

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 108981
	:	
v.	:	
	:	
PEDRO DIAZ,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: August 6, 2020

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-19-636751-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Kevin Bringman, Assistant Prosecuting Attorney, *for appellee*.

Myriam A. Miranda, *for appellant*.

SEAN C. GALLAGHER, J.:

{¶ 1} Pedro Diaz pleaded guilty to three counts of gross sexual imposition in violation of R.C. 2907.05(A)(4), felonies of the third degree, one count of sexual battery in violation of R.C. 2907.03(A)(1), a felony of the second degree, and one count of attempted gross sexual imposition, a felony of the fourth degree. The state

nolled a rape, a kidnapping, and two gross sexual imposition charges in exchange for the plea. Diaz was sentenced to serve 17 years in prison through consecutive service of the individual prison terms imposed on each count. The convictions are based on Diaz's conduct, occurring over a several-year period, in sexually abusing five children in his family. The crimes were discovered after two of the victims disclosed pain attributed to Diaz's misconduct. For the following reasons, we affirm.

{¶ 2} In the sole assignment of error, Diaz claims that the consecutive-sentence findings are not supported by the record and, therefore, his sentences should be vacated.

{¶ 3} Felony sentences are reviewed under the standard provided in R.C. 2953.08(G)(2). *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 16. A reviewing court may overturn the imposition of consecutive sentences only if it clearly and convincingly finds that either (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." R.C. 2953.08. Before a trial court may impose consecutive sentences, the court must make specific findings mandated by R.C. 2929.14(C)(4) and then incorporate those findings in the sentencing entry. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 37. The trial court is not required to give a rote recitation of the statutory language. *Id.* "[A]s 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." *Id.* at ¶ 29. Appellate review of

the underlying findings is narrow. In order to reverse the imposition of consecutive sentences, the defendant must clearly and convincingly demonstrate that the record does not support the sentencing court's findings under R.C. 2929.14(C)(4).

{¶ 4} Diaz has not cited any factual basis upon which we could conclude that the trial court's findings are clearly and convincingly not supported by the record, nor is it disputed that the trial court made the required findings and considered all that was required by law. In fact, Diaz presents two conclusions without any supporting analysis: that consecutive sentences "are in excess of what is necessary to incapacitate the offender, deter him from committing future crime and to rehabilitate him"; and that "the consecutive nature of his sentence was not supported by the record and was also contrary to law." The remainder of the brief is dedicated to reciting the black-letter law and the trial court's considerations and conclusions with respect to the application of R.C. 2929.14(C)(4).

{¶ 5} In essence, Diaz is asking for review of his consecutive sentences de novo, without deference to the findings made by the trial court or consideration of the record that supports those findings. This form of review is beyond the scope provided under R.C. 2953.08(G)(2). *See, e.g., State v. Rapier*, 8th Dist. Cuyahoga No. 108583, 2020-Ohio-1611, ¶ 11 (rejecting appellant's claim that a lesser sentence would have sufficed to punish the offender); *State v. Lavender*, 2019-Ohio-5352, 141 N.E.3d 1000, ¶ 131 (1st Dist.). Appellate courts can reverse consecutive sentences only upon concluding that the findings were not made or that the record does not clearly and convincingly support those findings. R.C. 2953.08(G)(2);

Marcum, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231. In light of the facts that Diaz has not set forth any analysis upon which either conclusion can be reached and that the trial court thoroughly considered and applied R.C. 2929.14(C)(4), the sole argument presented for our review does not give rise to the possibility of a reversal. The assignment of error is overruled.

{¶ 6} We therefore affirm.

It is ordered that appellee recover from appellant 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 convictions 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.

SEAN C. GALLAGHER, JUDGE

EILEEN T. GALLAGHER, A.J., and
KATHLEEN ANN KEOUGH, J., CONCUR