

[Cite as *State v. Stilson*, 2010-Ohio-607.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO)	CASE NO. 08 MA 143
)	
PLAINTIFF-APPELLEE)	
)	
VS.)	OPINION
)	
RICHARD STILSON)	
)	
DEFENDANT-APPELLANT)	

CHARACTER OF PROCEEDINGS:	Criminal Appeal from the Court of Common Pleas of Mahoning County, Ohio Case No. 06 CR 262
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JUDGMENT:	Affirmed.
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APPEARANCES:

For Plaintiff-Appellee:	Atty. Paul J. Gains Mahoning County Prosecutor Atty. Gabriel M. Wildman Assistant Prosecuting Attorney 21 West Boardman Street, 6 th Floor Youngstown, Ohio 44503
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For Defendant-Appellant:	Atty. Louis M. DeFabio 4822 Market Street, Suite 220 Youngstown, Ohio 44512
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JUDGES:

Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Joseph J. Vukovich

Dated: February 18, 2010

WAITE, J.

{¶1} Appellant, Richard Stilson appeals a thirty-year sentence imposed by the Mahoning County Common Pleas Court following his plea and conviction on three counts of rape, in violation of R.C. 2907.02(A)(1), (B), felonies of the first degree. Appellant argues that the sentence is contrary to law and that the trial court abused its discretion and violated his due process rights by imposing consecutive maximum sentences for each rape count. Because the trial court considered the factors set forth in R.C. 2929.11 and 2929.12 and did not abuse its discretion in applying those factors, Appellant's sole assignment of error is overruled and his sentence is affirmed.

{¶2} Appellant was indicted on March 23, 2006 on six counts of rape and six counts of gross sexual imposition. He was accused of molesting three of his children, all of whom were under the age of ten at all times relevant to the indictment. Appellant faced potential life sentences for each of the rape charges, based on specifications alleged in the indictment relating to the victims' ages and Appellant's alleged use of force or threat of force.

{¶3} Pursuant to a negotiated plea agreement, the state dismissed three of the rape charges and all of the gross sexual imposition charges, and removed the specification language from the remaining rape charges, thereby reducing the remaining charges to first degree felonies. In exchange for the reduction of charges, Appellant entered a guilty plea to the three remaining rape charges. The state agreed to recommend three concurrent maximum sentences.

{¶14} At the sentencing hearing, the trial court heard statements from the victims' mother, Patricia Stilson, and Pat Carlini, a social worker from Mahoning County Children Services. Both Patricia Stilson and Pat Carlini testified that the children continue to suffer emotional problems as a result of the crimes committed against them. During Patricia's statement, she asked the trial court to impose maximum concurrent sentences. (Tr., p. 5.) Because the victims themselves were not available to speak on their own behalf, the trial court accepted the statement of Carlini as their spokesman. (Tr., p. 6.)

{¶15} During allocution, Appellant apologized to the victims, as well as his family and friends, for the hurt and humiliation he had caused. He informed the trial court that he had earned his GED and had attended Alcoholics Anonymous and bible study classes during the time that he had been incarcerated. He promised to continue to work toward becoming a better person. (Tr., p. 10.)

{¶16} The trial court imposed the maximum sentence for each count of rape to be served consecutively. After stating that he had considered all of the factors listed in R.C. 2929.11 and 2929.12, the trial court judge provided the following explanation for the sentence:

{¶17} "I've considered the seriousness factors under 2929.12(B). I believe that the injury was exacerbated by the age of the victims, and that the victims suffered serious mental harm, and that the position of trust of the defendant and the position of authority over the victims was such that he was in such a position as to be able to take advantage of these victims.

{¶18} "I find the less serious factors do not apply.

{¶9} “Recidivism under 2929.12(D) was more likely. There has been a previous criminal conviction for DUI in this matter. I don’t find recidivism to be less likely even though there’s no prior delinquency adjudications.

{¶10} “Basically, you have ruined your children’s lives. You were given a break by reduction of charges just so the case could save them more pain and more damage, so they do not have to come into this courtroom and point at you and tell 12 strangers what you did to them, which is horrific.” (Tr., pp. 11-12.)

{¶11} After imposing the thirty-year sentence, the trial court judge observed that he was, “only sorry [he couldn’t] give [Appellant] more time.” (Tr., pp. 12-13.) This timely appeal followed.

ASSIGNMENT OF ERROR

{¶12} “THE TRIAL COURT’S SENTENCE OF THREE (3) CONSECUTIVE TEN (10) YEAR TERMS OF IMPRISONMENT WAS CONTRARY TO LAW AND CONSTITUTED AN ABUSE OF DISCRETION. FURTHER, THE APPELLANT WAS DENIED DUE PROCESS OF LAW AT THE SENTENCING HEARING.”

{¶13} Appellate review of felony sentences involves a two-pronged inquiry. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶26 (plurality). First, an appellate court 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.” *Id.*

{¶14} In examining “all applicable rules and statutes,” the sentencing court must consider R.C. 2929.11 and R.C. 2929.12. *Id.* at ¶13-14. If the sentence is not clearly and convincingly contrary to law, the sentencing court’s exercise of discretion

“in selecting a sentence within the permissible statutory range is subject to review for abuse of discretion.” *Id.* at ¶17. The Ohio Supreme Court has held that the trial court has the discretion to determine the weight to assign a particular statutory factor. *State v. Arnette* (2000), 88 Ohio St.3d 208, 215, 724 N.E.2d 793.

{¶15} Here, the trial court’s decision was not contrary to law. The trial court expressly stated that it considered the purposes and principles of R.C. 2929.11, as well as the factors listed in R.C. 2929.12. Appellant does not contend the individual sentences were outside the permissible range or that the trial court failed to fulfill any specific sentencing notification requirements, i.e. postrelease control. Accordingly, the respective sentences are not clearly and convincingly contrary to law.

{¶16} Next, we must determine whether the trial court abused its discretion. An abuse of discretion is, “more than an error of law or judgment; it implies that the court’s attitude is unreasonable, arbitrary or unconscionable.” *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144.

{¶17} Appellant concedes that the trial court’s findings that he abused his position of trust with his children and that his crimes caused them serious harm are supported by the record. Appellant argues instead that the trial court abused its discretion when it considered the age of the victims as “there was no evidence presented at the sentencing hearing which would have permitted the trial court to make this finding.” (Appellant’s Brf., p. 7.)

{¶18} The children’s ages were listed in the indictment and are a part of the record. R.C. 2929.12(B)(1) specifically directs the trial court to consider whether the physical or mental injury suffered by the victim was exacerbated because of his or

her age. Patricia Stilson and Pat Carlini both testified that the victims suffer from emotional problems as a result of Appellant's crimes.

{¶19} Even though the witnesses did not specifically attribute the victims' emotional problems to their ages at the times that the rapes were committed, the trial court did not abuse its discretion by inferring that their mental injuries were exacerbated due to their tender ages. The Ohio Supreme Court has recognized that a discretionary decision necessitates the exercise of personal judgment, and when making such judgments, the sentencing court "is not required to divorce itself from all personal experiences and make [its] decision in a vacuum." *Arnette* at 215-216.

{¶20} Next, Appellant argues that the trial court abused its discretion when it concluded that Appellant was more likely to commit future crimes, because of the trial court's reliance on a prior conviction for operating a motor vehicle while intoxicated. He also complains that the trial court specifically stated that it disregarded the fact that he had no juvenile record, and that the trial court did not acknowledge that he was remorseful at sentencing.

{¶21} Although Appellant correctly argues that the trial court relied on a traffic offense to conclude that he was likely to reoffend under R.C. 2929.12(D), it does not follow that the sentence was an abuse of discretion. Just as in the court's dismissal of what Appellant regards as mitigation, the court was fully within the law in sentencing, here. The trial court could have relied exclusively on the factors listed in R.C. 2929.12(B) in imposing the maximum sentence.

{¶22} Finally, Appellant contends that his due process rights were violated when the trial court allowed both Patricia Stilson and Pat Carlini to provide victim

impact statements on behalf of the victims. Appellant argues that one of the individuals could have given a statement on behalf of the victims, but allowing both to speak, “led to an emotionally charged atmosphere resulting in maximum consecutive sentences being imposed.” (Appellant’s Brf., p. 15.)

{¶23} The purpose of a victim impact statement is to help inform the trial court of the actual harm inflicted upon the victim and the victim’s family by the crime. *State v. Bunch*, 7th Dist. No. 02CA196, 2005-Ohio-3309, ¶220. According to R.C. 2929.19(A), either the victim or the victim’s representative, and any other person with approval of the trial court, may speak at the sentencing hearing. It is within the trial court’s discretion to allow any other person/persons to speak at the hearing. *Id.* at ¶221, citing *State v. Harwell*, 149 Ohio App.3d 147, 150, 776 N.E.2d 524, 2002-Ohio-4349. Therefore, Appellant’s due process rights were not violated when both Patricia Stilson and Pat Carlini were permitted to speak at the sentencing hearing.

{¶24} Accordingly, Appellant’s sole assignment of error is overruled and his sentence is affirmed.

Donofrio, J., concurs.

Vukovich, P.J., concurs.