

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	No. 14AP-938
Plaintiff-Appellee,	:	(C.P.C. No. 12CR-0606)
v.	:	
	:	(REGULAR CALENDAR)
[Q.S.P.],	:	
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on May 21, 2015

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*Ron O'Brien*, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

*Yeura R. Venters*, Public Defender, and *David L. Strait*, for appellant.

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APPEAL from the Franklin County Court of Common Pleas.

BROWN, P.J.

{¶ 1} Q.S.P., defendant-appellant, appeals the judgment of the Franklin County Court of Common Pleas in which the court resentenced him pursuant to our remand in *State v. [Q.S.P.]*, 10th Dist. No. 13AP-351, 2013-Ohio-5546.

{¶ 2} On February 3, 2012, appellant was charged with 12 counts of gross sexual imposition ("GSI") and 1 count of rape. Appellant was accused of sexually molesting his two stepdaughters, K.P. and S.P., over an extended period of years. Appellant sexually molested K.P. from the age of 3 until the age of 15 years old. Appellant sexually molested S.P. from the age of 7 until the age of 14 years old.

{¶ 3} A jury trial was held on February 11, 2013. The trial court granted appellant's Crim.R. 29 motion to dismiss three of the GSI counts, and the remaining

counts were submitted to a jury, which convicted appellant of nine counts of GSI and the rape count. The court sentenced appellant to 8 years of incarceration on the rape conviction, 15 years on five of the third-degree-felony GSI convictions, and 4 years on the fourth-degree felony GSI convictions. The court ordered all of the sentences to be served consecutively, for a total sentence of 27 years of incarceration.

{¶ 4} Appellant appealed his convictions and sentencing. In [*Q.S.P.*], we affirmed the convictions but found the trial court committed plain error by failing to make the proper consecutive sentence findings under R.C. 2929.14(C). The trial court conducted a resentencing hearing on August 12, 2014, and sentenced appellant to the same sentences it previously imposed. The trial court entered judgment on August 14, 2014. Appellant appeals the judgment, asserting the following assignment of error:

The trial court committed plain error in imposing consecutive sentences when the record does not support the finding that consecutive sentences are not disproportionate to the seriousness of Appellant's conduct and the danger he poses to the public.

{¶ 5} Appellant argues in his assignment of error that the trial court's imposition of consecutive sentences was not supported by the record. Pursuant to R.C. 2929.14(C)(4), in order to impose consecutive terms of imprisonment, the trial court is required to make at least three distinct findings: (1) that consecutive sentences are necessary to protect the public from future crime or to punish the offender, (2) that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and (3) that one of the subsections (a), (b) or (c) applies. *State v. Price*, 10th Dist. No. 13AP-1088, 2014-Ohio-4696, ¶ 31, citing *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177. A trial court seeking to impose consecutive sentences must make the findings required by R.C. 2929.14(C)(4) at the sentencing hearing and also incorporate such findings into its sentencing entry. *Bonnell* at ¶ 37. However, the trial court need not state reasons to support its findings, nor is the court "required to give a talismanic incantation of the words of the statute, provided that the necessary findings can be found in the record and are incorporated into the sentencing entry." *Id.* "[A] word-for-word recitation of the language of the statute is not required," but where "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.

{¶ 6} In the present case, because appellant failed to object to the imposition of consecutive sentences at the resentencing hearing, our review is limited to consideration of whether the trial court committed plain error. *State v. Ayers*, 10th Dist. No. 13AP-371, 2014-Ohio-276, ¶ 7. Under Crim.R. 52(B), "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." "To constitute plain error, the error must be obvious on the record, palpable, and fundamental such that it should have been apparent to the trial court without objection." " *State v. Jones*, 10th Dist. No. 14AP-80, 2014-Ohio-3740, ¶ 11, quoting *State v. Gullick*, 10th Dist. No. 13AP-26, 2013-Ohio-3342, ¶ 3, citing *State v. Tichon*, 102 Ohio App.3d 758, 767 (9th Dist.1995).

{¶ 7} Appellant does not contest whether the trial court made the appropriate findings required by R.C. 2929.14(C)(4). Appellant argues only that the record does not support the finding that consecutive sentences are not disproportionate to the seriousness of his conduct and the danger he poses to the public. In support of his argument, appellant only asserts that the court's analysis of the proportionality issue was cursory at best and fell short of what the law requires. Appellant requests that we conduct an independent review of the transcript of the sentencing hearing to determine whether the trial court's imposition of consecutive sentences complied with the law.

{¶ 8} Notwithstanding appellant's brief and non-specific argument in support of his contentions, our review of the record reveals his contentions to be without merit. The record supports the trial court's finding that appellant's acts were extremely serious and he poses a danger to the public. The earliest S.P. could remember appellant molesting her was when she was seven years old. He would come into her bedroom at night, pull her pants down, and touch her vagina with his fingers. This behavior continued one to three times per week. The molestations stopped from the time she was eight years old until she was ten years old because appellant and her mother separated, but the molestations started again when she was ten years old, with the same frequency of one to three times per week. The molestations stopped again when she was 11 years old and living with appellant's mother. When S.P. was 13 years old, she woke up and saw appellant molesting

K.P. in their bedroom, with his face close to K.P.'s vagina. S.P. did not remember appellant touching her when she was 13 years old, but when she was 14 years old, appellant came into her bedroom, pulled down her pants, and touched her vagina with his hand. When she was 14 years old, she opened her eyes while appellant was touching her vagina in her bedroom, and appellant told her that he would shoot her mother if she told her what was happening. One week after that incident, she told her mother that appellant had been molesting her and K.P.

{¶ 9} With regard to K.P., appellant raped her more times than she could remember, starting when she was three years old. When she was three years old, appellant came into her room, removed her lower body from her "footie" pajamas, removed her underwear, and put his mouth on her vagina. She remembered the same thing happening again when she was seven years old. The activity continued every year—except for an 18-month period when she was 11 or 12 years old and appellant had moved out of their home—until she was 15 years old, with the frequency increasing as she got older. She said it happened almost every night. When she was 9 years old, he began inserting his fingers in her vagina.

{¶ 10} After reviewing the record, we find the trial court did not err when it found that consecutive sentences were not disproportionate to the seriousness of appellant's conduct and the danger he poses to the public. The record demonstrates that appellant's conduct was horrendous, disgusting, and socially and morally unconscionable. The record demonstrates he poses a great danger to the public. Therefore, consecutive sentences were warranted, and appellant's assignment of error is overruled.

{¶ 11} Accordingly, appellant's sole assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

*Judgment affirmed.*

KLATT and HORTON, JJ., concur.

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