

**IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
UNION COUNTY**

STATE OF OHIO,

PLAINTIFF-APPELLEE,

CASE NO. 14-16-05

v.

JESSICA L. DAYTON,

OPINION

DEFENDANT-APPELLANT.

**Appeal from Union County Common Pleas Court
Trial Court No. 15-CR-0120**

Judgment Affirmed

Date of Decision: October 3, 2016

APPEARANCES:

Elizabeth M. Mosser for Appellant

Ashley L. Johns for Appellee

SHAW, P.J.

{¶1} Defendant-appellant, Jessica Dayton (“Dayton”), brings this appeal from the February 24, 2016 judgment of the Union County Common Pleas Court sentencing Dayton to serve an aggregate 8 year prison term after Dayton pled guilty to four counts of Endangering Children in violation of R.C. 2919.22(B)(2) all felonies of the second degree.

Relevant Facts and Procedural History

{¶2} On July 27, 2015, a ten count indictment was filed against Dayton alleging that she committed two counts of Felonious Assault in violation of R.C. 2903.11(A)(2), both felonies of the second degree (counts 1 and 2), four counts of Felonious Assault in violation of R.C. 2903.11(A)(1), all felonies of the second degree (counts 3 through 6), and four counts of Endangering Children in violation of R.C. 2919.22(B)(2), all felonies of the second degree (counts 7 through 10).

{¶3} According to a later-filed Bill of Particulars, the Felonious Assault charges stemmed from physical abuse perpetrated by Dayton on her two stepdaughters, and also from Dayton causing the two stepdaughters to physically harm each other. The alleged acts included Dayton requiring her stepdaughters to keep their toes “curled under at all times, so they were not visible” and when they did not, Dayton would force one stepdaughter to strike the other stepdaughter “in

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the feet with a hammer,” causing “significant swelling, bruising and pain.”¹ (Doc. No. 51). Another count alleged that Dayton struck one of her step-daughters in the head with a belt, causing a permanent scar.² It was also alleged that Dayton struck one stepdaughter’s ears with such force that the stepdaughter was unable to hear from that ear for approximately 3 weeks. When the stepdaughter complained of the injury, Dayton “poured alcohol down her ear, causing additional pain.”³ (*Id.*) Another incident alleged that Dayton caused the two stepdaughters to fight, leading to a significant scar on the hip of one of the girls.⁴ It was also alleged that Dayton forced one girl to strike the other across the face with a “cord or wire” while the victim’s eyes were taped shut so she could not see the assault taking place. (*Id.*) The injury resulted in a scar on the girl’s face.⁵

{¶4} According to the Bill of Particulars, the Endangering Children allegations stemmed from incidents wherein Dayton would force the children to harm each other multiple times each week, sometimes daily.⁶ The Endangering Children counts also alleged that Dayton forced the children to “ ‘float’ which [was] described as trying to hover in the air and falling face first onto the ground.”⁷ (Doc. No. 51).

¹ These factual allegations were related to counts 1 and 2 in the indictment.

² This allegation was related to count 3 in the indictment.

³ This allegation was related to count 4 in the indictment.

⁴ This allegation was related to count 5 in the indictment.

⁵ This allegation was related to count 6 in the indictment.

⁶ These factual allegations were related to counts 7 and 8 in the indictment.

⁷ These factual allegations were related to counts 9 and 10 in the indictment.

{¶5} Dayton originally pled not guilty to the charges against her.

{¶6} On December 22, 2015, Dayton entered into a written negotiated guilty plea wherein she agreed to plead guilty to the four counts of Endangering Children as indicted and in exchange the State dismissed the remaining charges against her. Dayton specifically stipulated that the Endangering Children offenses were not allied offenses of similar import.

{¶7} On February 22, 2016, Dayton's case proceeded to sentencing. At sentencing, statements were made by the stepdaughter-victims. The victims spoke about scars and injuries from being struck, "choked, punched, and given black eyes." (Feb. 22, 2016, Tr. at 10). One victim stated that she was hit, had her "head banged on the floor and wall, * * * was made to stay in a dog crate, * * * was slapped, had [her] hair pulled, and had food withheld, told [she] was fat." (*Id.*) One victim indicated that some of Dayton's own children were starting to exhibit Dayton's abusive "techniques." (*Id.* at 8).

{¶8} Brief testimony was then provided by officers involved investigating the case, by a member of the Union County Children's Services Agency, an ongoing caseworker, a mental health professional who had evaluated Dayton, Dayton's stepmother, and Dayton herself.

{¶9} Dayton stated that she was the primary caregiver for five children, which included the two stepdaughters, while her husband worked two jobs. Dayton

testified that she had been sexually abused as a child, that she dealt with physical and mental health issues, and that her son was diagnosed with cancer when he was one, all leading to significant stress for her.

{¶10} Following the statements and testimony at the sentencing hearing, the State requested that Dayton be sentenced to serve an aggregate 12 year prison term. Dayton's counsel requested leniency, arguing that the court should overcome the presumption of prison and order Dayton to be placed on community control.

{¶11} The court then stated that it had considered, *inter alia*, the record, the presentence investigation, the defendant's sentencing memorandum, the victim impact statements, the testimony presented, and the principles and purposes of sentencing under R.C. 2929.11 while balancing the seriousness and recidivism factors under R.C. 2929.12. After reviewing the case and the statutes, the court determined that consecutive sentences were appropriate, and made the necessary findings to impose consecutive sentences pursuant to R.C. 2929.14(C)(4). Ultimately the court ordered Dayton to serve 4 years in prison on each count of Endangering Children with the prison terms in Counts 7 and 8 to run consecutive to each other but the prison terms in Counts 9 and 10 to run concurrent for an aggregate prison sentence of 8 years.

{¶12} Before the sentencing hearing concluded, Dayton fainted, and the hearing was continued to a second day. After the sentencing hearing was concluded,

a judgment entry was filed memorializing Dayton's conviction and sentence on February 24, 2016. It is from this judgment that Dayton appeals, asserting the following assignments of error for our review.

ASSIGNMENT OF ERROR 1

CONTRARY TO R.C. 2929.11(A), APPELLANT'S SENTENCE EXCEEDS THE MINIMUM SENTENCE NECESSARY TO PROTECT THE PUBLIC FROM FUTURE CRIME AND PUNISH THE OFFENDER.

ASSIGNMENT OF ERROR 2

CONTRARY TO R.C. 2929.11(B), APPELLANT'S SENTENCE WAS NOT CONSISTENT WITH OTHER SENTENCES FOR SIMILAR OFFENSES COMMITTED BY SIMILAR OFFENDERS.

ASSIGNMENT OF ERROR 3

THE COURT ERRANTLY CONSIDERED THE PRESENT CONDUCT MORE SERIOUS THAN CONDUCT NORMALLY CONSTITUTING THE OFFENSE OF CHILD ENDANGERMENT AND FURTHER FAILED TO PROPERLY CONSIDER MITIGATING FACTORS, CONTRARY TO R.C. 2929.12(B) AND (C).

ASSIGNMENT OF ERROR 4

THE COURT ERRANTLY FAILED TO GIVE PROPER WEIGHT TO EVIDENCE THAT RECIDIVISM IS UNLIKELY OR IMPOSSIBLE TO OCCUR HEREIN, CONTRARY TO R.C. 2929.12(E).

{¶13} As all of the assignments of error deal with sentencing, we elect to address them together.

First, Second, Third and Fourth Assignments of Error

{¶14} In Dayton’s assignments of error, she argues that the trial court erred in sentencing her to an aggregate prison term of 8 years. Specifically, she argues that her sentence exceeded the minimum sentence necessary, that her sentence was not consistent with similarly situated offenders, that the trial court failed to properly consider mitigating factors, and that the trial court did not properly weigh evidence that recidivism was unlikely.

{¶15} “ ‘The trial court has full discretion to impose any sentence within the authorized statutory range, and the court is not required to make any findings or give its reasons for imposing maximum or more than minimum sentences.’ ” *State v. Castle*, 2d Dist. Clark No. 2016-CA-16, 2016-Ohio-4974, ¶¶ 26-27, quoting, *State v. King*, Clark Nos. 2012–CA–25, 2012–CA–26, 2013–Ohio–2021, ¶ 45. However, in exercising its discretion, a trial court must consider the statutory policies that apply to every felony offense, including those set out in R.C. 2929.11 and R.C. 2929.12. *Castle* at ¶ 26, citing *State v. Leopard*, Clark No. 2010–CA–87, 2011–Ohio–3864.

{¶16} R.C. 2929.11(A) requires trial courts to be guided by the overriding principles of felony sentencing. Those purposes are “to protect the public from future crime by the offender and others and 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.” The court must “consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.” *Id.* Revised Code 2929.11(B) further provides that “[a] sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing * * *, 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.”

{¶17} Meanwhile, R.C. 2929.12(B) sets forth nine factors that indicate an offender’s conduct is more serious than conduct normally constituting the offense. Those factors relevant to this case include the physical and mental injury suffered by the victims being exacerbated because of the victims’ ages, whether the victims suffered serious physical or psychological harm, and whether the offender’s relationship to the victims facilitated the offense.

{¶18} In this case, when the trial court sentenced Dayton, the trial court explicitly stated that it had considered

the record, the presentence investigation, the defendant’s sentencing memorandum, the victim impact statements, the testimony presented, the need for deterrence, incapacitation, rehabilitation, and restitution, the principles, and purposes of sentencing under Revised Code Section 2929.11, and * * *

balanced the seriousness and recidivism factors under Revised Code Section 2929.12.

(Tr. at 77).

{¶19} The trial court also made a lengthy statement on the record indicating its concern with the children having “long and lasting injuries” both physical and psychological. (*Id.* at 75). The trial court indicated it was concerned with the fact that the abuse had been occurring for multiple years.

{¶20} The trial court stated that it was sympathetic to what Dayton suffered in her own childhood but it was no “excuse to perpetrate it upon your stepchildren, or to treat your stepchildren any differently than you treated your own children.” (Tr. at 77).

{¶21} Dayton now argues on appeal that the trial court did not properly apply the statutes related to the principles and purposes of sentencing, specifically R.C. 2929.11 and R.C. 2929.12, and balancing the recidivism factors. However, the trial court explicitly stated that it had considered the factors and it *was not required to elaborate upon them* so long as the record indicates that the trial court considered them and the sentences were within the appropriate statutory range. *Castle, supra*, at ¶ 30.

{¶22} Nevertheless, the trial court was certainly well within its discretion to find that the acts committed by Dayton required prison terms, which were already presumed due to the crimes being second degree felonies, and that minimum prison

terms were not sufficient to punish Dayton when the victims were both children, had lasting scars, and had ongoing psychological problems. Moreover, Dayton was facing a maximum of 32 years in prison, and had already stipulated that her crimes were not allied offenses of similar import.⁸ The State had actually requested an aggregate 12 year prison term, so comparatively the trial court was rather lenient and took some mitigating factors into account.

{¶23} While Dayton argues that her conduct was not more serious than the conduct traditionally constituting the offense of Endangering Children, she ignores the fact that these two children were repeatedly subject to severe beatings, were forced to fight each other, and that they stated that they were afraid constantly in their own home. The children also stated at the sentencing hearing that they had trouble sleeping and had difficulty trusting people. Moreover, Dayton even went so far as to video record some of the fights between the girls, showing a callous disregard for their safety. While Dayton cites a few cases where defendants were given lesser sentences for Endangering Children than the sentences imposed here, none of them are remotely factually analogous to the circumstances in this case and none of them establish that the trial court's sentence was erroneous in these circumstances.

⁸ Even if Dayton had not stipulated that her crimes were not allied offenses of similar import the crimes were committed on different dates and two separate victims were involved.

{¶24} Finally, Dayton argues that the trial court failed to give proper weight to the recidivism factors in R.C. 2929.12(E) because Dayton had no prior criminal history and had shown remorse for her offenses. However, the trial court stated that it had considered the appropriate statutory sections and reviewed the record in crafting its sentence. The trial court was not required to make specific findings related to specific recidivism factors, and the trial court clearly found that the exacerbating factors related to Dayton's conduct were more influential than the recidivism factors.

{¶25} As we have found no error with the trial court's sentence as alleged in Dayton's assignments of error her first, second, third, and fourth assignments of error are overruled.

{¶26} For the foregoing reasons the judgment of the Union County Common Pleas Court is affirmed.

Judgment Affirmed

WILLAMOWSKI and ROGERS, J.J., concur.

/jlr