

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2011-L-072
CHARLES J. RHODES,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Lake County Court of Common Pleas, Case No. 10 CR 000740.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, and *Teri R. Daniel*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

R. Paul LaPlante, Lake County Public Defender, and *Vanessa R. Clapp*, Assistant Public Defender, 125 East Erie Street, Painesville, OH 44077 (For Defendant-Appellant).

DIANE V. GRENDALL, J.

{¶1} Defendant-appellant, Charles J. Rhodes, appeals his aggregate eighteen-year sentence for two counts of Felonious Assault and one count of Kidnapping. The issue before this court is whether the trial court abused its discretion in imposing an eighteen-year sentence given the alleged mitigating circumstances present in this case and the minimal likelihood of recidivism. For the following reasons, we affirm the decision of the court below.

{¶2} On December 6, 2010, the Lake County Grand Jury returned an Indictment against Rhodes charging him with one count of Felonious Assault, a felony of the second degree in violation of R.C. 2903.11(A)(1); one count of Kidnapping, a felony of the first degree in violation of R.C. 2905.01(A)(2); one count of Kidnapping, a felony of the first degree in violation of R.C. 2905.01(A)(3); and one count of Attempted Murder, a felony of the first degree in violation of R.C. 2923.02.

{¶3} On December 10, 2010, Rhodes waived his right to be present at his arraignment and entered a plea of not guilty to all charges.

{¶4} On April 7, 2011, Rhodes entered a Written Plea of Guilty to Felonious Assault and Kidnapping (R.C. 2905.01(A)(2)) as charged in the Indictment, and Felonious Assault, a felony of the second degree in violation of R.C. 2903.11(A)(2), as a lesser offense of Attempted Murder.

{¶5} The following factual basis for Rhodes' plea was proffered at the change of plea hearing:

{¶6} Regarding Count One of the [I]ndictment, the facts in this matter, if we were to proceed to trial, would demonstrate that on November 28, 2010, in Painesville Township, that the Defendant had had a prior relationship with the victim in this case. They previously had dates; they had broken up. They both that evening ended up at a party of mutual friends which at the time the Defendant convinced the victim to give him a ride home to his residence.

{¶7} Once they arrived at the residence, they spent a considerable amount of time discussing their prior relationship. At one point the

victim wanted to leave the residence and was prohibited from doing so by the Defendant. He had the keys to the car and would not return them to her.

{¶8} As she attempted to leave the physical property, the Defendant tackled her to the ground, continued at that point to strike her about the face with his fists. During that time, while he was striking her, he did end up breaking her orbital socket to her face and she was temporarily knocked unconscious.

{¶9} * * *

{¶10} [Regarding Count Two of the Indictment], the victim was temporarily knocked unconscious, the Defendant at that time then picked her up physically. He was viewed by witnesses, neighbors[,] actually physically dragging her to the trunk area of his vehicle. He opened the trunk area and placed her inside the trunk and closed it. Following doing that, he went back inside of his residence, came back out with what turned out to be two steak knives as well as some other personal items.

{¶11} * * * [A]nd then from there the Defendant left that location with the victim in the trunk of the car. Where she was concealed and locked in the trunk of the car and proceeded to a second location also in Painesville Township where an additional act occurred at that location.

{¶12} * * *

{¶13} [Regarding Count Four of the Indictment], [t]he evidence would further show from the leaving the residence in Painesville Township, the Defendant proceeded to the location of the BP station located in Painesville Township for the purpose of filling up the tank of his car.

{¶14} The evidence would show at that location, as he was engaged in filling up his gas tank, that the victim was able to secure her release by locating an interior release to the trunk inside the vehicle. She was able to manipulate that release, the trunk popped open and she was able to jump outside of the trunk.

{¶15} The evidence would show at that location, the Defendant in response grabbed a knife that he had * * * on his person, one of the steak knives he had brought from the residence, and proceeded to pursue the victim, attacking her with this knife. She was stabbed in the back, in the head, and on the back area with this knife to the point where the blade of the knife actually broke off and became embedded in her neck. At that time she was able to get inside of the BP station, at which time she collapsed.

{¶16} The Defendant in response then took off, fled. At which time he proceeded from that location. Law enforcement, specifically the sheriff's department, was contacted. And after a pursuit, the Defendant did subsequently surrender himself to law enforcement authorities.

{¶17} On May 19, 2011, Rhodes filed a Sentencing Memorandum, in which it was argued that “a lengthy prison term” was not necessary to punish him or to protect the public from future harm. The Memorandum detailed the course of Rhodes’ relationship with the victim and the events of the night of November 28, 2010.

{¶18} The Memorandum also contained a psychological evaluation performed by Dr. James R. Eisenberg. Dr. Eisenberg diagnosed Rhodes as having “adjustment disorder with mixed anxiety and depressed mood,” in addition to issues with alcohol and cannabis abuse. Dr. Eisenberg concluded that Rhodes’ behavior on the night in question was “clearly aberrant,” as “[h]e has no prior record and was doing well in college and progressing towards a degree.” Depression, alcohol abuse, and the “toxic nature of the relationship with the victim” were cited as contributing factors to the instant offense. “The two had known each other since high school. They had broken up on previous occasions and gotten back together. Mr. Rhodes firmly believed that they would get back together again despite her stating otherwise. * * * He was clearly obsessed with [the victim]. * * * He was clearly depressed when seen at the Ohio University Counseling Service in November of 2010 just prior to the instant offense.”

{¶19} On May 23, 2011, the sentencing hearing was held. Counsel for Rhodes argued that a community control sanction would not demean the seriousness of the offense. Counsel noted that the victim’s injuries were not life-threatening. With respect to mitigating factors, counsel noted that Rhodes “acted under strong provocation,” that provocation being the “culmination or combination” of “the breakup, depression, mixed signals, in an individual * * * with [Rhodes’] underlying issues with the Personality Disorder.” With respect to recidivism, counsel emphasized that Rhodes had no criminal

record. Counsel noted that, under the probation department's risk assessment, Rhodes was determined compliant and amenable to probation. Counsel further noted that "this whole incident occurred in about 20 or 25 minutes," and was "a continuing course [of conduct] by a young man who just lost it."

{¶20} Rhodes spoke at the hearing, apologizing to the victim and her family. Members of Rhodes' family and prison chaplains spoke on his behalf.

{¶21} The victim addressed the trial court stating that Rhodes was "not a horrible person" and that she forgave him, but that "things in my life will never be the same."

{¶22} The State recommended an aggregate prison term of eighteen years.

{¶23} The trial court stated that it "has reviewed all of the materials and information that have been presented," including the Sentencing Memorandum, victim impact statements, testimony and letters on behalf of Rhodes, presentence investigation report, a forensic psychological evaluation performed by Dr. Jeffrey Rindsberg, and the purposes and principles of felony sentencing.

{¶24} The trial court found that the seriousness of the crimes were aggravated by the physical harm suffered by the victim, including a fractured orbital bone and multiple stab wounds, one of which lodged "right above the vertebra, C-6, the base of her skull, three to five inches deep with the blade stuck inside of her." The court disagreed that these injuries were not life threatening.

{¶25} The trial court determined the Kidnapping to be much more serious than the typical Kidnapping, which occurs "usually for just a few brief moments in order to facilitate the commission of some other offense." The fact that Rhodes' relationship with

the victim facilitated the commission of the offenses further aggravated their seriousness.

{¶26} The trial court rejected Rhodes' contention of serious provocation. The court stated that this factor contemplated provocation by the victim, rather than the offender's underlying personality traits. The court also stated that Rhodes' underlying "personality disorder or trait has nothing to do with the conduct that he engaged in."

{¶27} The trial court found no factors suggesting recidivism was more likely and several factors indicating the contrary, such as genuine remorse and the lack of a prior criminal record.

{¶28} The trial court credited the victim's strength, fortitude, and "will * * * to survive this ordeal" as the reason why Rhodes was not facing more serious charges.

{¶29} On a couple of occasions, the trial court emphasized that there were "three separate serious crimes that have been committed." The court concluded that "the heinous nature of these crimes deserves serious punishment."

{¶30} The trial court sentenced Rhodes to serve consecutive prison terms of four years for Felonious Assault, seven years for Kidnapping, and seven years for Felonious Assault as a lesser offense of Attempted Murder, for an aggregate prison term of eighteen years. The court ordered Rhodes to pay restitution to the victim in the amount of \$3,416.56.

{¶31} On May 31, 2011, the trial court issued its written Order and Journal Entry, memorializing Rhodes' sentence.

{¶32} On June 13, 2011, Rhodes filed his Notice of Appeal. On appeal, Rhodes raises the following assignments of error:

{¶33} “[1.] The trial court erred by sentencing the defendant-appellant to an excessive and consecutive term of imprisonment.”

{¶34} “[2.] The trial court violated the defendant-appellant’s rights to equal protection and due process of law under the Fifth and Fourteenth Amendments to the U.S. Constitution and under Sections 2, 10 and 16, Article I of the Ohio Constitution when it sentenced him contrary to R.C. 2929.11(B).”

{¶35} “[A]ppellate courts must apply a two-step approach when reviewing felony sentences. First, they must examine the sentencing court’s compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law. If this first prong is satisfied, the trial court’s decision in imposing the term of imprisonment is reviewed under the abuse-of-discretion standard.” *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶ 26.

{¶36} In the first assignment of error, Rhodes does not argue that his sentence is contrary to law, but, rather, that the trial court failed to give “careful and substantial deliberation to the relevant statutory considerations.” *Id.* at ¶ 20. While acknowledging that the overriding purposes of felony sentencing in Ohio “are to protect the public from future crime by the offender * * * and to punish the offender,” R.C. 2929.11(A), Rhodes maintains the court focused solely on punishing the offender, and disregarded the consideration that his sentence was not necessary to protect the public in any way.

{¶37} It is well-established that a sentencing court “has discretion to determine the most effective way to comply with the purposes and principles of sentencing.” R.C. 2929.12(A). The Ohio Supreme Court has described a sentencing court’s discretion as

“full discretion to impose a prison sentence within the statutory range.” *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1, paragraph three of the syllabus; *State v. Ries*, 11th Dist. No. 2008-P-0064, 2009-Ohio-1316, ¶ 13 (“[s]uch discretion is plenary”). “[T]he trial court is not obligated, in the exercise of its discretion, to give any particular weight or consideration to any sentencing factor.” *State v. Holin*, 174 Ohio App.3d 1, 2007-Ohio-6255, 880 N.E.2d 515, ¶ 34 (11th Dist.).

{¶38} The trial court’s imposition of an eighteen-year sentence primarily as punishment for the present offenses does not constitute an abuse of discretion. As noted above, the court is entitled to impose a sentence it feels is commensurate with the seriousness of the offender’s crime, although such a sentence may not be necessary for the protection of the public.

{¶39} The sentence imposed in the present case is commensurate with the seriousness of Rhodes’ crimes. Rhodes counters that the trial court exaggerated the gravity of the victim’s injuries, which were not immediately life-threatening, and instead imposed a sentence based on what those injuries might have been. We disagree. The seriousness of a crime is not solely measured by the harm inflicted, but is also dependent on the nature of the offender’s conduct. In the present case, the medical records describe the severity of the victim’s injuries as “moderate.” That description, however, does not properly characterize the act of repeatedly stabbing the victim in the head and back as she tries to escape. Nor does it well describe the act of beating the victim unconscious and placing her in the trunk of a car, allegedly for the purpose of speaking with her.

{¶40} Rhodes also argues under this assignment of error that the sentencing judge demonstrated judicial bias in rendering judgment, both by displaying animus toward Rhodes and by identifying with the victim.

{¶41} Prior to passing judgment, Rhodes' father addressed the court. During the address, he stated: "I can't imagine how many sleepless nights I would have knowing I would be responsible for sending someone to prison who is so deeply sorry and remorseful for his actions and represents no further threat to me or my family. Especially knowing that person has a treatable condition. If I sent that person to prison, I would probably need therapy to make that right in my mind or to be able to look at myself in the mirror."

{¶42} After both parties had finished addressing the trial court and the sentencing judge had reviewed the applicable seriousness and recidivism factors, the judge addressed Rhodes' father: "And before I impose the prison term, I do want to say that I am going to sleep very fine tonight, Mr. Rhodes, and I am quite certain as I get off the bench I am not going to need any therapy. I'm not the one responsible for sending him to prison. He sent himself to prison."

{¶43} Rhodes claims the sentencing judge aligned himself with the victim, as evidenced by his statements that "this is one of the most serious kidnappings," "how she got out is just amazing," and "the only reason we are not here with you facing life in prison is because of [the victim]."

{¶44} Judicial bias has been described as "a hostile feeling or spirit of ill will or undue friendship or favoritism toward one of the litigants or his attorney, with the formation of a fixed anticipatory judgment on the part of the judge, as

contradistinguished from an open state of mind which will be governed by the law and the facts.” *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956), paragraph four of the syllabus. The Ohio Supreme Court has approved the position that “opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.” *State v. Dean*, 127 Ohio St.3d 140, 2010-Ohio-5070, 937 N.E.2d 97, ¶ 49, quoting *Liteky v. United States*, 510 U.S. 540, 555, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994). “Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge.” *Id.*

{¶45} The sentencing judge’s statements in the present case do not reflect judicial bias as described above. Rather, they represent the judge’s opinions based solely on the facts and testimony before the court.

{¶46} The first assignment of error is without merit.

{¶47} In the second assignment of error, Rhodes asserts that his sentence is inconsistent with the sentences of similarly situated criminals who committed comparable crimes, as required by R.C. 2929.11(B).

{¶48} Rhodes acknowledges the holdings of this court that “sentencing consistency is not derived from the trial court’s comparison of the current case to prior sentences for similar offenders and similar offenses.” (Citation omitted.) *State v. DeMarco*, 11th Dist. No. 2007-L-130, 2008-Ohio-3511, ¶ 25. “Rather, it is the trial court’s proper application of the statutory sentencing guidelines that ensures

consistency in sentencing. * * * Thus, in order to show a sentence is inconsistent, a defendant must show the trial court failed to properly consider the statutory factors and guidelines.” (Citation omitted.) *Id.*

{¶49} Rhodes contends that the trial court’s failure to properly consider the seriousness and recidivism factors, as argued under the first assignment of error, resulted in a sentence inconsistent with those similar offenders. Rhodes cites the following cases: *State v. Archibald*, 11th Dist. No. 2008-L-123, 2009-Ohio-5425, ¶ 6 (thirteen-year aggregate sentence for five counts of Rape and two counts of Kidnapping); *State v. Eggleston*, 11th Dist. No. 2008-L-047, 2008-Ohio-6880, ¶ 10 (ten-year aggregate sentence for Aggravated Burglary, Disrupting Public Services, three counts of Kidnapping, and Misdemeanor Assault); *State v. Jordan*, 11th Dist. No. 2009-L-006, 2009-Ohio-6152, ¶ 19 (four-year aggregate sentence for Felonious Assault and Possession of Cocaine).

{¶50} The lower aggregate sentences in these cases do not render Rhodes’ eighteen-year sentence an abuse of the trial court’s discretion. The trial court’s decision to impose an eighteen-year prison sentence in the present case was neither arbitrary nor capricious. The court imposed a four-year sentence for the Felonious Assault in which the victim was beaten unconscious. Four years is toward the lower end of the range of possible sentences for a second degree felony. R.C. 2929.14(A)(2) (“[f]or a felony of the second degree, the prison term shall be two, three, four, five, six, seven, or eight years”). For the Kidnapping and the Felonious Assault with the steak knife, crimes which the court described as “heinous,” it imposed seven-year sentences, which are less than the maximum possible sentences for felonies of the first and second degree.

Former R.C. 2929.14(A)(1) (“[f]or a felony of the first degree, the prison term shall be three, four, five, six, seven, eight, nine, or ten years”).

{¶51} The length of Rhodes’ sentence is primarily attributable to the trial court’s decision to impose consecutive sentences. This decision was neither arbitrary nor capricious, but arises from the court’s conviction that the three offenses were separate and distinct and, thus, each deserving of punishment. In *Archibald* and *Eggleston*, the Kidnappings were part of the commission of other crimes, i.e., the victims in those cases were restrained in the course of the Rape or the Assault. In the present case, in contrast, the Kidnapping occurred apart from the two Assaults. Accordingly, it is not an abuse of the court’s discretion to order consecutive sentences. *State v. Hodge*, 128 Ohio St.3d 1, 2010-Ohio-6320, 941 N.E.2d 768, ¶ 11 (“[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 * * * consecutive * * * sentences”) (citation omitted).

{¶52} Likewise, the situation in *Jordan* is factually distinguishable. Rhodes claims that the injury suffered in *Jordan* was more life-threatening than the injuries suffered by the victim in the present case. *Jordan*, 2009-Ohio-6152, at ¶ 9 (the victim “was * * * stabbed three times in his left bicep, one so deep that it severed a major artery”). Nonetheless, the offender in *Jordan* received a lower sentence for Felonious Assault. As noted above, it was proper to consider the nature of the conduct, in this case, repeatedly stabbing the victim in the head and back and leaving the blade stuck in the victim’s neck, as well as the severity of the actual injury. Moreover, the offender and the victim in *Jordan* were adult men engaged in mutual combat after “a night of drinking

and smoking crack cocaine,” *id.* at ¶ 7, whereas the present case involved violence committed against the offender’s unarmed and unoffending ex-girlfriend. These distinctions between the two cases justify the disparate sentences for Felonious Assault.

{¶53} The second assignment of error is without merit.

{¶54} For the foregoing reasons, the judgment of the Lake County Court of Common Pleas, sentencing Rhodes to an aggregate eighteen-year prison sentence, is affirmed. Costs to be taxed against appellant.

MARY JANE TRAPP, J.,

THOMAS R. WRIGHT, J.,

concur.