate of six years.

{¶ 44} Williams maintains that the record does not support the trial court's findings pursuant to R.C. 2929.14(C)(4). He challenges the trial court's findings that consecutive sentences were necessary to protect the public or punish Williams and

that the consecutive sentences were disproportionate to his conduct and risk to the public because J.J. sustained no physical injury and Williams was a first-time offender who expressed remorse for his conduct.

{¶ 45} We find that the record supports the trial court's findings that consecutive sentences were necessary to punish Williams and were not disproportionate to the seriousness of his conduct and to the danger he poses to the public. Even though the record does not reflect that J.J. sustained physical injury, it establishes that she suffered psychological harm, including a decline in self-esteem, a sense of being unsafe, depression, embarrassment, bullying, nightmares, stigmatization, and humiliation. And although Williams was a first-time offender, he used his position of trust to take advantage of and sexually abuse a 15-year-old student multiple times, and his remorse and acceptance of responsibility for his actions were inconsistent throughout the proceedings.

{¶ 46} Williams also argues that the record does not show that at least two of his offenses were committed as part of a course of conduct, and the harm caused by the offenses were so great or unusual that no single term would suffice. We disagree.

{¶ 47} The record contains evidence to support the trial court's findings. Williams engaged in a course of sexual conduct with J.J. over the span of several weeks. He began by spending time, having lunch, and flirting with J.J. before working his way up to physically touching her. The offenses to which Williams pleaded guilty were specifically on three separate dates between October 6 and 24,

2018. The 29-year age difference between Williams and J.J., the abuse of his position of trust as her coach, and the statements of the resulting trauma to J.J. and her family support the trial court's finding that Williams's offenses were so great and unusual that no single prison term for any of the offenses could adequately reflect the seriousness of his conduct.

{¶ 48} Based upon our meaningful review of the trial court's sentencing judgment, we clearly and convincingly find that the record supports the trial court's findings under R.C. 2929.14(C)(4).

{¶ 49} Accordingly, Williams's third assignment of error is overruled.

{¶ 50} Because we find that the record shows that the trial court imposed a sentence that was reasonably calculated to achieve the purposes of felony sentencing, that Williams's sentence was commensurate with and not demeaning to the seriousness of his conduct, that his sentence was consistent with those imposed for similar cases, that the trial court properly considered and weighed the seriousness and recidivism factors, and that the trial court made the proper findings before imposing consecutive sentences, we overrule all three of Williams's assignments of error and affirm Williams's sentence.

{¶ 51} 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. 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.

MARY J. BOYLE, PRESIDING JUDGE

FRANK D. CELEBREZZE, JR., J., and
RAYMOND C. HEADEN, J., CONCUR