

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

ROBERT MOON,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 18 MA 0080

Criminal Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 17 CR 76

BEFORE:

David A. D'Apolito, Cheryl L. Waite, Carol Ann Robb, Judges.

JUDGMENT:

Affirmed

Atty. Paul J. Gains, Mahoning County Prosecutor, *Atty. Jennifer McLaughlin*, and *Atty. Ralph M. Rivera*, Assistant Prosecuting Attorneys, 21 West Boardman Street, 6th Floor, Youngstown, Ohio 44503, for Plaintiff-Appellee and

Atty. Joseph Gardner, 19 East Front Street, Youngstown, Ohio 44503, and *Atty. James Wise*, Hartford & Wise, Co., LPA, 91 West Taggart, P.O. Box 85, East Palestine, Ohio 44413, for Defendant- Appellant.

Dated: May 21, 2019

D'APOLITO, J.

{¶1} Appellant, Robert Moon, appeals from the July 3, 2018 judgment of the Mahoning County Court of Common Pleas, sentencing him to ten years in prison for gross sexual imposition and rape and labeling him a Tier III Sex Offender following a guilty plea. On appeal, Appellant takes issue with his sentence. Finding no reversible error, we affirm.

FACTS AND PROCEDURAL HISTORY

{¶2} On January 26, 2017, Appellant was indicted by the Mahoning County Grand Jury on nine counts involving two victims: counts one and two, gross sexual imposition, felonies of the third degree, in violation of R.C. 2907.05(A)(4) and (C)(2); counts three and four, rape, felonies punishable by life imprisonment, in violation of R.C. 2907.02(A)(1)(b) and (B); counts five through eight, rape, felonies of the first degree, in violation of R.C. 2907.02(A)(2) and (B); and count nine, gross sexual imposition, a felony of the fourth degree, in violation of R.C. 2907.05(A)(1) and (C)(1). Appellant was appointed counsel and pleaded not guilty at his arraignment.

{¶3} Thereafter, Appellant and Appellee, the State of Ohio, entered into Crim.R. 11 negotiations. A plea hearing was held on April 11, 2018. Appellant withdrew his not guilty plea and entered an oral and written plea of guilty to the following: counts one and two, gross sexual imposition, felonies of the third degree, in violation of R.C. 2907.05(A)(4) and (C)(2); counts five through eight, rape, felonies of the first degree, in violation of R.C. 2907.02(A)(2) and (B); and count nine, gross sexual imposition, a felony of the fourth degree, in violation of R.C. 2907.05(A)(1) and (C)(1). The trial court accepted Appellant's guilty plea and granted the State's motion to dismiss counts three and four.

{¶4} On July 3, 2018, the trial court sentenced Appellant to five years in prison on counts one and two, ten years on counts five through eight, and 18 months on count nine. The court ordered that the sentences run concurrently for a total of ten years in prison. The court labeled Appellant a Tier III Sex Offender and notified him that postrelease control is mandatory for a period of five years. Appellant filed a timely appeal and raises a single assignment of error.

ASSIGNMENT OF ERROR

THE TRIAL COURT FAILED TO CONSIDER MITIGATING FACTORS IN SENTENCING THE DEFENDANT TO TEN (10) YEARS.

{¶5} This court utilizes R.C. 2953.08(G) as the standard of review in all felony sentencing appeals. *State v. Michaels*, 7th Dist. Mahoning No. 17 MA 0122, 2019-Ohio-497, ¶ 2, citing *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 1.

{¶6} R.C. 2953.08(G) states in pertinent part:

(2) The court hearing an appeal under division (A), (B), or (C) of this section shall review the record, including the findings underlying the sentence or modification given by the sentencing court.

The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing. The appellate court's standard for review is not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division if it clearly and convincingly finds either of the following:

(a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;

(b) That the sentence is otherwise contrary to law.

{¶7} Although trial courts have full discretion to impose any term of imprisonment within the statutory range, they must consider the sentencing purposes in R.C. 2929.11 and the guidelines contained in R.C. 2929.12.

{¶8} R.C. 2929.11(A) provides that the overriding purposes of felony sentencing are (1) "to protect the public from future crime by the offender and others"; and (2) "to

punish the offender * * * using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources.” Further, the sentence imposed shall be “commensurate with and not demeaning to the seriousness of the offender’s conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.” R.C. 2929.11(B).

{¶9} R.C. 2929.12 provides a nonexhaustive list of sentencing factors the trial court must consider when determining the seriousness of the offense and the likelihood that the offender will commit future offenses. The court that imposes a felony sentence “has discretion to determine the most effective way to comply with the purposes and principles of sentencing.” R.C. 2929.12(A). The factors a trial court may consider include the “more serious” factors, such as “[t]he 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” and “[t]he victim of the offense suffered serious physical, psychological, or economic harm as a result of the offense.” R.C. 2929.12(B)(1) and (2). The court may also consider the “less serious” factors, any recidivism factors, and any mitigating factors listed in R.C. 2929.12(C)-(F).

R.C. 2929.11 does not require the trial court to make any specific findings as to the purposes and principles of sentencing. *State v. Wilson*, 129 Ohio St.3d 214, 2011-Ohio-2669, 951 N.E.2d 381, ¶ 31. Similarly, R.C. 2929.12 does not require the trial court to “use specific language or make specific findings on the record in order to evince the requisite consideration of the applicable seriousness and recidivism factors.” *State v. Arnett*, 88 Ohio St.3d 208, 215, 724 N.E.2d 793 (2000).

A silent record raises the rebuttable presumption that the sentencing court considered the proper statutory items within R.C. 2929.11 and R.C. 2929.12. *State v. Grillon*, 7th Dist. No. 10 CO 30, 2012-Ohio-893, ¶ 131.

State v. Shaw, 7th Dist. Belmont No. 15 BE 0065, 2017-Ohio-1259, ¶ 36-37.

{¶10} At the sentencing hearing, the trial court heard from the attorneys and from Appellant; indicated that it reviewed the presentence investigation report and sentencing memorandum; and referenced the two young female victims in terms of what they are going to be forced to endure. The trial judge proceeded by stating the following:

So considering the factors contained in Section 2929 of the revised code, and based upon everything that I've read and everything that I've heard today, and considering those factors, it's going to be the sentence of this Court that you * * * serve a definite sentence of five years in Count 1 and five years in Count 2. I'm going to impose a sentence of 10 years in Count 5, 10 years in Count 6, 10 years in Count 7 and 10 years in Count 8, as well as an 18-month sentence in Count 9. Those counts shall be served concurrently with each other for a total sentence of ten years.

(7/2/18 Sentencing T.p. 14).

{¶11} Also, in its July 3, 2018 judgment entry, the trial court stated that it "considered the record, oral statements, as well as the principles and purposes of sentencing under Ohio Revised Code Section 2929.11, and has balanced the seriousness and recidivism fact[ors] under Ohio Revised Code Section 2929.12." (7/3/18 Judgment Entry p. 1).

{¶12} Accordingly, the record reflects the trial court gave due deliberation to the relevant statutory considerations. The court considered the purposes and principles of felony sentencing under R.C. 2929.11 and balanced the seriousness and recidivism factors under R.C. 2929.12, as evidenced from the record.

{¶13} As stated, Appellant was sentenced to a total of ten years in prison following a guilty plea. Specifically, the trial court concurrently sentenced Appellant to five years in prison on counts one and two, gross sexual imposition, felonies of the third degree, in violation of R.C. 2907.05(A)(4) and (C)(2); ten years on counts five through eight, rape, felonies of the first degree, in violation of R.C. 2907.02(A)(2) and (B); and 18 months on count nine, gross sexual imposition, a felony of the fourth degree, in violation of R.C. 2907.05(A)(1) and (C)(1). Thus, the court sentenced Appellant within the statutory ranges under R.C. 2929.14(A)(1) ("For a felony of the first degree, the prison term shall be three,

four, five, six, seven, eight, nine, ten, or eleven years”); R.C. 2929.14(A)(3)(a) (“For a felony of the third degree that is a violation of section * * * 2907.05 * * * the prison term shall be twelve, eighteen, twenty-four, thirty, thirty-six, forty-two, forty-eight, fifty-four, or sixty months”); and R.C. 2929.14(A)(4) (“For a felony of the fourth degree, the prison term shall be six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, or eighteen months.”)

{¶14} Further, the record reveals the trial court properly advised Appellant regarding postrelease control. Therefore, the court complied with all applicable rules and statutes. As a result, we do not find by clear and convincing evidence that the record does not support Appellant’s sentence or that the sentence is contrary to law.

{¶15} Appellant’s sole assignment of error is without merit.

CONCLUSION

{¶16} For the foregoing reasons, Appellant’s sole assignment of error is not well-taken. The judgment of the Mahoning County Court of Common Pleas sentencing Appellant to ten years in prison for gross sexual imposition and rape and labeling him a Tier III Sex Offender following a guilty plea is affirmed.

Waite, P.J., concurs.

Robb, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.