

[Cite as *State v. Puckey*, 2010-Ohio-3776.]

IN THE COURT OF APPEALS OF CLARK COUNTY, OHIO

STATE OF OHIO :
 Plaintiff-Appellee : C.A. CASE NO. 09CA0066
 vs. : T.C. CASE NO. 09CR0381
 THOMAS PUCKEY : (Criminal Appeal from
 Defendant-Appellant : Common Pleas Court)

.

O P I N I O N

Rendered on the 13th day of August, 2010.

.

Stephen Schumaker, Pros. Attorney; Amy M. Smith, Asst. Pros.
 Attorney, Atty. Reg. No. 0081712, 50 E. Columbia Street, P.O. Box
 1608, Springfield, OH 45501
 Attorneys for Plaintiff-Appellee

Adrian King, Atty. Reg. No. 0081882, 36 N. Detroit Street, Suite
 104, Xenia, OH 45385
 Attorney for Defendant-Appellant

.

GRADY, J.:

{¶ 1} Defendant, Thomas Puckey, appeals from his conviction
 and sentence for unlawful sexual conduct with a minor.

{¶ 2} In March 2009, while staying at the home of his girlfriend
 and her family in Springfield, Ohio, thirty-three year old Thomas
 Puckey engaged in two separate acts of fellatio and one act of

vaginal intercourse with his girlfriend's fourteen year old sister.

{¶ 3} Defendant was indicted on three counts of unlawful sexual conduct with a minor, R.C. 2907.04(A). Each count carried a specification that Defendant is ten or more years older than the victim, making the offenses felonies of the third degree. R.C. 2907.04(B)(3). Pursuant to a negotiated plea agreement, Defendant entered pleas of guilty to counts one and two with their specifications in exchange for the State's dismissal of count three. The trial court sentenced Defendant to consecutive three-year prison terms on each count, for a total sentence of six years, and classified him as a tier II sex offender.

{¶ 4} Defendant timely appealed to this court from his conviction and sentence. On appeal he challenges only the severity of his sentence.

FIRST ASSIGNMENT OF ERROR

{¶ 5} "THE COURT ERRED TO THE PREJUDICE OF MR. PUCKEY BY NOT SENTENCING HIM TO A MINIMUM SENTENCE, THUS FAILING TO PROPERLY RELY UPON, FOLLOW OR ANALYZE THE FACTORS SET FORTH IN R.C. 2929.14(B)."

SECOND ASSIGNMENT OF ERROR

{¶ 6} "THE COURT ERRED TO THE PREJUDICE OF MR. PUCKEY BY IMPOSING CONSECUTIVE SENTENCES THUS FAILING TO PROPERLY RELY UPON, FOLLOW OR ANALYZE THE FACTORS SET FORTH IN R.C. 2929.14(E)."

{¶ 7} In his first assignment of error, Defendant argues that the trial court failed to comply with R.C. 2929.14(B), which requires the court to impose a minimum sentence, and that the necessary conditions set forth for imposing a greater than minimum sentence are not present in this case. In his second assignment of error, Defendant argues that the court failed to make the findings required by R.C. 2929.14(E)(4) in order to impose consecutive sentences.

{¶ 8} In *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, at ¶83, 99, the Ohio Supreme Court held that R.C. 2929.14(B) and (E)(4) are unconstitutional and severed those provisions from the sentencing statutes. Compliance with R.C. 2929.14(B) and (E)(4) is no longer required.

{¶ 9} In *State v. Jeffrey Barker*, Montgomery App. No. 22779, 2009-Ohio-3511, at ¶36-38, we wrote:

{¶ 10} "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, consecutive, or more than minimum sentences. *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, at paragraph 7 of the syllabus. Nevertheless, in exercising its discretion the trial court must consider the statutory policies that apply to every felony offense, including those set out in

R.C. 2929.11 and 2929.12. *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1, at ¶ 37.

{¶ 11} "When reviewing felony sentences, an appellate court must first determine whether the sentencing court complied with all applicable rules and statutes in imposing the sentence, including R.C. 2929.11 and 2929.12, in order to find whether the sentence is contrary to law. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124. If the sentence is not clearly and convincingly contrary to law, the trial court's decision in imposing the term of imprisonment must be reviewed under an abuse of discretion standard. *Id.*

{¶ 12} "'The term "abuse of discretion" connotes more than an error of law or judgment; it implies that the trial court's attitude is unreasonable, arbitrary, or unconscionable.'" *State v. Adams* (1980), 62 Ohio St.2d 151, 157[, 16 O.O.3d 169], 404 N.E.2d 144."

{¶ 13} An examination of this record demonstrates that the court considered the presentence investigation report, the principles and purposes of felony sentencing, R.C. 2929.11, the seriousness and recidivism factors, R.C. 2929.12, and the statements made by all parties at sentencing. The court also informed Defendant about post release control requirements. The trial court complied with all applicable rules and statutes in imposing its sentence. Furthermore, the three-year prison term the court imposed on each

count is clearly within the authorized range of available punishments for a felony of the third degree, the maximum being five years. R.C. 2929.14(A)(3). Defendant's sentence is not clearly and convincingly contrary to law. *Kalish*.

{¶ 14} The trial court noted that this thirty-three year old Defendant knew that the victim, his girlfriend's sister, was only fourteen, and he made a conscious decision to take advantage of this immature young girl and engage in multiple unprotected sex acts for his own pleasure and gratification. R.C. 2929.12(B)(6).

As a result of Defendant's conduct, the victim is currently undergoing counseling and has suffered changes in attitude and personality. R.C. 2929.12(B)(1) and (2). Defendant has a history of prior convictions as an adult. R.C. 2929.12(D)(2). At sentencing Defendant did admit that what he did was wrong. R.C. 2929.12(E)(5). The record supports the mid-range sentence imposed on Defendant by the trial court. No abuse of discretion on the part of the trial court, as that term is defined by law, is demonstrated.

{¶ 15} Defendant's assignments of error are overruled. The judgment of the trial court will be affirmed.

DONOVAN, P.J. And FROELICH, J., concur.

Copies mailed to:

Amy M. Smith, Esq.

Adrian King, Esq.

Hon. Richard J. O'Neill