

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	No. 12AP-316
Plaintiff-Appellee,	:	(C.P.C. No. 12CR-02-0731)
v.	:	
	:	(REGULAR CALENDAR)
David M. Slane,	:	
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on May 23, 2013

Ron O'Brien, Prosecuting Attorney, and *Laura R. Swisher*, for appellant.

Yeura R. Venters, Public Defender, and *John W. Keeling*, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶ 1} This is an appeal by defendant-appellant, David M. Slane, from a judgment of the Franklin County Court of Common Pleas sentencing appellant following his entry of a guilty plea to one count of unlawful sexual conduct with a minor and four counts of pandering obscenity.

{¶ 2} Appellant was initially indicted in a separate case on charges of rape and unlawful sexual conduct with a minor. That case, however, was dismissed (*nolle prosequi*), and appellant entered guilty pleas in the instant case to a five-count bill of particulars, charging him with one count of unlawful sexual conduct with a minor, in violation of R.C. 2907.04, and four counts of pandering obscenity involving a minor, in

violation of R.C. 2907.321. The trial court ordered a pre-sentence investigation at the time of the plea (February 9, 2012), and the court conducted a sentencing hearing on March 9, 2012. By entry filed on March 12, 2012, the court sentenced appellant to 16 years of incarceration.

{¶ 3} On appeal, appellant sets forth the following two assignments of error for this court's review:

ASSIGNMENT OF ERROR NUMBER ONE

THE TRIAL COURT ERRED WHEN IT IMPOSED CONSECUTIVE SENTENCES WITHOUT FIRST FINDING THAT THE CONSECUTIVE SENTENCES WERE NOT DISPROPORTIONATE TO THE SERIOUSNESS OF THE OFFENDER'S CONDUCT AS REQUIRED BY R.C. 2929.141(4)(sic).

ASSIGNMENT OF ERROR NUMBER TWO

THE TRIAL COURT ERRED WHEN IT SENTENCED THE DEFENDANT TO A PRISON TERM OF EIGHT YEARS ON THE CHARGE OF UNLAWFUL SEXUAL CONDUCT WITH A MINOR WHEN THE MAXIMUM TERM ALLOWED BY LAW IS FIVE YEARS.

{¶ 4} We initially note that, subsequent to the filing of his brief, appellant filed a motion to withdraw his second assignment of error, which this court granted. Accordingly, the sole assignment of error for consideration is appellant's first assignment of error, in which he asserts the trial court erred in imposing consecutive sentences without complying with the requirements of R.C. 2929.14.

{¶ 5} R.C. 2929.14(C)(4) states as follows:

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.

{¶ 6} Pursuant to the above provisions, "trial courts must make statutory findings when imposing consecutive sentences." *State v. Upkins*, 3d Dist. No. 17-12-13, 2012-Ohio-6114, ¶ 4, citing *State v. Hites*, 3d Dist. No. 6-11-07, 2012-Ohio-1892, ¶ 11. More specifically, a trial court is required to "find that 1) consecutive sentences are necessary to either protect the public or punish the offender, 2) the sentences would not be disproportionate to the offense committed, and 3) one of the factors set forth in R.C. 2929.14(C)(4)(a, b, or c)." *Id.* at ¶ 4.

{¶ 7} In the present case, appellant argues that the trial court erred in imposing consecutive sentences without first finding that consecutive sentences were not disproportionate to the seriousness of the offender's conduct. Appellant maintains that the trial court's failure to engage in this statutorily required analysis constitutes error as a matter of law.

{¶ 8} The state of Ohio, plaintiff-appellee, concedes that the trial court failed to find on the record that consecutive sentences were not disproportionate to the seriousness of appellant's conduct and to the danger he poses to the public. Upon review of the record, we agree. As such, the court's imposition of consecutive sentences without the required statutory findings is contrary to law. *Id.* at ¶ 4. Accordingly, appellant's first assignment of error is well-taken, and we remand this matter to the trial court for re-sentencing so that the court may make the appropriate findings under R.C. 2929.14(C)(4).

{¶ 9} Based upon the foregoing, appellant's first assignment of error is sustained, the sentence imposed by the Franklin County Court of Common Pleas is vacated, and this matter is remanded to the trial court for re-sentencing.

*Sentence vacated;
case remanded for re-sentencing.*

CONNOR and McCORMAC, JJ., concur.

McCORMAC, J., retired of the Tenth Appellate District,
assigned to active duty under authority of the Ohio
Constitution, Article IV, Section 6(C).
