

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

State of Ohio

Court of Appeals No. L-12-1115

Appellee

Trial Court No. CR0201102815

v.

Timothy Kerekgyarto

DECISION AND JUDGMENT

Appellant

Decided: June 28, 2013

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Jennifer L. Donovan, Assistant Prosecuting Attorney, for appellee.

David A. Baker, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Defendant-appellant, Timothy Kerekgyarto, appeals the March 21, 2012 judgment of the Lucas County Court of Common Pleas which sentenced him to a total prison term of 14 years following his guilty pleas to two counts of rape of a minor. Because we find that the trial court did not abuse its discretion we affirm.

{¶ 2} On November 8, 2011, appellant was indicted on seven counts of rape of a minor, all first degree felonies. The charges stemmed from the repeated rape of appellant's younger sister from 2004 through 2011. Appellant entered not guilty pleas to the charges.

{¶ 3} On March 6, 2012, appellant withdrew his not guilty pleas and entered guilty pleas to Counts 1 and 2 in the indictment, rape, in violation of R.C. 2907.02(A)(1)(b) and (B). Appellant's sentencing hearing was held on March 20, 2012. The court noted that the abuse of appellant's sister began when she was four years old with appellant "humping" her over her clothes. Appellant continued "grooming" her over the next several years until the abuse evolved into sexual intercourse. The trial court stated that when the victim first informed her family they did nothing. She again spoke with her parents about the abuse and they merely questioned appellant and he denied the allegations. The court indicated that it reviewed the presentence report and that it read several letters submitted by family and friends. The court quoted extensively from the victim's letter.

{¶ 4} The court then determined that a minimum sentence would demean the seriousness of the offense, which took place over the course of 13 years. The court imposed seven-year prison terms for each count of rape. Ordering the sentences to be served consecutively, the court indicated that a "consecutive sentence is necessary to protect the public from future crime" and not disproportionate to the offender's conduct. The court further found that "the harm caused was so great and unusual that no single

prison term for any one of the offenses committed as part of any of the courses of conduct would adequately reflect the seriousness of the offender's conduct.”

{¶ 5} Based on his convictions, appellant was then classified as a Tier III sex offender and the matter proceeded to a hearing on whether appellant would be subject to community notification under R.C. 2950.11(F)(2). The state indicated that the statutory factors supporting community notification included the age of the victim and the fact that the grooming and abuse persisted for several years. The state also indicated that the victim was isolated at home and was told that she would get in trouble if she told anyone about the abuse. After discussing the possibility of the victim testifying, appellant agreed, under oath, not to contest the statements made by the prosecutor in support of community notification. Defense counsel then argued against community notification by noting that the incidents took place in the home, appellant had no criminal history, no use of drugs or alcohol to impair the victim, and appellant had not previously been classified as a habitual sexual offender.

{¶ 6} The court then found that the victim grew up in an isolated environment being home-schooled and that appellant used this to aid in grooming his sister for the sexual abuse that fully began when she was 12 years old. The court noted that the cruelty of the abuse was evident in the victim's letter to the court. The court then concluded that the community must be notified because appellant's family, despite knowing that the abuse was taking place, never attempted to stop it. Further, the court noted that appellant only stopped the abuse after police intervention.

{¶ 7} The sentencing judgment entry was journalized on March 21, 2012, and this appeal followed. Appellant raises two assignments of error for our review:

I. The consecutive sentences handed down by the trial court was [sic] excessive and not supported by sections 2929.11 or 2929.12.

II. It was an abuse of the court's discretion when it found that community notice was appropriate.

{¶ 8} In appellant's first assignment of error, he contends that the trial court's imposition of consecutive sentences does not align with the purposes of felony sentencing. Specifically, appellant argues that because the crimes were committed against one specific individual, there is little or no threat of recidivism. Appellant further notes that he has expressed genuine remorse for his actions. Appellant does not dispute that his sentences are within the statutory range.

{¶ 9} R.C. 2929.11 and 2929.12 set forth factors to be considered by a court in determining the appropriate sentence for a felony. Where the court imposes a sentence within the maximum statutory limit, a reviewing court will presume the trial court followed the standards in determining sentence, absent evidence to the contrary. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124.

{¶ 10} In sentencing appellant, the trial court carefully reviewed the facts of the case, including the long history of grooming and abuse, the isolation and threats, and the psychological damage suffered by the victim. The court noted that it reviewed the presentence investigation report and the numerous letters in support of defendant and on

behalf of the victim. We find no abuse of the court's discretion in sentencing appellant to consecutive sentences. Appellant's first assignment of error is not well-taken.

{¶ 11} In his second assignment of error, appellant argues that the court erred when it determined that he be subject to community notification. R.C. 2950.11(F)(2) provides:

(2) * * * [I]f a court finds at a hearing after considering the factors described in this division that the person would not be subject to the notification provisions of this section that were in the version of this section that existed immediately prior to the effective date of this amendment. In making the determination of whether a person would have been subject to the notification provisions under prior law as described in this division, the court shall consider the following factors:

- (a) The offender's or delinquent child's age;
- (b) The offender's or delinquent child's prior criminal or delinquency record regarding all offenses, including, but not limited to, all sexual offenses;
- (c) The age of the victim of the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made;
- (d) Whether the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made involved multiple victims;

(e) Whether the offender or delinquent child used drugs or alcohol to impair the victim of the sexually oriented offense or to prevent the victim from resisting;

(f) If the offender or delinquent child previously has been convicted of or pleaded guilty to, or been adjudicated a delinquent child for committing an act that if committed by an adult would be, a criminal offense, whether the offender or delinquent child completed any sentence or dispositional order imposed for the prior offense or act and, if the prior offense or act was a sex offense or a sexually oriented offense, whether the offender or delinquent child participated in available programs for sexual offenders;

(g) Any mental illness or mental disability of the offender or delinquent child;

(h) The nature of the offender's or delinquent child's sexual conduct, sexual contact, or interaction in a sexual context with the victim of the sexually oriented offense and whether the sexual conduct, sexual contact, or interaction in a sexual context was part of a demonstrated pattern of abuse;

(i) Whether the offender or delinquent child, during the commission of the sexually oriented offense for which sentence is to be imposed or the order of disposition is to be made, displayed cruelty or made one or more threats of cruelty;

(j) Whether the offender or delinquent child would have been a habitual sex offender or a habitual child victim offender under the definitions of those terms set forth in section 2950.01 of the Revised Code as that section existed prior to the effective date of this amendment;

(k) Any additional behavioral characteristics that contribute to the offender's or delinquent child's conduct.

{¶ 12} While the statute requires the trial court to consider the factors set forth above, the statute does not require the trial court to make specific findings of fact in order to justify community notification. The statute vests discretion with the trial court in making the determination. Based upon the factual circumstances in this case as discussed above, we find the trial court did not abuse its discretion in ordering that appellant be subject to community notification. Appellant's second assignment of error is not well-taken.

{¶ 13} On consideration whereof, we find that appellant was not prejudiced or prevented from having a fair proceeding and the judgment of the Lucas County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

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

Stephen A. Yarbrough, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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