

[Cite as *State v. Jackson*, 2004-Ohio-4153.]

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
CLERMONT COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2003-09-
081	:	
	:	<u>O P I N I O N</u>
-vs-	:	8/9/2004
	:	
ERNEST E. JACKSON,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS  
Case No. 2002-CR-0550

Donald W. White, Clermont County Prosecuting Attorney, David H. Hoffmann, 123 N. Third Street, Batavia, OH 45103-3033, for plaintiff-appellee

R. Daniel Hannon, Clermont County Public Defender, Robert F. Benintendi, 10 S. Third Street, Batavia, OH 45103, for defendant-appellant

**POWELL, J.**

{¶1} Defendant-appellant, Ernest E. Jackson, appeals his sentence in the Clermont County Court of Common Pleas for one count of gross sexual imposition. We affirm the decision of the trial court.

{¶2} On September 5, 2002, the Clermont County Grand Jury indicted appellant for six counts of rape of a person younger than 13, and six counts of gross sexual imposition, also of a person younger than 13, under former R.C. 2907.05(A)(4). After a jury trial on June 26, 2003, appellant was convicted of one count of gross sexual imposition, Count 8 of the indictment, for an incident that took place prior to July 1, 1996. On August 27, 2003, appellant was sentenced to serve two years in prison, and was classified a sexually oriented offender. Judgment was entered August 27, 2003. Appellant appeals his sentence raising a single assignment of error:

{¶3} "THE TRIAL COURT ABUSED ITS DISCRETION IN SENTENCING APPELLANT TO THE MAXIMUM PRISON TERM OF TWO (2) YEARS."

{¶4} Appellant argues that "the trial court has a duty to consider the statutory aggravating and mitigating factors set forth in R.C. 2929.13 when sentencing an offender, and abuses its discretion when it fails to do so, or imposes a sentence which apparently disregards those factors."

{¶5} While the court was required to consider factors and guidelines promulgated under R.C. 2951.02 and 2929.12, the court was not required to explicitly state what factors affected its sentencing decision. State v. Bivens (1988), 49 Ohio App.3d 75, 77. At the sentencing hearing, the trial court informed appellant, "[t]he presentence report does include victim impact statements and letters; information from the victim and others concerning the issue of sentencing." The trial court went on to

state, "I have reviewed the presentence investigation report. It does indicate that you've had no prior contact with law enforcement either as a juvenile or an adult. The circumstances of the case though here are serious, obviously."

{¶6} Clearly, the trial court reviewed the presentence investigation report before imposing sentence. Although the trial court may abuse its discretion by ignoring the statutory sentencing criteria, where the record shows that court reviewed the presentence investigation report before imposing sentence, the factors are presumed to have been considered. See State v. Flors (1987), 38 Ohio App.3d 133, 140. Therefore, we find the trial court did not abuse its discretion as the statutory factors are presumed to have been considered before sentence was imposed.

{¶7} Appellant also argues that "it is an abuse of discretion for a trial court to impose a more severe sentence because the trial court believes that the jury was mistaken in finding an offender not guilty of another charged offense." However, the trial court did not make any reference to the charges of which appellant was acquitted.

{¶8} We first note that where a sentence is within the statutory limits, we cannot hold that the trial court abused its discretion by imposing a more severe sentence. State v. Coyle (1984), 14 Ohio App.3d 185, 186. At sentencing, the trial court informed appellant, "[t]he circumstances of this case are obviously serious. I heard the trial. I heard the evidence. I thought the victim's testimony was extremely credible under the

circumstances, frankly. I think in order to adequately punish you (sic) for the conduct that has occurred in this particular case and also to protect society that incarceration in a state penal institution is required. I am going to sentence you to a period of two years in the Ohio Penal System."

{¶9} Appellant is unable to demonstrate that his sentence was influenced by the verdicts of acquittal. However, appellant maintains that the trial court's intention to impose the maximum sentence upon him because he was acquitted of six counts of rape and five counts of gross sexual imposition were "subtly expressed" and had a "duplicitous insinuation."

{¶10} We cannot say that the sentence was too severe or that it was influenced by the verdicts of acquittal. Because it appears that the trial court considered the statutory criteria in imposing a sentence which was within the statutory limits, we find no abuse of discretion. The assignment of error is overruled.

Judgment affirmed.

YOUNG, P.J., and WALSH, J., concur.