

[Cite as *State v. Jones*, 2019-Ohio-108.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107340

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MARQUIS D. JONES

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-17-623134-A

BEFORE: Boyle, P.J., Celebrezze, J., and Yarbrough, J.*

RELEASED AND JOURNALIZED: January 10, 2019

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MARY J. BOYLE, P.J.:

{¶1} Defendant-appellant, Marquis Jones, appeals his consecutive sentences. He raises one assignment of error for our review:

Appellant's sentence is contrary to law and the record does not support the imposition of consecutive sentences.

{¶2} Finding no merit to his arguments, we affirm.

I. Procedural History and Factual Background

{¶3} In November 2017, Jones was indicted with one count of raping a child under 10 years old (between August 1, 2015 and July 31, 2016), one count of raping a child under 13 years old (the same child between August 1, 2016 and August 25, 2017), and two counts of kidnapping a child under 18 years old with sexual motivation specifications.

{¶4} In April 2018, Jones pleaded guilty to an amended indictment of rape in violation of R.C. 2907.02(A)(2), a first-degree felony, and gross sexual imposition in violation of R.C. 2907.05(A)(4), a third-degree felony. The remaining counts were nolle.

{¶5} The trial court held a sentencing hearing approximately one month later. The state explained that the charges arose in August 2017, when the 11-year-old victim told her mother that she had been grabbed off of the street, pulled into a driveway, and raped by a stranger. The victim's mother reported the incident to police and took the victim to the hospital, where a rape kit was collected.

{¶6} Two days later, the victim told her mother that she had lied about who raped her. The victim said that it was her stepfather (Jones) who had "raped" her and that he had done so "for a number of years." The victim described a number of incidents to her mother, including her stepfather having sexual intercourse with her in her mother's and stepfather's bedroom, and her stepfather using "sex toys" on her. The victim's siblings also told the detective that they had seen Jones in his bedroom with the victim with his pants down.

{¶7} The mother of the victim and Jones had been together for nine years and had four children together, all younger than the victim. When the case was being investigated, Jones went to the house when he was not supposed to. As a result, all of the children were removed from the home and placed in foster care. The victim took this very hard and blamed herself for her family being separated. The state explained that the victim was "very damaged from everything" and was in therapy.

{¶8} The state told the court that Jones's sperm was found in the victim's underwear when the rape kit was tested. The victim said that "an instance of sexual abuse had just happened the night before she went to the hospital."

{¶9} The state informed the court that in November 2017, defense counsel gave the state a letter "that was supposedly written by the victim to her mother." In this letter, the victim said she lied and "got daddy taken to jail." The victim further stated in the letter, "I know I lied

and I promise I will never lie again. Daddy did not rape me. * * * I didn't want to get a whooping." The victim told her mother in the letter that "I'm 11. I know what sex and DNA is. I'm a smart girl. Sex is always on TV like in the Jackass movies. DNA is what makes me me, and you you. It's a fine-tuned art." The state explained that in the letter, the victim went on to say that she knew her stepfather's DNA was found in her underwear. She stated, "I had peed on myself because I was scared and washed my private with daddy's wash rag and got dirty underwear out of the clothes pile." The state told the court that when it received the letter, it discussed the letter with the victim's advocate and the social worker, and they all agreed that the victim did not write the letter.

{¶10} The state further informed the court that it talked to the victim about the letter, and she had no idea about the letter. When the state showed the letter to the victim, "she did remember writing it," but she could not repeat anything in the letter or explain what DNA was. The state said that when it talked to the victim in December 2017, it was "heartbreaking." The state told the court that the victim "ultimately" did say that what she "originally reported about the defendant was 100 percent true. That he had been having sex with her for several years." The state talked to the victim again a couple of months later. The victim had been in foster care since the state last spoke to her. At that point, she still maintained that what she reported about the defendant was true.

{¶11} The state requested that the trial court give Jones the maximum amount of prison time, which was 16 years (11 years for the rape and 60 months for the gross sexual imposition). The state argued that although Jones pleaded guilty, the presentence investigation report showed that "he really didn't take responsibility" because "he's got all kind of excuses."

{¶12} Defense counsel spoke next. Defense counsel stated that Jones was “extremely sorry for taking advantage of the victim for his own selfish motives.” Defense counsel told the court that Jones was a productive member of society and only had one prior felony case in 1991 that was reduced to a misdemeanor. Since that time, Jones had been employed. Defense counsel explained that Jones had an extensive support network, which would ensure that he could reintegrate into society. Defense counsel asked for “a sentence in the middle range of a concurrent sentence.”

{¶13} Jones’s two sisters spoke to the court. Both of them stated that their brother was a kind person and questioned whether the victim was telling the truth.

{¶14} Jones apologized to the court and said that he missed his family. When the court asked him if he was taking responsibility for his actions, he responded, “That’s all I can do.” The court indicated that it did not understand what he meant. Jones explained, “If I’m hurting my children from the outcome of this, then I’m taking responsibility.” The court then asked, “the outcome of what?” Jones replied, “Of everything. The kids being taken * * * because of something they said I did.” The court asked again, “So you’re not taking responsibility for your actions?” Jones insisted that he was taking responsibility.

{¶15} The trial court stated that in deciding what sentence to impose, it took into consideration everything that it heard at the sentencing hearing, as well as the PSI, the sentencing memorandum, and the victim’s statements through the state. The court also said that it based its sentence on the overriding principles and purposes of felony sentencing. The court indicated that it decided Jones’s sentence “using the minimum sanctions” that would accomplish the purposes of felony sentencing without imposing a necessary burden on the state. The court also “considered the need for incapacitation, deterrence, and rehabilitation” and “the seriousness and

recidivism factors relevant to the offense and the offender.” The court further stated that the sentence it was imposing did not demean the seriousness of the crime, the impact on the victim, and was consistent with “similar offenses committed by like offenders.” Finally, the court stated that the sentence was not based upon any impermissible factors.

{¶16} The court told Jones that what he did could not just be a mistake. The court stated:

A mistake is a crime where you exhibit poor judgment, you drive drunk, break into a house because you’re drunk, you steal something, that’s poor judgment; but physically being able to get aroused by laying next to an 11-year-old child that calls you daddy, that’s not a mistake. That can’t be called a mistake and a lapse in judgment.

{¶17} The court further stated:

You know, I believe [your family] when they say who you are when you’re around them. I believe your counsel when he says that this guy works and he works hard to put food on the table. It doesn’t diminish your actions in this case, though.

There’s some really good people that do really bad things, and there’s some really bad people that mask themselves as good people. I don’t know who you are, I just know what’s in front of me today. I know the damage that has been caused, and it’s my job to ensure that that doesn’t happen again.

{¶18} The trial court then imposed a sentence of 9 years in prison for rape, to be served consecutive to 24 months for gross sexual imposition, for a total of 11 years in prison. The court found that consecutive sentences were necessary to punish Jones and to protect the public from future crime and were not disproportionate to the seriousness of the conduct and the danger imposed by Jones. The trial court further found that two or more of the offenses were part of one or more courses of conduct, and the harm caused was so great or unusual that a single prison term would not adequately reflect the seriousness of the conduct.

{¶19} The court informed Jones that he would be subject to a mandatory five years of postrelease control upon his release from prison and the consequences that he would face if he violated the terms of his postrelease control. The court also told Jones that he was classified as a Tier III sex offender and the requirements for that classification. It is from this judgment that Jones now appeals.

II. Standard of Review

{¶20} An appellate court must conduct a meaningful review of the trial court's sentencing decision. *State v. Johnson*, 8th Dist. Cuyahoga No. 97579, 2012-Ohio-2508, ¶ 6, citing *State v. Hites*, 3d Dist. Hardin No. 6-11-07, 2012-Ohio-1892. R.C. 2953.08(G)(2) provides that our review of consecutive sentences is not an abuse of discretion. Instead, an appellate court must "review the record, including the findings underlying the sentence or modification given by the sentencing court." *Id.* If an appellate court clearly and convincingly finds either that (1) "the record does not support the sentencing court's findings under [R.C. 2929.14(C)(4)]" or (2) "the sentence is otherwise contrary to law," then "the appellate court may increase, reduce, or otherwise modify a sentence * * * or may vacate the sentence and remand the matter to the sentencing court for resentencing." *Id.*

III. Consecutive Sentences

{¶21} R.C. 2929.14(C)(4) provides that in order to impose consecutive sentences, the trial court must find (1) that consecutive sentences are necessary to protect the public from future crime or to punish the offender, (2) that such sentences would not be disproportionate to the seriousness of the conduct and to the danger the offender poses to the public, and (3) that 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 postrelease 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.

{¶22} Jones argues that the record does not support consecutive sentences because he did not have a substantial criminal record, was gainfully employed, and did not pose a risk to the public.

{¶23} The record reflects, however, that the trial court considered all three of those mitigating factors. Nonetheless, it was within the trial court's discretion to also consider the serious physical harm that the young victim had to endure for at least two years and the significant emotional harm she continues to endure to this day and will likely do so for years. The trial court did not even sentence Jones to the maximum prison time that it could have, which was 16 years.

{¶24} Further, although Jones pleaded guilty and stated that he was taking responsibility for his actions, the PSI indicates otherwise. In the PSI, Jones stated, "The document is all wrong. I love my kids. I feel as though as an adult, I can see how society looks at it, that it's wrong for the child being in the room with me." Jones further indicated that he "felt he made a mistake by having the child in the room with him and should have made a better decision as an adult by not having her in the room at night with him when she couldn't sleep." Jones also stated "that he did not want to take the plea deal in the current offense, but his family could not afford to take the case to trial."

{¶25} The PSI also gives more details as to what the victim told her mother and the police as to what Jones did to her over at least a two-year period. The details are excruciatingly painful. The victim in this case called her stepfather “daddy.” She loved and trusted him. Jones took advantage of his stepdaughter’s love and trust and violated her in the worst way imaginable.

{¶26} Thus, after considering the entire record, we find that it supports the trial court’s imposition of consecutive sentences.

{¶27} Accordingly, Jones’s sole assignment of error is overruled.

{¶28} Judgment affirmed.

It is ordered that appellee recover from appellant the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant’s conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY J. BOYLE, PRESIDING JUDGE

FRANK D. CELEBREZZE, JR., J., and
STEPHEN A. YARBROUGH, J.,* CONCUR

* (Sitting by Assignment: Retired Judge Stephen A. Yarbrough of the Sixth District Court of Appeals.)

