[Cite as *State v. Tressler*, 2020-Ohio-1164.]

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

State of Ohio	Court of Appeals No. WM-19-005
Appellee	Trial Court No. 18CR000220
v.	
Scotty R. Tressler	**DECISION AND JUDGMENT**
Appellant	Decided: March 27, 2020

* * * * *

Katherine J. Zartman, Williams County Prosecuting Attorney,
and Stacey S. Stiriz, Assistant Prosecuting Attorney, for appellee.

Joseph C. Patituce, Megan M. Patituce, Catherine R. Meehan,
and Aaron A. Schwartz, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Appellant, Scotty Tressler, appeals the judgment of the Williams County Court of Common Pleas, convicting him of two counts of rape in violation of R.C. 2907.02(A)(2), felonies of the first degree. For the reasons that follow, we affirm.

I. Facts and Procedural Background

{¶ 2} On November 20, 2018, the Williams County Grand Jury returned a 13-count indictment against appellant, charging him with three counts of gross sexual imposition, seven counts of rape, three of which specified that the victim was less than ten years old, one count of rape with a sexually violent predator specification, and two counts of kidnapping.

{¶ 3} On March 8, 2019, appellant entered into a plea agreement whereby he would plead guilty to two counts of rape in violation of R.C. 2907.02(A)(2), felonies of the first degree. In exchange, the state agreed to dismiss the remaining charges. Following a detailed plea colloquy, the trial court accepted appellant's guilty plea, and continued the matter for preparation of a presentence investigation report.

{¶ 4} The presentence investigation report detailed the nature of the offenses. On October 21, 2018, appellant's cousin, J.T., had a conversation with appellant's wife, R.T., about appellant's son, D.T. J.T. expressed concern about D.T.'s behavior, and suspected that something had happened between D.T. and appellant. J.T. went on to explain that he, himself, had been sexually abused by appellant between the ages of seven and fourteen. J.T. further stated that approximately two months ago, appellant asked J.T. if he could touch his penis and wanted to know if "it's still big."

{¶ 5} With this information, appellant's wife spoke with her son, and D.T. reported that appellant had, on numerous occasions, caused him to touch appellant's penis until appellant ejaculated. In addition, appellant performed oral sex on his son until

the son ejaculated into appellant's mouth. The son reported that this conduct began occurring seven years ago, and had occurred over fifty times. D.T. stated that appellant threatened to harm him if he ever told anyone.

{¶ 6} The sentencing hearing was held on April 2, 2019. In arguing for consecutive ten-year sentences, the state noted that appellant has a history of this type of offense. According to the presentence investigation report, in April 2005, appellant was charged for performing oral sex on a sixteen-year-old male. The state also noted the extraordinary psychological and emotional damage to the victims. Finally, the state commented on the recidivism factor, stating that this conduct occurred many times over many years and involved more than one victim.

{¶ 7} Appellant's wife, R.T., also spoke. R.T. stated that, no matter what the court decided, appellant would be punished for the rest of his life because he lost his son, whom he adored. R.T. stated that appellant had been the victim of similar conduct when he was a child, and believed that if appellant had been able to receive help, then he would not have committed these crimes. R.T. asked the court to give appellant the opportunity to get the help he needs, so that he can heal, so that D.T. can heal, and so that their other child can have her father back, and not just lock him in prison forever to be forgotten, which would only cause more pain.

{¶ 8} Appellant's counsel then spoke in mitigation. Counsel stated that appellant was two persons, one who was a committed and loving husband and father, and one who was plagued by a demon he could not control. Counsel noted that appellant had never

been able to speak out and get help in his own life for the things that happened to him as a child, and so counsel pleaded for the court to fashion a sentence that provides a path for rehabilitation. Counsel relayed that appellant is not making excuses for his conduct, and that he has displayed extreme remorse. Counsel further relayed that appellant wants D.T. to do whatever it takes to heal, and if that means never speaking to appellant again then appellant will accept that, but appellant would like to be there for D.T. if D.T. wants him to be.

{¶ 9} Finally, appellant spoke on his own behalf. Appellant conveyed that he understood the pain his family is going through because he went through it himself. Appellant then stated that he was proud of his son for speaking out and doing what appellant could not do. Upon questioning from the court, appellant did not contest any of the facts recounted by D.T. in the presentence investigation report, other than to say that he never threatened his family.

{¶ 10} Upon receiving the statements, the court took a brief recess to consider the matter. After the recess, the court recognized several points. First, the court noted that appellant received a significant break by avoiding the potential risk of a life sentence without parole. Second, the court stated that appellant did not just harm himself by his conduct, but he harmed his son, a minor child, and that the public needs to send a message that people like appellant need to get help without it being forced on them. Finally, the court recognized that this was an unusual situation in that the people who should be most angry at appellant are in fact the most supportive. The court duly noted

that it took into consideration the fact that appellant agreed to plead guilty in part to spare his son the additional trauma of having to testify at trial.

{¶ 11} Thereafter, the trial court ordered appellant to serve nine years in prison on each count, designated him a Tier III sex offender, and imposed five years of mandatory postrelease control. In announcing its decision, the court expressly took into consideration the primary purposes of sentencing in R.C. 2929.11 and the seriousness and recidivism factors in R.C. 2929.12. The court then ordered the sentences to be served consecutively, finding that the consecutive sentence is necessary to protect the public and punish appellant, that it is not disproportionate to appellant's conduct, and that the harm was so great or unusual that a single term does not adequately reflect the seriousness of the conduct. The court also considered appellant's prior criminal history in determining that consecutive sentences were necessary.

II. Assignment of Error

{¶ 12} Appellant has timely appealed his judgment of conviction, asserting two assignments of error for our review:

1. The trial court erred in sentencing appellant to an eighteen-year term of incarceration.

2. The trial court erred in sentencing appellant to serve consecutive sentences.

III. Analysis

{¶ 13} In his first assignment of error, appellant argues that the 18-year consecutive sentence is inconsistent with the principles and purposes of sentencing in R.C. 2929.11, and the statutory seriousness and recidivism factors in R.C. 2929.12. However, the lead opinion in *State v. Gwynne*, Slip Opinion No. 2019-Ohio-4761, ¶ 16-18, recognized that R.C. 2953.08(G)(2)(a) is the "exclusive means of appellate review of consecutive sentences," and that R.C. 2929.11 and 2929.12 are not applicable to a review of consecutive sentences. Therefore, "[w]here the appellant challenges the trial court's imposition of consecutive sentences, we are bound to review the issue under R.C. 2953.08(G)(2)(a), and must affirm the trial court unless we clearly and convincingly find '[t]hat the record does not support the sentencing court's findings under division * * * (C)(4) of section 2929.14.'" *State v. Taylor*, 6th Dist. Wood No. WD-19-009, 2020-Ohio-404, ¶ 14, quoting R.C. 2953.08(G)(2)(a).

{¶ 14} In this case, appellant challenges the trial court's imposition of consecutive sentences in his second assignment of error, thus we will address that assignment of error first. R.C. 2929.14(C)(4) requires a trial court to find

> 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.

{¶ 15} Upon review, we do not clearly and convincingly find that the record does not support the sentencing court's findings under R.C. 2929.14(C)(4). Specifically, we find that appellant's demonstrated pattern of sexual conduct which occurred over a period of seven years with his minor son, and which resulted in serious psychological and emotional trauma to the son, supports the trial court's finding that the harm was so great or unusual that no single prison term adequately reflects the seriousness of appellant's conduct. In addition, we find that appellant's pattern of sexual conduct over a number of years with J.T., and once in 2005 with a sixteen-year-old male, supports the trial court's finding that appellant's history of criminal conduct demonstrates that consecutive

sentences are necessary to protect the public from future crime by appellant. Therefore, we hold that the trial court did not err when it imposed consecutive sentences.

{¶ 16} Accordingly, appellant's second assignment of error is not well-taken.

{¶ 17} Turning to appellant's first assignment of error, we will apply the arguments that he makes concerning the application of R.C. 2929.11 and 2929.12 to the length of the prison term imposed on each count.

> Where the appellant challenges the length of a particular term, regardless if that term is ordered to run concurrently or consecutively to other sentences, we must first determine if the trial court was required to make findings under R.C. 2929.13(B) or (D), R.C. 2929.14(B)(2)(e), or R.C. 2929.20(I), and if so, whether we clearly and convincingly determine that the record does not support those findings. R.C. 2953.08(G)(2)(a). If those sections are not relevant, we must then examine whether the term is clearly and convincingly "otherwise contrary to law." R.C. 2953.08(G)(2)(b). In *State v. Tammerine*, 6th Dist. Lucas No. L-13-1081, 2014-Ohio-425, ¶ 15, we recognized that *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, *abrogated by State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 516, still can provide guidance for determining whether a sentence is clearly and convincingly contrary to law. *Tammerine* at ¶ 15. The Ohio Supreme Court in *Kalish* held that where the trial court expressly stated that it considered the purposes and principles of sentencing in R.C.

> 2929.11 as well as the factors listed in R.C. 2929.12, properly applied postrelease control, and sentenced the defendant within the statutorily permissible range, the sentence was not clearly and convincingly contrary to law. *Kalish* at ¶ 18. Finally, if the term is not otherwise contrary to law, we may vacate or modify the term only if we find by "clear and convincing evidence that the record does not support the sentence" upon consideration of R.C. 2929.11 and 2929.12. *Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, at ¶ 23.

Taylor at ¶ 15.

{¶ 18} Here, appellant does not argue that R.C. 2929.13(B) or (D), R.C. 2929.14(B)(2)(e), or R.C. 2929.20(I) apply to the sentences at issue. Furthermore, the record reflects that the trial court expressly considered R.C. 2929.11 and 2929.12, properly applied postrelease control, and sentenced appellant within the statutory range. Thus, appellant's sentences are not clearly and convincingly contrary to law. Therefore, we are left to apply the standard in *Marcum* and determine whether there is clear and convincing evidence that the record does not support the sentence upon consideration of R.C. 2929.11 and 2929.12.

{¶ 19} R.C. 2929.11 directs the court to be guided by the overriding purposes of felony sentencing, which are "to protect the public from future crime by the offender and others, to punish the offender, and to promote the effective rehabilitation of the offender using the minimum sanctions that the court determines accomplish those purposes

without imposing an unnecessary burden on state or local government resources." R.C. 2929.12 provides seriousness and recidivism factors that the court must consider in fashioning a sentence that complies with R.C. 2929.11.

{¶ 20} In this case, we hold that there is not clear and convincing evidence that the record does not support the nine-year prison sentence on each count upon consideration of R.C. 2929.11 and 2929.12. In particular, we find that the record supports a finding that appellant's conduct met several of the "more serious" factors, such as that the mental injury to the victim was exacerbated because of his age, that the victim suffered serious psychological harm as a result of the offense, and that appellant's relationship with the victim facilitated the offense. As to the recidivism factors, we find that at best they are evenly balanced in that appellant has demonstrated a history of this type of behavior, but now does show genuine remorse. In sum, we hold that the imposed sentences are not clearly and convincingly unsupported by the record where it is established that appellant has engaged in a course of sexual conduct and rape of his minor son over a period of seven years.

{¶ 21} Accordingly, appellant's first assignment of error is not well-taken.

IV. Conclusion

{¶ 22} For the foregoing reasons, we find that substantial justice has been done the party complaining, and the judgment of the Williams County Court of Common Pleas is 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.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

Christine E. Mayle, J.
CONCUR.

JUDGE

JUDGE