[Cite as *State v. Todd*, 2015-Ohio-649.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

CLERMONT COUNTY

STATE OF OHIO,	:	
		CASE NO. CA2014-05-035
Plaintiff-Appellee,	:	
		O P I N I O N
	:	2/23/2015
- vs -		
	:	
JEFFERY A. TODD,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 2013CR00660

D. Vincent Faris, Clermont County Prosecuting Attorney, Nicholas Horton, 76 South Riverside Drive, 2nd Floor, Batavia, Ohio 45103, for plaintiff-appellee

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M. POWELL, J.

{¶ 1} Defendant-appellant, Jeffery Todd, appeals his sentence in the Clermont County Court of Common Pleas for gross sexual imposition and sexual battery.

{¶ 2} Appellant was indicted in October 2013 on three counts of rape, four counts of gross sexual imposition, and one count of sexual battery. The charges arose out of appellant's inappropriate sexual conduct with his daughter and his two nieces between 2006

and 2011. At the time of the offenses, all three victims were under the age of 13. On March 14, 2014, appellant pled guilty to four counts of gross sexual imposition in violation of R.C. 2907.05(A)(4) and one count of sexual battery in violation of R.C. 2907.03(A)(5), all third-degree felonies. During the plea hearing, the state indicated that in 2006, appellant touched the breast and vagina of one of his nieces who was then 10-11 years old, inserted his finger in the vagina of his then 6-7-year-old daughter, and made the latter touch his penis. The state further indicated that in 2011, appellant touched the vagina of his other niece who was then 11-12 years old.

{¶ 3} On April 15, 2014, the trial court sentenced appellant to five years in prison on each count of gross sexual imposition and on the sexual battery count, and ordered that the five sentences be served consecutively, for an aggregate prison term of 25 years.

{¶ 4} Appellant appeals, raising two assignments of error.

{¶ 5} Assignment of Error No. 1:

{¶ 6} THE TRIAL COURT ABUSED ITS DISCRETION IN SENTENCING APPELLANT TO FIVE-YEAR TERMS OF IMPRISONMENT.

{¶ 7} Appellant argues the trial court abused its discretion in sentencing him to the maximum prison term on the sexual battery count and on each of the four counts of gross sexual imposition. Appellant asserts that because (1) he is a first-time offender with no prior criminal history, either as a juvenile or as an adult, (2) the seriousness and recidivism factors under R.C. 2929.12 either do not apply here or are in his favor, and (3) there is "absolutely no evidence that [he] poses any danger to the public," appellant should have been sentenced to minimum prison terms and the trial court's imposition of the maximum prison term on each of the five counts was "clearly excessive." Appellant cites a decision of the Second Appellate District for the proposition that a trial court abuses its discretion in sentencing a first-time offender to maximum, consecutive prison terms. *State v. Watkins*, 186 Ohio App.3d 619,

2010-Ohio-740 (2d Dist.).

{¶ 8} At the outset, we note that we no longer review felony sentences under an abuse of discretion standard. *State v. Crawford*, 12th Dist. Clermont No. CA2012-12-088, 2013-Ohio-3315, ¶ 6-7. Rather, we review felony sentences to determine whether the imposition of those sentences is clearly and convincingly contrary to law. *Id.* A sentence is not clearly and convincingly contrary to law where the record supports the trial court's findings under R.C. 2929.14(C)(4) and where the trial court considers the purposes and principles of R.C. 2929.11, as well as the factors listed in R.C. 2929.12, properly applies postrelease control, and sentences appellant within the permissible statutory range. *See id.* at ¶ 7, 9; R.C. 2953.08(G)(2). Because we no longer review felony sentences under an abuse of discretion standard, *Watkins* is not applicable here.

{¶ 9} Appellant does not dispute that the trial court sentenced him within the statutory range, nor does he dispute that the trial court properly applied postrelease control in this case. The judgment entry of conviction specifically states that the trial court considered "the principles and purposes of sentencing under Ohio Revised Code Section 2929.11, and has balanced the seriousness and recidivism factors under Ohio Revised Code Section 2929.12."

{¶ 10} We find that the trial court did not err in sentencing appellant to the maximum prison term for each gross sexual imposition count and for the sexual battery count. When sentencing a defendant, a trial court is not required to consider each sentencing factor, "but rather to exercise its discretion in determining whether the sentence satisfies the overriding purpose of Ohio's sentencing structure." *State v. Oldiges*, 12th Dist. Clermont No. CA2011-10-073, 2012-Ohio-3535, ¶ 17. Factors set forth in R.C. 2929.12 are nonexclusive, and R.C. 2929.12 explicitly permits a trial court to consider any relevant factors in imposing a sentence. *State v. Birt*, 12th Dist. Butler No. CA2012-02-031, 2013-Ohio-1379, ¶ 64.

{¶ 11} During the sentencing hearing, appellant did not address the trial court but

presented mitigating evidence via his attorney. Specifically, counsel for appellant told the trial court that appellant took responsibility for his actions, was "extremely remorseful," and believed the victims were telling the truth, but that he had no recollection of committing the offenses as a result of suffering from multiple sclerosis.

{¶ 12} In sentencing appellant to the maximum prison term for each gross sexual imposition count and the sexual battery count, the trial court found that (1) appellant committed multiple offenses against close family members, his pre-teenage daughter and nieces, over an extended time frame, (2) appellant took advantage of his close relationship with the victims and abused their trust, and (3) as a result, the victims suffered great psychological harm which they will "carry with them for a long time." The trial court noted that "the harm is going to be much greater when [the victim] is a daughter [or] niece," and "when you're dealing with a family member, somebody who trusted a child's innocence, entrusting their father or uncle, there's going to be great harm."

{¶ 13} The trial court also found that although appellant had no prior criminal record, recidivism was more likely because appellant had engaged in a pattern of conduct by repeatedly committing offenses against multiple victims at different times. The trial court noted that "if you do it repeatedly it is a pattern, and if * * * there's a pattern it's more likely that it's going to recur." The trial court also emphasized the fact that although appellant's score on the Static-99 placed him in the low range of recidivism,[1]

> Again, in this case you have five separate instances. You have a pattern of conduct. To me that outweighs these recidivism tools which are at best statistical tools. * * * [Y]ou can use that tool and then you can look at Mr. Todd and say he did this five different times under the circumstances where, you know, that there has to be something innate that says that this is terribly wrong. He was able to do that, and to me again that makes recidivism more likely.

1. The Static-99 is an instrument designed to assist in the prediction of sexual and violent recidivism for sexual offenders. *See State v. McGlosson*, 12th Dist. Butler No. CA2013-05-082, 2014-Ohio-1321.

{¶ 14} Finally, the trial court found appellant was not remorseful for his conduct. The trial court noted appellant's disconcerting assertion he did not remember committing the offenses because of his multiple sclerosis, yet was able to remember "other things from the same time frame."

{¶ 15} In light of the foregoing, we find that the trial court did not err in sentencing appellant to the maximum prison term for each of the four counts of gross sexual imposition and for the sexual battery count. Appellant's actions did not involve a single, isolated incident against one victim, but rather involved multiple offenses that took place over two years, 2006 and 2011, against close family members, his pre-teenage daughter and nieces. Appellant was in position of power and trust and took advantage of his close relationship with the victims. Appellant's maximum sentences are not clearly and convincingly contrary to law.

{¶ 16} Appellant's first assignment of error is overruled.

{¶ 17} Assignment of Error No. 2:

{¶ 18} THE TRIAL COURT ERRED IN SENTENCING APPELLANT TO CONSECUTIVE PRISON TERMS.

{¶ 19} Appellant argues that the trial court's imposition of consecutive sentences was "disproportionate and excessive when examined in conjunction with [his] conduct," and was thus an abuse of discretion.

{¶ 20} Pursuant to R.C. 2929.14(C)(4), a trial court must engage in a three-step analysis and make certain findings before imposing consecutive sentences. *State v. Dillon*, 12th Dist. Madison No. CA2012-06-012, 2013-Ohio-335, ¶ 9. Specifically, the trial court must find that (1) the consecutive sentence is necessary to protect the public from future crime or to punish the offender, (2) consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and (3) one of

the following applies:

> (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.

R.C. 2929.14(C)(4); *Dillon* at *id.*

{¶ 21} A trial court is not required to provide "a word-for-word recitation of the language of the statute" or articulate reasons explaining its findings when imposing consecutive sentences. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, ¶ 27, 29; *State v. Childers*, 12th Dist. Warren No. CA2014-02-034, 2014-Ohio-4895, ¶ 31. However, it must be clear from the record that the trial court actually made the required statutory findings. *Id.* When imposing consecutive sentences, the trial court "is required to make the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and incorporate its findings into its sentencing entry[.]" *Bonnell* at ¶ 37. "A consecutive sentence is contrary to law where the trial court fails to make the consecutive sentencing findings as required by R.C. 2929.14(C)(4)." *State v. Marshall*, 12th Dist. Warren No. CA2013-05-042, 2013-Ohio-5092, ¶ 8.

{¶ 22} Appellant concedes, and the record shows, that the trial court made the required statutory findings under R.C. 2929.14(C)(4) both at the sentencing hearing and in its sentencing entry. Appellant nonetheless asserts that because he is a first-time offender, the

imposition of consecutive sentences is excessive and thus an abuse of discretion. Once again, appellant cites *Watkins* in support of his argument.

{¶ 23} Once again, we reiterate that this court no longer reviews felony sentences under an abuse of discretion standard, and therefore *Watkins* is not applicable here. We further find that given the fact appellant committed multiple offenses against three pre-teenage family members over the course of several years, abused his position of power and trust to commit the offenses, and claimed he had no recollection of committing the offenses because he suffers from multiple sclerosis, the trial court did not err in sentencing appellant to consecutive prison terms. Appellant's consecutive sentences are not clearly and convincingly contrary to law.

{¶ 24} Appellant's second assignment of error is overruled.

{¶ 25} Judgment affirmed.

PIPER, P.J., and HENDRICKSON, J., concur.