

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

State of Ohio

Court of Appeals No. S-18-015

Appellee

Trial Court No. 18CR219

v.

Dalton L. Smith

DECISION AND JUDGMENT

Appellant

Decided: February 8, 2019

* * * * *

Timothy Braun, Sandusky County Prosecuting Attorney, and
Mark E. Mulligan, Assistant Prosecuting Attorney, for appellee.

Sara J. Sherick, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from an April 18, 2018 sentencing judgment of the Sandusky County Court of Common Pleas, sentencing appellant to a total term of incarceration of 54 months following appellant's convictions pursuant to a plea agreement on one count of unlawful sexual conduct with a minor, in violation of R.C.

2907.04, a felony of the fourth degree, and three counts of illegal use of a minor and nudity material or performance, in violation of R.C. 2907.323, felonies of the fifth degree.

{¶ 2} In exchange for the pleas, one count of rape, in violation of R.C. 2907.02, a felony of the first degree, and one count of pandering sexual matter involving a minor, in violation of R.C. 2907.322, a felony of the second degree, were dismissed. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 3} Appellant, Dalton L. Smith, sets forth the following assignment of error:

The trial court failed to make requisite findings under [R.C.] 2929.14(C)(4) to justify the imposition of consecutive sentences on the charges of the Appellant.

{¶ 4} The following undisputed facts are relevant to this appeal. In March 2017, a 15-year-old girl spent the night at the home of a friend. Appellant, 22 years of age at the times of these events and an older brother of the victim's friend, was also present at the home.

{¶ 5} Although appellant left the home earlier in the evening, he later returned to the home and began to socialize with his younger sister's 15-year-old female friend. Ultimately, appellant raped his sister's friend on the sofa in the living room of the home.

{¶ 6} On October 26, 2017, following a police investigation into the above-described incident, appellant was indicted on one count of rape, in violation of R.C. 2907.02, a felony of the first degree, and one count of unlawful sexual conduct with a

minor, in violation of R.C. 2907.04, a felony of the fourth degree. A presentence investigation was ordered.

{¶ 7} Notably, subsequent to appellant's arrest on the original rape offense, appellant persuaded a separate victim, a 16-year-old female, to create sexually explicit videos of herself and forward them to appellant on a video visitation monitor at the prison where appellant was incarcerated on the pending rape offense.

{¶ 8} On March 12, 2018, given the additional sexual offenses committed by appellant while he was incarcerated on the initial rape offense, appellant was indicted on one count of pandering sexually oriented material involving a minor, in violation of R.C. 2907.322, a felony of the second degree, and three counts of illegal use of a minor in nudity material or performance, in violation of R.C. 2907.323, felonies of the fifth degree.

{¶ 9} On April 17, 2018, pursuant to a voluntarily negotiated plea agreement, appellant pled guilty to three counts of illegal use of a minor in nudity material or performance, in violation of R.C. 2907.323, felonies of the fifth degree, in addition to pleading guilty to one count of unlawful sexual conduct with a minor, in violation of R.C. 2907.04, a felony of the fourth degree. In exchange for the pleas, the remaining felony offenses were dismissed. The matter proceeded to sentencing.

{¶ 10} The trial court sentenced appellant to an 18-month term of incarceration on the count of unlawful sexual conduct with a minor, and 12-month terms of incarceration on each of the three counts of illegal use of a minor in nudity material or performance, all

ordered to be served consecutively, for a total term of incarceration of 54 months. This appeal ensued.

{¶ 11} In the sole assignment of error, appellant maintains that the trial court erred in imposing consecutive sentences in this case. We do not concur.

{¶ 12} R.C. 2929.14(C)(4) establishes that a trial court may properly impose consecutive terms of incarceration upon an offender convicted of multiple offenses if the court finds that consecutive sentences are necessary to protect the public, consecutive sentences are not disproportionate to the seriousness of the conduct, and if the court finds either that the offender committed one of the offenses while awaiting trial or sentencing, that at least two of the offenses were committed as part of a course of conduct and that the harm committed was so great that no single prison term adequately reflects the seriousness of the conduct, or that the offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public.

{¶ 13} We have carefully reviewed the record of evidence in this matter, paying particular attention to the sentencing transcript in order to assess the propriety of the imposition of consecutive sentences in this case.

{¶ 14} The sentencing transcript reflects that appellee properly emphasized to the trial court at sentencing, "[Appellant] acts without regard to consequences, has, while sitting in jail, had to have known he was being monitored, and, yet, committed further similar offenses [while already incarcerated]."

{¶ 15} The victim impact statement from the 15-year-old rape victim conveyed to the trial court, “I will never truly be able to trust anyone again. I flinch whenever anybody touches me * * * I used to feel safe at school and at home, but, now, I always feel the need to look over my shoulder. You took my virginity. You took my ability to feel safe and think straight. You took my ability to trust people.”

{¶ 16} The grandmother of the second victim, the 16-year-old girl who appellant encouraged to make sexually explicit videos and forward to appellant while incarcerated, next addressed the court. The grandmother conveyed to the trial court, “She had over \$2,500 saved [but] after I find out that she had been talking to [appellant] while he was incarcerated for this other case of the rape charges knowing [they] weren’t supposed to be talking, all of her money is gone * * * I don’t understand how he’s had this much control over her.”

{¶ 17} The record reflects that the trial court carefully reviewed and considered all of the evidence before it and all relevant statutory considerations in the course of crafting the disputed sentence. The trial court ultimately conveyed, “I cannot comprehend how a person can be so depraved when they’re sitting [in jail] involving a sexual offense involving a juvenile to engage in behavior like this with another juvenile. It confounds me.”

{¶ 18} The trial court went on to specifically find that, “[C]onsecutive sentences are necessary to adequately punish you and to protect the public * * * [A]t least two of the offenses were committed as part of one or more courses of conduct and the harm

caused * * * [W]as so great that no single prison term adequately reflects the seriousness.” The trial court went on to further find that, “[T]his sentence is not disproportionate to the seriousness of your conduct and to the danger that you pose to the public.”

{¶ 19} In reviewing challenges to consecutive sentences, the Ohio Supreme Court has specifically held, “[A] word for word recitation of the language of the statute is not required, and as long as the reviewing court can discern that the trial court engaged in the correct analysis and can determine that the record contains evidence to support the findings, consecutive sentences should be upheld.” *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 29.

{¶ 20} We find, as evidenced by the above-quoted portions of the sentencing transcript, that the trial court properly performed the requisite R.C. 2929.14(C)(4) analysis. We further find that the record contains ample evidence in support of the required findings so as to warrant the imposition of consecutive sentences.

{¶ 21} Wherefore, we find appellant’s assignment of error not well-taken. The judgment of the Sandusky County Court of Common Pleas is hereby affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

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

Thomas J. Osowik, J.

JUDGE

Christine E. Mayle, P.J.
CONCUR.

JUDGE

<p>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: http://www.supremecourt.ohio.gov/ROD/docs/.</p>
