

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	Nos. 11AP-811
	:	(C.P.C. No. 10CR-5662)
v.	:	11AP-812
	:	(C.P.C. No. 10CR-6329)
Keith B. Gunnell, Jr.,	:	11AP-813
	:	(C.P.C. No. 11CR-2935)
Defendant-Appellant.	:	11AP-814
	:	(C.P.C. No. 11CR-3329)
	:	11AP-815
	:	(C.P.C. No. 11CR-4213)
	:	
	:	(REGULAR CALENDAR)
	:	

D E C I S I O N

Rendered on April 10, 2012

Ron O'Brien, Prosecuting Attorney, and *Sheryl I. Prichard*,
for appellee.

Yeura R. Venters, Public Defender, and *John W. Keeling*, for
appellant.

APPEALS from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Keith B. Gunnell, Jr., is appealing from his convictions and the resulting sentences of incarceration. He assigns two errors for our consideration:

[I.] THE TRIAL COURT ERRED WHEN IT USED HEARSAY ALLEGATIONS OF OTHER PRIOR BAD ACTS THAT WERE NOT PART OF THE INSTANT OFFENSES AND DID NOT RESULT IN ANY CONVICTIONS TO ENHANCE THE PUNISHMENT IT IMPOSED UPON THE DEFENDANT.

[II.] THE RECORD DOES NOT SUPPORT THE IMPOSITION OF SEVENTEEN YEARS OF IMPRISONMENT UPON A DEFENDANT SUFFERING FROM SEVERE MENTAL IMPAIRMENT.

{¶ 2} Gunnell was the subject of five separate indictments for felony offenses. On August 11, 2011, Gunnell entered pleas of guilty to two counts of burglary as felonies of the second degree and three counts of harassment by bodily substance, each a felony of the fifth degree. The trial court judge who accepted the guilty pleas ordered a pre-sentence investigation ("PSI") and set the cases for a sentencing hearing on September 14, 2011.

{¶ 3} On September 14, the trial court judge sentenced Gunnell to a total of 17 years of incarceration. Gunnell was sentenced to 8 years of incarceration on each of the burglary charges, with the sentences to be served consecutively. Gunnell was sentenced to 1 year of incarceration on each of the harassment by bodily substance charges, with the sentences to be served concurrently with each other, but consecutively to the 16-year sentence for the burglary charges.

{¶ 4} On appeal, counsel for Gunnell argues that the sentences were the result of the trial court's reliance on portions of the PSI. Counsel also argues the consecutive sentences were inappropriate.

{¶ 5} Gunnell has a history of mental health problems which are serious enough that the trial court had him evaluated by Twin Valley Behavioral Health Center to determine if he was competent to stand trial. A report from Twin Valley indicated Gunnell was competent and the trial court accepted that report before finding Gunnell competent.

{¶ 6} Gunnell's education is limited. He stopped formal schooling in the ninth grade.

{¶ 7} Gunnell broke into a home on the near eastside of Columbus and stole a wallet, credit cards, driver's license, cell phone, and set of car keys. Gunnell used the car keys to steal the homeowner's car. A neighbor saw Gunnell leaving the home and was able to identify Gunnell as the burglar.

{¶ 8} Gunnell also broke into the home of a 71-year-old woman and stole over \$30,000 worth of jewelry and other property. Gunnell tried to break into the house a second time almost three weeks later.

{¶ 9} Before his pleas, Gunnell had nine separate hostile encounters with deputy sheriffs while he was in custody awaiting trial on the burglary charges. He spit at deputies and, on one occasion, threw urine at them. His encounters continued after the pleas and more charges were being considered as of the date of his sentencing.

{¶ 10} The trial judge read much of the PSI into the record at the sentencing hearing. The PSI itemized an extremely extensive history of physical violence on a wide range of people. The PSI also itemized a number of incidents of violence while Gunnell was in custody and a number of incidents of vandalism to jail property.

{¶ 11} The trial judge concluded that nothing could be done to rehabilitate Gunnell and the only reasonable thing to do was to incarcerate him so the public could be protected as well as possible. The trial court's conclusion is fully supported by the record before us on appeal.

{¶ 12} If only one or two of the incidents from Gunnell's past were open to question, an argument that a total sentence of 17 years of incarceration was inappropriate could be made. Given Gunnell's extreme history of violent and assaultive behavior, the trial court's sentence was not an abuse of discretion.

{¶ 13} The second assignment of error is overruled.

{¶ 14} The trial court could reasonably rely on the PSI. Much of Gunnell's violent behavior occurred while he was young. Attempts were made to help him. He spent a lengthy period of time in custody and in placements. The juvenile court did not pursue a new delinquency proceeding each time Gunnell was violent. Instead, the juvenile court used an attempted burglary charge dating back to when Gunnell was age 11 and tried a variety of remedies involving children services agencies.

{¶ 15} The trial court could reasonably use the information in the PSI in sentencing Gunnell. The first assignment of error is overruled.

{¶ 16} Both assignments of error having been overruled, the judgments of the Franklin County Court of Common Pleas is affirmed.

Judgments affirmed.

FRENCH and DORRIAN, JJ., concur.
