[Cite as *State v. Taylor*, 2005-Ohio-6426.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

FAYETTE COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NOS. CA2005-01-001 CA2005-01-004
	:	
- vs -	:	O P I N I O N 12/5/2005
MICHAEL E. TAYLOR,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM FAYETTE COUNTY COURT OF COMMON PLEAS
Case No. 20030268 CRI

David B. Bender, Fayette County Prosecuting Attorney, Kristina M. Rooker, 110 East Court Street, Washington C.H., Ohio 43160, for plaintiff-appellee

Thomas M. Tyack, James P. Tyack, 536 South High Street, Columbus, Ohio 43215, for defendant-appellant

BRESSLER, J.

{¶1} Defendant-appellant, Michael Taylor, appeals a decision of the Fayette County Court of Common Pleas, sentencing him on three counts of sexual battery. Appellant argues that the trial court wrongly imposed consecutive, nonminimum sentences and improperly classified him as a sexual predator. For the reasons outlined below, we affirm the decision of the trial court.

{¶2} The events that lead up to the indictment involved appellant's molestation of four

juvenile victims, beginning in 1993 and spanning nearly a decade. A successful businessman, school board member, and retired police officer, appellant was a prestigious and respected member of his community. Throughout the years, appellant befriended the adolescent sons of local families, offering them gifts, money, and jobs at his construction sites. Appellant's sexually-oriented conduct often began with explicit comments and jokes with his victims, and culminated in his molestation of them. This abuse included fondling the genitalia of his victims and performing fellatio on them. The victims were typically around 13 or 14 years of age when the abuse began, and around 16 or 17 when the abuse ended. Although the indictment focused on only four victims, appellant admitted to molesting a number of young boys over the years. While the victims insisted that they did not voluntarily participate in these encounters, appellant alleged that these incidents were always consensual and further stated that the victims initiated contact with him.

{¶3} On December 12, 2003, appellant was indicted on 21 counts alleging rape, attempted rape, and gross sexual imposition. Following a plea agreement, the state amended three of the counts from rape, a felony of the first degree, to sexual battery, a felony of the third degree. The state then dismissed the remaining counts, as well as the violent sexual offender specifications contained in the indictment. The trial court accepted appellant's guilty plea to three counts of sexual battery on November 5, 2004.

{¶4} On December 16, 2004, the trial court held a combined sexual predator and sentencing hearing. At that hearing, the court considered information contained in the screening instrument, the presentence investigation report, and in the forensic evaluation submitted by the state's expert. The court also considered statements made by appellant, the victims, friends and relatives of the victims, as well as testimony by the investigating police officer and appellant's psychologist. After considering this evidence, the court classified appellant a sexual predator. The court then heard further statements from two of the three

victims and their relatives, after which the court imposed a three-year sentence on each count, to run consecutively, for a total prison term of nine years. Appellant timely appealed, raising four assignments of error which we will address in turn.

{¶5} First, we observe that a sentencing court is vested with broad discretion when imposing a sentence. *State v. Blankenship* (Jan. 29, 2001), Clermont App. No. CA2000-04-025, at 4. An appeals court may not disturb a sentence unless it finds by clear and convincing evidence that the sentence is not supported by the record or is contrary to law. R.C. 2953.08(G)(2). Clear and convincing evidence is that evidence "which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *State v. Boshko* (2000), 139 Ohio App.3d 827, 835, quoting *Cross v. Ledford* (1954), 161 Ohio St. 469, paragraph three of the syllabus. In addition, the applicable record to be examined by a reviewing court includes any presentence, psychiatric, or other investigative report submitted in writing before imposition of the sentence; the trial record; and any oral or written statements made to or by the court at the sentencing hearing. R.C. 2953.08(F)(1) through (3). We are bound by these considerations in reviewing each of appellant's four assignments of error.

{¶6} Assignment of Error No. 1:

{¶7} "THE TRIAL COURT FAILED TO MAKE THE REQUIRED FINDINGS NECESSARY AND THERE IS NO EVIDENCE TO SUPPORT A FINDING THAT CONSECUTIVE SENTENCES WERE NECESSARY PURSUANT TO §2929.14(E)(4) OF THE REVISED CODE. THEREFORE, SENTENCING THE DEFENDANT TO THREE CONSECUTIVE SENTENCES IS CONTRARY TO LAW."

{¶8} In his first assignment of error, appellant challenges the trial court's imposition of consecutive sentences as unsupported by the necessary statutory findings or the reasons for those findings, as well as uncorroborated by the evidence.

{¶9} R.C. 2929.14(E)(4) permits a trial court to impose consecutive terms of imprisonment provided that the court makes each of the following three findings: (1) consecutive sentences are necessary to protect the public from future crime or to punish the offender; (2) consecutive terms are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public; and (3) at least one of the following factors is present: (a) the offender committed one or more of the offenses while awaiting trial or sentencing, or while under sanction or post-release control; (b) the resultant harm was so great or unusual that no single prison term adequately reflects the seriousness of the offender's conduct; or (c) the offender's history of criminal conduct establishes that consecutive sentences are necessary to protect the public from future crime by the offender.

{¶10} Furthermore, the trial court must give reasons supporting these findings on the record at the sentencing hearing. R.C. 2929.19(B)(2)(c); *State v. Comer* (2003), 99 Ohio St.3d 463, 2003-Ohio-4165, paragraph one of the syllabus. While the court must clearly indicate that it considered how the statutory factors apply to the facts of the case, it need not align its reasoning with the specific statutory findings. *State v. Ebbing*, Clermont App. No. CA2003-05-041, 2003-Ohio-5877, ¶17.

{¶11} Our review of the trial transcript reveals that, not only did the court make the requisite findings to support its imposition of consecutive sentences, but it also directly aligned its reasons with the specific statutory findings although it was not required to do so. First, the court found that "consecutive sentences are necessary to protect the public from future crime." The court described appellant's conduct as "horrific * * * [r]uining a young life" and the result of a plan or scheme. The court was appalled by appellant's insistence that the incidents were the result of mutual consent, and opined that appellant's denial outweighed his proffered apologies. Second, the court found that consecutive sentences "are not disproportionate to the seriousness of [defendant's] conduct [and to] the danger that

[defendant] ultimately pose[s] to the public." In support of this conclusion, the court emphasized the egregiousness of appellant's conduct and noted that he was originally subject to a 21-count indictment, reduced to three counts to which he pled guilty. Third, the court found that "[t]he harm caused by the multiple offenses was great and unusual[, and] [n]o single term reflects the seriousness of [defendant's] conduct." The court reasoned that "[defendant] undermined the basic level of this community. [Defendant] undermined the level of at least three families that we know of here. And [defendant] undermined positions of authority which [he] held * * *." The court concluded that appellant's chances of recidivism were high, and emphasized the fact that these serious acts were committed against children and over a span of many years.

{¶12} We further note that the court informed appellant at the plea hearing of the likelihood of the imposition of consecutive sentences, and appellant conveyed his understanding of this information.

{¶13} Because the record clearly indicates that the trial court performed the requisite statutory analysis and made the necessary findings before imposing consecutive sentences, appellant's first assignment of error is overruled.

{¶14} Assignment of Error No. 2:

{¶15} "THE TRIAL COURT FAILED TO MAKE THE REQUIRED FINDINGS TO JUSTIFY IMPOSING MORE THAN A MINIMUM SENTENCE ON ANY COUNT PURSUANT TO §2929.14(B) OF THE REVISED CODE, AND THERE WAS NO EVIDENCE TO ESTABLISH THAT SUCH A SENTENCE WAS NECESSARY. THEREFORE, THE SENTENCES ON EACH COUNT WERE CONTRARY TO LAW."

{¶16} In his second assignment of error, appellant argues that the trial court improperly imposed a nonminimum sentence on each of the three counts of sexual battery because it merely recited the applicable statutory language and failed to reference any

evidence establishing the required findings.

{¶17} As previously stated, the offense of sexual battery is a felony of the third degree. R.C. 2907.03(B). With certain exceptions not relevant here, R.C. 2929.14(A)(3) authorizes a definite term of imprisonment of one, two, three, four, or five years for each count of a third-degree felony. Except where the code provides otherwise, a court imposing a sentence upon a felony offender is required to impose the shortest prison term authorized for the offense. R.C. 2929.14(B). This general rule applies unless the offender was in prison during or prior to the time he committed the offense [R.C. 2929.14(B)(1)], or the court finds on the record that the shortest prison term will demean the seriousness of the offender's conduct or will not adequately protect the public from future crime by the offender or others [R.C. 2929.14(B)(2)].

{¶18} Appellant was given a three-year sentence on each of the three counts of sexual battery, to run consecutively, for a total of nine years imprisonment. A three-year term fits within the range of sentences permissible under R.C. 2929.14(A)(3). However, because that term is longer than the one-year minimum term and appellant had no prior record, the trial court was required to find on the record pursuant to 2929.14(B)(2) that the shortest prison term would demean the seriousness of the offender's conduct or would not adequately protect the public from future crime by the offender or others.

{¶19} Our review of the trial transcript reveals that the court did in fact make the requisite findings to support its imposition of nonminimum sentences on each count. At appellant's sentencing hearing, the court specifically stated: "[O]n * * * all three [counts] the Court finds the shortest prison term would demean the serious [sic] of the defendant's conduct * * * [and] certainly the shortest prison term will not adequately protect the public from future crime by the defendant." The court went on to provide its underlying reasons for imposing a prison term greater than the minimum, even though it was not required to do so. *State v. Boshko* (2000), 139 Ohio App.3d 827, 835; *State v. Edmonson*, 86 Ohio St.3d 324,

326, 1999-Ohio-110. Rather, it is sufficient that the record reflects that the court engaged in statutory analysis and found that either or both of the R.C. 2929.14(B) exceptions warranted a sentence greater than the minimum. *Boshko* at 835.

{¶20} Because the record clearly indicates that the trial court performed the requisite statutory analysis and made the necessary findings before imposing nonminimum sentences, appellant's second assignment of error is overruled.

{¶21} Assignment of Error No. 3:

{¶22} "THE TRIAL COURT'S IMPOSITION OF MORE THAN THE MINIMUM SENTENCE ON EACH CHARGE VIOLATED DEFENDANT'S SIXTH AMENDMENT CONSTITUTIONAL RIGHTS AS DEFINED BY THE UNITED STATES SUPREME COURT IN *APPRENDI V. NEW JERSEY*; *BLAKELY V. WASHINGTON* AND *UNITED STATES V. BOOKER*."

{¶23} In his third assignment of error, appellant insists that the trial court's imposition of nonminimum sentences pursuant to R.C. 2929.14(B)(2) is unconstitutional and violates the rule set forth in *Blakely v. Washington* (2004), 542 U.S. 296, 124 S.Ct. 2531, and its progeny.

{¶24} This court has previously held that the imposition of nonminimum sentences under Ohio's sentencing scheme does not violate a defendant's right to a jury trial as contemplated by the *Blakely* line of cases. See *State v. Combs*, Butler App. No. CA2000-03-047, 2005-Ohio-1923, ¶58; *State v. Farley*, Butler App. No. CA2004-04-085, 2005-Ohio-2367, ¶43 (*Combs'* holding that maximum term within statutory range does not violate the Constitution "leads to the natural and necessary conclusion that the imposition of a nonminimum sentence within the statutory range is also constitutionally sound"). Based on our prior holdings, we find no error in the trial court's imposition of a prison term greater than the minimum on each count. Additionally, we note that appellant failed to raise this objection

on the record at his sentencing hearing. In light of the foregoing considerations, appellant's third assignment of error is overruled.

{¶25} Assignment of Error No. 4:

{¶26} "THE TRIAL COURT'S FINDING THE DEFENDANT TO BE A SEXUAL PREDATOR IS NOT SUPPORTED BY THE (SIC) CLEAR AND CONVINCING EVIDENCE, AND IS THEREFORE CONTRARY TO LAW."

{¶27} In his fourth assignment of error, appellant argues that the trial court erred in classifying him a sexual predator. In particular, appellant notes that his expert witness testified as to the improbability of appellant re-offending in the future. Appellant also emphasizes that the state's own expert corroborated this conclusion in his forensic report evaluating appellant.

{¶28} A "sexual predator" is a person who has been convicted of or pleaded guilty to a sexually-oriented offense and who is likely to re-offend. R.C. 2950.01(E). In assigning this classification, a trial court must find that a defendant is a sexual predator by clear and convincing evidence. R.C. 2950.09(B)(4). The Ohio Revised Code contains a nonexclusive list of factors that a trial court must consider in making the sexual predator determination. R.C. 2950.09(B)(3). The factors applicable to the case at bar include the offender's age, the ages of the victims, the nature of the offender's sexual conduct and contact and whether it demonstrated pattern of abuse, and any additional behavioral characteristics that contribute to the offender's conduct. Id.

{¶29} This court has continually reaffirmed the principle that a trial court making a sexual predator determination is not required to accept the conclusions of a psychiatric evaluation. *State v. Phillips*, Madison App. No. CA2003-03-012, 2004-Ohio-2301, ¶15; *State v. Gordon* (Oct. 30, 2000), Fayette App. No. CA2000-04-013, at 6. The trial court is free to consider all of the evidence relating to the factors enumerated in R.C. 2950.09(B)(3), and has

discretion to determine how much weight to allocate to each factor. *State v. Thompson*, 92 Ohio St.3d 584, 2001-Ohio-1288, paragraph one of the syllabus.

{¶30} In the case at bar, the trial court thoroughly reviewed the evidence pertaining to the applicable statutory factors. The court noted that appellant was a 54-year-old male who demonstrated a long-standing pattern of sexually abusing adolescent boys. Appellant admitted to molesting multiple victims. He occupied a position of authority in the community, and used persuasion and pressure to control his victims. He systematically groomed his victims, befriending their families and abusing their trust. Although appellant admitted that he had a problem and appeared concerned, he demonstrated little understanding as to the causes of his behavior. The court further stated its belief that appellant failed to fully reveal the extent of his problem to either appellant's or the state's examining doctors. After considering this information, the court found that there was clear and convincing evidence that appellant was likely to re-offend, and thereafter classified him a sexual predator.

{¶31} Having reviewed the record, we find that there is clear and convincing evidence to support the trial court's determination that appellant is a sexual predator. Appellant's fourth assignment of error is overruled.

{¶32} Judgment affirmed.

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

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