

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2011-P-0089
JARMEL L. LATIMER,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2010 CR 0258.

Judgment: Affirmed.

Victor V. Vigluicci, Portage County Prosecutor, and *Pamela J. Holder*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

Patricia J. Smith, 9442 State Route 43, Streetsboro, OH 44241 (For Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Jarmel L. Latimer, appeals the entry of the Portage County Court of Common Pleas sentencing him to a definite term of life imprisonment with the eligibility of parole after 30 years, to be served for the offense of aggravated murder, and four years on each of the four counts of kidnapping, to run consecutive to one another and consecutive to the life sentence. On appeal, this court must decide whether the trial court erred when it imposed appellant's sentence. Based on the following, we affirm.

{¶2} Appellant pled guilty to aggravated murder, in violation of R.C. 2903.01(B); aggravated burglary, in violation of R.C. 2911.11(A)(1)(2)(B); aggravated robbery, in violation of R.C. 2911.01(A)(1)(3)(C); and four counts of kidnapping, in violation of R.C. 2905.01(A)(2)(3)(C). The trial court found the counts of aggravated burglary and aggravated robbery to be allied offenses of similar import.

{¶3} The trial court conducted a sentencing hearing on July 8, 2011. At the hearing, the state outlined appellant's extensive criminal record that began at the age of 12. In fact, since the age of 12, appellant had been unsupervised only twice, and on both occasions he committed violent crimes—aggravated robbery with a gun and the crime of April 18, 2010, which is the subject of this appeal. On this day, appellant, who was carrying a knife, along with three other men, burst into an apartment occupied by Clifford Cummings, Erica Rouser, and her four children, ages five, six, seven and nine.

{¶4} Ms. Rouser and two of her four children were pushed into a utility closet in the kitchen by one of the men. This occurred while another man held down the victim so that appellant could stab him repeatedly. The four attackers fled the apartment with Mr. Cummings' wallet. Mr. Cummings died shortly after arriving at the hospital.

{¶5} The trial court also heard from Antoinette Latimer, appellant's mother, and Cecil Lott, a fatherly figure to appellant. Ms. Latimer admitted that she abused drugs during her pregnancy with appellant and that her drug abuse continued during appellant's childhood. Due to her drug abuse, Ms. Latimer would disappear for weeks. Ms. Latimer admitted that appellant was "essentially unsupervised from the day he was born." Ms. Latimer testified that appellant was removed from her home by Children Services at the age of five, was put in several placements, and eventually went to live

with his aunt. Ms. Latimer, however, interfered with this placement by encouraging appellant to disobey his aunt. Ms. Latimer, who is currently incarcerated and was intermittently incarcerated during appellant's childhood, admitted that she never read appellant a book, never cooked him a meal, never met his basic needs, never assisted him with his homework, and never attended a parent-teacher conference.

{¶6} Mr. Lott testified that although he was not appellant's biological father, he was appellant's only father figure. Mr. Lott, who is currently incarcerated and was incarcerated intermittently during appellant's childhood, described his parenting skills as pitiful, admitting that he did not provide any guidance to appellant as he was intoxicated every day and was "in jail and prison all of the time."

{¶7} The trial court also heard from Antoinette Cummings, the victim's mother, and Wendy Johnson, a co-worker of the victim.

{¶8} Appellant now appeals. On appeal, he alleges the following assignments of error:

{¶9} [1.] The sentence of the trial court is contrary to law because it failed to reflect any consideration of the purposes and principles of felony sentencing contained in the R.C. 2929.11 or the seriousness and recidivism factors of R.C. 2929.12. The trial court committed abuse of discretion when it imposed consecutive sentences without adequate justification.

{¶10} [2.] The trial judge violated the appellant's right to due process when it sentenced the appellant to consecutive prison terms and

erred by failing to conduct a proportionality review in determining consecutive sentences to be appropriate.

{¶11} As both of appellant's assigned errors relate to his sentence, we address them in a consolidated fashion.

{¶12} In *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, the Ohio Supreme Court established a two-step analysis for an appellate court reviewing a felony sentence. In the first step, we consider whether the trial court "adhered to all applicable rules and statutes in imposing the sentence." *Id.* at ¶25. "As a purely legal question, this is subject to review only to determine whether it is clearly and convincingly contrary to law, the standard found in R.C. 2953.08(G)." *Id.*

{¶13} As the Ninth Appellate District observed:

{¶14} *Kalish* did not specifically provide guidance as to the 'laws and rules' an appellate court must consider to ensure the sentence clearly and convincingly conforms with Ohio law. The specific mandate of *Kalish* is that the sentence fall within the statutory range for the felony of which a defendant is convicted." *State v. Gooden*, 9th Dist. No. 24896, 2010-Ohio-1961, ¶48, citing *Kalish* at ¶15.

{¶15} Next, if the first step is satisfied, we consider whether, in selecting the actual term of imprisonment within the permissible statutory range, the trial court abused its discretion. *Kalish, supra*, ¶26. An abuse of discretion is the trial court's "failure to exercise sound, reasonable, and legal decision-making." *State v. Beechler*, 2d Dist. No. 09-CA-54, 2010-Ohio-1900, ¶62, quoting *Black's Law Dictionary* 11 (8th Ed.2004).

{¶16} Addressing the first step of the *Kalish* test, appellant pled guilty to one count of aggravated murder, an unclassified felony, without specification in violation of R.C. 2903.01(B). The trial court's sentence of imprisonment for life with the eligibility of parole after 30 years is within the statutory range. R.C. 2929.03(A)(1)(d). He also pled guilty to four counts of kidnapping, felonies of the first degree, for which he was subject to a prison term of three, four, five, six, seven, eight, nine, or ten years. Former R.C. 2929.14(A)(1). Appellant's sentence was therefore within the statutory range for these offenses and did not run afoul of sentencing laws existing at the time of his sentencing.

{¶17} We next address the second step of *Kalish*: whether the sentence selected by the trial court was an abuse of discretion. Appellant maintains his sentence must be overturned because the trial court did not make findings under R.C. 2929.11 and R.C. 2929.12. We find this argument to be without merit.

{¶18} While the trial court is required to consider the R.C. 2929.12 factors, "the court is not required to 'use specific language or make specific findings on the record in order to evince the requisite consideration of the applicable seriousness and recidivism factors (of R.C. 2929.12.)'" *State v. Webb*, 11th Dist. No. 2003-L-078, 2004-Ohio-4198, ¶10, quoting *State v. Arnett*, 88 Ohio St.3d 208, 215 (2000). In *State v. Greitzer*, 11th Dist. No. 2006-P-0090, 2007-Ohio-6721, ¶28, this court acknowledged its adoption of the pronouncement of the Supreme Court of Ohio in *State v. Adams*, 37 Ohio St.3d 295 (1988). The Ohio Supreme Court in *Adams* held: "[a] silent record raises the presumption that a trial court considered the factors contained in R.C. 2929.12." *Adams*, *supra*, paragraph three of the syllabus. Moreover, in *State v. Cyrus*, 63 Ohio St.3d 164 (1992), the Ohio Supreme Court held that the burden is on the defendant to

present evidence to rebut the presumption that the court considered the sentencing criteria. *Id.* at 166.

{¶19} On appeal, appellant did not meet his burden in demonstrating the trial court's failure to consider the factors in R.C. 2929.11 and R.C. 2929.12. At sentencing, the trial court acknowledged that appellant had taken responsibility for his actions and appellant's tragic upbringing. See R.C. 2929.12(E)(5). While the trial court did not enumerate all of the factors on the record, it was not required to do so.

{¶20} Appellant also argues the trial court failed to conduct a proportionality analysis as required by R.C. 2929.11. This court has repeatedly held that consistency in sentencing is accomplished by the trial court's application of the statutory sentencing guidelines. See, e.g., *State v. Swiderski*, 11th Dist. No. 2004-L-112, 2005-Ohio-6705, ¶58. Thus, in order to show a sentence is inconsistent, a defendant must show the trial court failed to properly consider the statutory purposes and factors of felony sentencing. Because appellant failed to make such showing, his sentence was proportionate and consistent.

{¶21} For the reasons stated in the opinion of this court, appellant's assignments of error are overruled. It is the judgment and order of this court that the judgment of the Portage County Court of Common Pleas is affirmed.

MARY JANE TRAPP, J.,

THOMAS R. WRIGHT, J.,

concur.