

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-16-1116

Appellee

Trial Court No. CR0201502314

v.

Tyshawn Searcy

DECISION AND JUDGMENT

Appellant

Decided: March 31, 2017

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Brenda J. Majdalani, Assistant Prosecuting Attorney, for appellee.

Brad F. Hubbell, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a May 4, 2016 sentencing judgment of the Lucas County Court of Common Pleas, sentencing appellant to a total term of incarceration of 24 years arising from his convictions on three counts of rape, in violation of R.C. 2907.02, with all of the convictions being felonies of the first degree.

{¶ 2} This matter arises from appellant raping his girlfriend's 12-year-old niece on over a dozen separate occasions during a time span ranging from September of 2014 to March of 2015. During the course of these crimes, the victim was impregnated by appellant. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 3} Appellant, Tyshawn Searcy, sets forth the following assignment of error:

I. The trial court acted contrary to law in not merging the three rape counts.

{¶ 4} The following undisputed facts are relevant to this appeal. The 12-year-old victim resided with her grandmother in Toledo. Subsequently, the victim's aunt and the aunt's boyfriend, appellant, also moved into the grandmother's residence.

{¶ 5} In the fall of 2014, while the victim was at home babysitting her aunt's children, appellant pulled the victim into a bathroom of the home and forcibly raped her. Over the course of the next six months, appellant raped the victim on over a dozen separate occasions. Appellant did not utilize condoms during the crimes. Ultimately, the matter came to light after the victim was impregnated, resulting in an investigation which revealed appellant's paternity and multiple acts of rape. Appellant did not deny the events.

{¶ 6} On August 12, 2015, appellant was indicted on four counts of rape, in violation of R.C. 2907.02, felonies of the first degree. On February 12, 2016, appellant pled guilty to three of the pending rape counts. In exchange, the remaining count was

dismissed. A presentence investigation was ordered. On May 4, 2016, appellant was sentenced to consecutive terms of incarceration of eight years on each count, for a total term of incarceration of 24 years. This appeal ensued.

{¶ 7} In the sole assignment of error, appellant asserts that the trial court erred in not merging the rape convictions for sentencing purposes. We do not concur.

{¶ 8} In support, appellant concludes, without supporting evidence, “Mr. Searcy argues that the three counts of rape were not committed with a separate animus and therefore the court erred when it failed to merge the counts for sentencing.”

{¶ 9} R.C. 2941.25(B) establishes in pertinent part, “Where the defendant’s conduct constitutes two or more offenses of dissimilar import, *or where his conduct results in two or more offenses of the same or similar kind committed separately* or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.” (Emphasis added).

{¶ 10} As applied to the instant case, the record shows that appellant raped his girlfriend’s 12-year-old niece on over a dozen separate occasions during a time frame spanning from September of 2014 through March of 2015. The record further shows that during the course of committing rape the victim on multiple separate occasions, appellant impregnated the victim. Appellant did not deny the events. The record reflects overwhelming evidence against him.

{¶ 11} Adopting appellant’s reasoning, appellant could have raped this victim on limitless separate occasions yet never be sentenced in excess of a single count of rape. Such a position is not borne out by the applicable statutes or the record of evidence.

{¶ 12} The record encompasses ample evidence that appellant’s unlawful conduct, committed over a six-month period of time, resulted in over a dozen similar offenses of the same kind, rape, in violation of R.C. 2907.02, felonies of the first degree, committed separately, on separate days, at separate times, with separate animus. The record establishes separate criminal offenses pursuant to R.C. 2941.25(B).

{¶ 13} Wherefore, we find appellant’s assignment of error not well-taken. The judgment of the Lucas County Court of Common Pleas is hereby affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, P.J.
CONCUR.

JUDGE