

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

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2014-05-036
- vs -	:	<u>OPINION</u>
	:	2/17/2015
JOHN H. FISHER,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 2013 CR 0639

D. Vincent Faris, Clermont County Prosecuting Attorney, Nicholas A. Horton, 76 South Riverside Drive, 2nd Floor, Batavia, Ohio 45103, for plaintiff-appellee

Michael K. Allen & Associates, Joshua A. Engel, 5181 Natorp Blvd., Suite 210, Mason, Ohio 45040, for defendant-appellant

PIPER, P.J.

{¶ 1} Defendant-appellant, John Fisher, appeals the consecutive nature of his sentence imposed by the Clermont County Court of Common Pleas for multiple counts of rape and gross sexual imposition.

{¶ 2} Fisher was charged in a seven-count indictment with multiple counts of rape, felonious assault, and gross sexual imposition. The charges were specific to sexual crimes

Fisher committed against his daughter and a neighbor child, which occurred throughout the 1990s.

{¶ 3} After negotiations with the state, Fisher agreed to plead guilty to two counts of rape and one count of gross sexual imposition, and the state nolleed the four remaining charges. After accepting Fisher's voluntary, knowing, and intelligent plea, the trial court sentenced Fisher on each of the three counts. The court ordered the sentences for the two counts of rape to be served consecutive to each other, and the sentence for gross sexual imposition to be served concurrently with the two rape sentences.

{¶ 4} During the sentencing hearing, the trial court made some reference as to why it was imposing consecutive sentences. However, the court did not make each finding as required by R.C. 2929.14(C)(4) at the sentencing hearing and did not incorporate the findings within its sentencing entry. Fisher now appeals the trial court's failure to make statutory findings, raising the following assignment of error.

{¶ 5} THE SENTENCE IMPOSED IN THIS CASE IS CONTRARY TO LAW.

{¶ 6} Fisher argues in his assignment of error that the trial court's failure to make statutory findings renders its sentence contrary to law.

{¶ 7} As recently stated by the Ohio Supreme Court, "in order to impose consecutive terms of imprisonment, a trial court is required to make the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and incorporate its findings into its sentencing entry * * *." *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, ¶ 37.

{¶ 8} The state argues that the R.C. 2929.14(C)(4) requirements are not necessary in this case because Fisher's crimes were committed in the 1990s, at a time when the court was not required to make statutory findings before imposing consecutive sentences. R.C. 2929.14(C)(4)'s requirement that a trial court make specific findings was effective as of September 30, 2011 when H.B. 86 revived a trial court's duty to make certain findings before

imposing consecutive sentences.

{¶ 9} In an uncodified portion of H.B. 86, the legislation provided that the bill and resulting changes would apply to a defendant who had not been sentenced for specific drug-related crimes as of its effective date, even if the defendant's crimes had been committed prior to September 30, 2011.¹ Furthermore, R.C. 1.58 provides that when there is an amendment to a statute that reduces the penalty or punishment for a crime, the new amendment will apply whenever the sentence has not already been imposed.

{¶ 10} Based on the express statement in H.B. 86 and the application of R.C. 1.58, courts have uniformly held that a defendant to whom Section 4 applies and has not yet been sentenced will be sentenced according to the changes implemented by H.B. 86 regardless of the date of the crime. *State v. Taylor*, 138 Ohio St.3d 194, 2014-Ohio-460, ¶ 17. The Ohio Supreme Court has stated multiple times that the Ohio General Assembly meant for H.B. 86, when applicable, to apply to anyone not yet sentenced, even if the crimes had occurred prior to the effective day of H.B. 86.² In so holding, the court recognized that the Ohio General Assembly passed H.B. 86 in an attempt to "reduce the state's prison population and to save the associated costs of incarceration by diverting certain offenders from prison and by shortening the terms of other offenders sentenced to prison." *Id.*

{¶ 11} For that reason, the *Taylor* court reasoned that courts must follow the mandates set forth in the statute, that the new provisions are to be applied to eligible criminal defendants who had yet to be sentenced as of the effective date of H.B. 86. To that end, the

1. That uncodified portion within Section 4 states, "the amendments to sections 2925.01, 2925.03, 2925.05, and 2925.11 of the Revised Code, and to division (W) of section 2929.01 of the Revised Code, that are made in this act apply to a person who commits an offense involving marihuana, cocaine, or hashish on or after the effective date of this act and to a person to whom division (B) of the section 1.58 of the Revised Code makes the amendments applicable."

2. Only to the extent that the penalty, forfeiture, or punishment for any offense is reduced by a reenactment or amendment of a statute. R.C. 1.58(B).

court held "the determining factor on whether the provisions of H.B. 86 apply to an offender *is not the date of the commission of the offense* but rather *whether sentence had been imposed*." (Emphasis added.) *Id.* at ¶ 19.

{¶ 12} Even though Fisher committed his crimes in the 1990s, he was not sentenced for those crimes until after H.B. 86's effective date. As such, the trial court was required by statute to make certain findings before imposing consecutive sentences. We therefore sustain Fisher's single assignment of error and remand the case for the trial court to comply with R.C. 2929.14(C)(4) and *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177.

{¶ 13} Judgment reversed and the cause is remanded for further proceedings.

HENDRICKSON and M. POWELL, JJ., concur.