

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

STATE OF OHIO,	:	OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2017-A-0007
RAYMOND S. EDDER,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Ashtabula County Court of Common Pleas, Case No. 2016 CR 456.

Judgment: Affirmed.

Nicholas A. Iarocci, Ashtabula County Prosecutor, and *Shelley M. Pratt*, Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047 (For Plaintiff-Appellee).

Rebecca R. Grabski, 9442 State Route 43, Streetsboro, OH 44241 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Raymond S. Edder, appeals the imposition of consecutive sentences following the entry of a guilty plea to Aggravated Burglary and Kidnapping in the Ashtabula County Court of Common Pleas. The issue before this court is whether the findings necessary for the imposition of consecutive sentences must be supported by sworn testimony subject to cross-examination. For the following reasons, we affirm the decision of the court below.

{¶2} On July 27, 2016, Edder was indicted by the Ashtabula County Grand Jury for the following: Aggravated Burglary (Count One), a felony of the first degree in violation of R.C. 2911.11(A)(2); Kidnapping (Count Two), a felony of the second degree in violation of R.C. 2905.01(B) and (C)(1); Kidnapping (Count Three), a felony of the second degree in violation of R.C. 2905.01(A)(4) and (B)(1); Felonious Assault (Count Four), a felony of the second degree in violation of R.C. 2903.11(A)(2); Felonious Assault (Count Five), a felony of the second degree in violation of R.C. 2903.11(A)(2); Improperly Discharging a Firearm at or into a Habitation (Count Six), a felony of the second degree in violation of R.C. 2923.161(A)(1); and Gross Sexual Imposition (Count Seven), a felony of the fourth degree in violation of R.C. 2907.05(A)(1). The first six Counts of the Indictment contained firearm specifications pursuant to R.C. 2941.145 and forfeiture specifications pursuant to R.C. 2981.02(A)(3) and 2981.04.

{¶3} On August 8, 2016, Edder was arraigned and entered a plea of not guilty.

{¶4} On November 9, 2016, Edder pled guilty to Aggravated Burglary (Count One), Kidnapping (Count Two), Felonious Assault (Count Four), and Felonious Assault (Count Five). The State agreed that the remaining charges would be dismissed.

{¶5} At the plea hearing, Edder explained that his actions were motivated by a desire to retrieve a coin collection which he believed one of the victims had taken from him.

{¶6} The State proffered the following as to what the evidence would have shown:

Victoria McGuire and Mr. Edder had a relationship * * * and then they broke up at some point in time. And it was on July 18th that Mr. Edder showed up at the trailer park in North Kingsville Village * * * known as Holiday Village * * * where Victoria McGuire * * * had been staying, along with another man named Steve Sanford. It's

alleged that Mr. Edder did knock at the door at that time. Ms. McGuire opened the door, saw him standing there, tried to shut the door and lock it. He forced his way in and pointed a semiautomatic handgun at Mr. Sanford and told him to sit or he would shoot him. And discharged, ultimately, the firearm into the floor of that trailer at that point.

It's alleged that Mr. Edder did take Ms. McGuire at gunpoint from that place and drive her back to his residence at 1010 Broad Street in Conneaut. And more or less he stayed there for a few hours until the SWAT team pinged his phone and was able to find her location. And then, ultimately, made the arrest when Mr. Edder walked out of the residence.

The allegation that Mr. Edder says that Ms. McGuire took his coin collection seems to be, at least from our standpoint, false. Because when a search warrant was obtained of the residence, a safe was inspected where all of these firearms were located. And in that safe, there were four pages of an inventory sheet identifying the number of coins. Essentially, a coin collection was found in this safe * * *. So Ms. McGuire adamantly denies having taken any kind of coin collection.

{¶7} On December 30, 2016, a sentencing hearing was held. The trial court merged one Felonious Assault (Count Five) conviction into the Aggravated Burglary (Count One) conviction, and the other Felonious Assault (Count Four) conviction into the Kidnapping (Count Two) conviction.

{¶8} At the sentencing hearing, Edder described his belief that McGuire had taken the coin collection and the effect that had on him. Edder claimed that he had contacted the police "on numerous occasions" for assistance in retrieving the collection but they would not help him:

And I got so upset, I just said, well, I got to go down there and scare her. I would never hurt anybody. It's not in my blood to cause harm. I would have scared her. And that was the stupidest thing I ever did, take my gun down there to scare her.

{¶9} Prior to pronouncing sentence, the trial court stated:

The Court's reviewed the Presentence Investigation Report, and, Mr. Edder, it's an extensive document and it provides the Court with much information about you. The Court's, of course, reviewed the facts -- the Court's familiar with those -- that led to the charges here. The Court also reviewed your version of what occurred. The Court listened to you here in court, and then we also have your statement here in the Presentence Investigation Report. The Court had an opportunity also to review your criminal -- your past criminal record.

As stated here, there's no known juvenile record. In regards to your adult record, it begins in 1985; and then it looks as though there is a 1992 domestic violence, that appears to be a misdemeanor; then a couple of misdemeanors in '99 and 2001, resisting arrest and aggravated menacing. And then there is a period of time between 2001 and 2016, it's a period of about 15 years where you were law-abiding. It sounds as though you had a job and you carried on a regular life. And then, unfortunately, the instant offenses occurred here; so the Court notes that.

The Court's considered the purposes and principles of the sentencing statutes, as the overriding purposes are to punish the offenders and to protect the public from future crime. The Court's considered both recidivism and seriousness factors as well.

In regards to recidivism factors, the Court notes that Mr. Edder does have a prior criminal record at the adult level. * * * In regards to remorse, the Court listened to Mr. Edder here in court and also your statement here in the Presentence Investigation Report.

In regard to seriousness factors, the Court's considered those. These are violent offenses with the presumption for prison, as stated in the plea agreement. That includes mandatory time for the gun specification. Ah, the victims in this case did suffer psychological harm. They certainly were fearful. They were * * * terrorized by you with your use of the gun. And you pled guilty to four felonies here, all of which are higher level felon[ies] * * *. Also in regards to seriousness factors, it happens that your relationship with the victim facilitated this offense. You and the victim in this case, Victoria McGuire, were not strangers. Also, the Court notes here * * * that you have served in the U.S. Army Reserves from 1976 to 1980. * * *

The Court has listened to the recommendations of counsel, and the Court finds that community control would demean the seriousness of the conduct in this case and its impact upon the victims and would not adequately protect the public. Therefore, a sentence of

imprisonment is commensurate with the seriousness of the Defendant's conduct, and the prison sentence does not place an unnecessary burden on the State.

* * *

The Court's decided * * * that consecutive sentences are necessary to protect the public from future crimes and to punish the Defendant, and that consecutive sentences will not be disproportionate to the seriousness of the Defendant's conduct and to the danger the Defendant poses to the public. The Court further finds the following: At least two of the multiple offenses, the two that the Court is sentencing the Defendant on, which is the Aggravated Burglary with the victim, Steven Sanford, and the Kidnapping with the victim, Victoria McGuire, were committed as part of one or more courses of conduct, and the psychological harm and the fear that was caused by these two 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 Defendant's conduct.

{¶10} The trial court sentenced Edder to a term of five years in prison for Aggravated Burglary, seven years for Kidnapping, and three years for the gun specification. All sentences were ordered to be served consecutively for an aggregate sentence of fifteen years.

{¶11} On December 30, 2016, the trial court memorialized Edder's sentence in a Judgment Entry *Sentencing*.

{¶12} On January 19, 2017, Edder filed a Notice of Appeal. On appeal, Edder raises the following assignment of error:

{¶13} "[1.] The trial court erred and abused its discretion by imposing consecutive terms of incarceration on appellant."

{¶14} The Ohio Revised Code provides, in relevant part, as follows regarding consecutive felony sentences:

If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the

prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime 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 if the court also finds any of the following:

(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.

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

{¶15} Under R.C. 2929.14(C)(4), a sentencing court is required to make three distinct findings in order to require an offender to serve consecutive prison terms: (1) that consecutive sentences are "necessary to protect the public from future crime or to punish the offender"; (2) that consecutive sentences are "not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public"; (3) "and * * * also" that one of the circumstances described in subdivision (a) to (c) is present.

{¶16} "In order to impose consecutive terms of imprisonment, a trial court is required to make the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and incorporate its findings into its sentencing entry, but it has no obligation to

state reasons to support its findings.” *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, syllabus.

{¶17} In reviewing a felony sentence, “[t]he appellate court may increase, reduce, or otherwise modify a sentence * * * or may vacate the sentence and remand the matter to the sentencing court for resentencing * * * if it clearly and convincingly finds * * * [t]hat the record does not support the sentencing court’s findings under division * * * (C)(4) of section 2929.14 * * *.” R.C. 2953.08(G)(2)(a); *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 22 (“R.C. 2953.08(G)(2)(a) compels appellate courts to modify or vacate sentences if they find by clear and convincing evidence that the record does not support any relevant findings under ‘division * * * (C)(4) of section 2929.14 * * * of the Revised Code’”).¹

{¶18} Edder contends that the record does not support the findings necessary to impose consecutive sentences. He argues that his advanced age – he turned sixty in May 2017 – and minimal adult criminal record do not support a finding that consecutive sentences are necessary to protect the public from future crime.

{¶19} We emphasize that this factor not only contemplates consecutive sentences as a means of protecting the public but also of punishing the offender. Although his criminal record is not extensive, Edder’s conduct in the commission of the present offenses was extreme. Edder committed multiple high level felonies based on the belief that the victim had stolen his coin collection. He involved a second victim with

1. Contrary to the statement in the Appellant’s Brief, an appellate court may not look to *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, for a standard of review or apply an abuse of discretion standard of review. Appellant’s Brief at 5-6. Such a position contradicts the plain language of R.C. 2953.08(G)(2) (“[t]he appellate court’s standard for review is not whether the sentencing court abused its discretion”). Moreover, in *Marcum*, the Ohio Supreme Court answered in the negative the certified question whether “the test outlined by the [c]ourt in *State v. Kalish* appl[ies] in reviewing felony sentences after the passage of R.C. 2953.08(G)” and expressly stated that “appellate courts may not apply the abuse-of-discretion standard in sentencing-term challenges.” *Id.* at ¶ 6, 7, and 10.

no overt connection to the alleged theft of the coin collection. Also, the present offenses are similar in kind to Edder's prior record which included charges of domestic violence and menacing suggesting that such behavior by Edder is not an aberration.

{¶20} Edder contends that there is a lack of evidence to support the finding that consecutive sentences are not disproportionate to the seriousness of his conduct. At the sentencing hearing, the prosecutor described the effect of Edder's conduct on the victims as follows:

Mr. Edder's actions are inexcusable, and the fact that he has left Ms. McGuire in so much fear that she is not here today because she can't even be in the same courtroom with him is reason enough for a substantial sentence.

I will say personally, Your Honor, during both of their testimony at Grand Jury [sic], Ms. McGuire cried like a baby, and Mr. Sanford, who I've known personally for years, cried. For me, that was a shocking instance, because I've never known the man to even show any emotion. And so the trauma that they have experienced as a result of Mr. Edder's action is inconceivable.

{¶21} Edder objects that this testimony "does not reflect victim testimony or statements made under oath and on the record." We find no error with the prosecutor's statements. It has been observed that sentencing hearings are governed by "simple notions of due process" where "evidence is properly considered 'when the defendant is afforded an opportunity to respond to it.'" (Citation omitted.) *State v. Schlegel*, 3d Dist. Defiance Nos. 4-14-12 and 4-14-13, 2015-Ohio-1183, ¶ 25. It has also been recognized that the Rules of Evidence do not apply to such proceedings. Evid.R. 101(C)(3); *State v. Leonard*, 11th Dist. Ashtabula No. 2002-A-0073, 2003-Ohio-6226, ¶ 22. Here, the prosecutor's statements were based on his own observation of the victims and he was competent to demonstrate the impact of Edder's crimes on the victims.

{¶22} With respect to the final factor, Edder contends that, although there were two separate victims and a single course of conduct, “[t]he record does not reflect any factual findings, exhibits of evidence, reliable statements of record subject to cross-examination, or victim testimony in which to conclude” that the harm done was “so great or unusual to warrant more than a single prison term.” Appellant’s Brief at 9. Again we disagree. As noted above, the prosecutor’s statements as to the impact of Edder’s criminal conduct on the victims were competent to demonstrate the harm. Edder had the opportunity to rebut the prosecutor’s statements, which, in fact, were more subject to examination than victim impact statements would have been. Further, the facts of the case presented to the trial court and/or admitted to by Edder indicate that he forcibly entered Sanford’s trailer, discharged a firearm therein, removed McGuire against her will and held her thus until he was taken into custody by a SWAT team. This record clearly and convincingly supports the court’s finding that the harm caused was so great or unusual that a single prison term would not adequately reflect the seriousness of Edder’s conduct.

{¶23} The sole assignment of error is without merit.

{¶24} For the foregoing reasons, the imposition of consecutive sentences for Aggravated Burglary and Kidnapping by the Ashtabula County Court of Common Pleas is affirmed. Costs to be taxed against the appellant.

CYNTHIA WESTCOTT RICE, P.J.,

COLLEEN MARY O’TOOLE, J.,

concur.