[Cite as *State v. Starkey*, 2015-Ohio-3115.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. John W. Wise, J.
-vs-	:	
	:	
DONALD STARKEY	:	Case No. 14-CA-92
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Court of Common Pleas, Case No.14-CR-00433
JUDGMENT:	Affirmed
DATE OF JUDGMENT:	July 31, 2015

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
PAULA M. SAWYERS 20 South Second Street 4th Floor Newark, OH 43055	ANDREW T. SANDERSON 73 North Sixth Street Newark, OH 43055

Farmer, J.

{¶1} On May 29, 2014, the Licking County Grand Jury indicted appellant, Donald Starkey, on six counts of unlawful sexual conduct with a minor in violation of R.C. 2907.04 and three counts of sexual imposition in violation of R.C. 2907.06. Said charges arose from incidents involving a thirteen year old child.

{¶2} On September 3, 2014, appellant pled guilty to three of the unlawful sexual conduct counts and all three of the sexual imposition counts. The remaining three counts were dismissed.

{¶3} On September 24, 2014, appellant filed a Crim.R. 32.1 motion to withdraw his guilty pleas, claiming he changed his mind and wanted a trial because he strongly felt he was not guilty of the charges. A hearing was held on September 26, 2014. During the hearing, appellant withdrew his motion to withdraw his guilty pleas.

{¶4} A sentencing hearing was held on October 13, 2014. By judgment entry filed same date, the trial court sentenced appellant to three years on each of the unlawful sexual conduct counts, to be served consecutively, for a total aggregate term of nine years in prison. The trial court also sentenced appellant to sixty days on each of the sexual imposition counts, to be served concurrently with the nine year sentence.

{¶5} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶6} "THE TRIAL COURT COMMITTED HARMFUL ERROR IN FAILING TO FULLY INQUIRE INTO THE DEFENDANT-APPELLANT'S REQUEST TO WITHDRAW HIS PREVIOUSLY ENTERED GUILTY PLEAS."

II

{¶7} "THE SENTENCING OF THE APPELLANT WAS IN ERROR."

I

{¶8} Appellant claims the trial court erred in failing to fully inquire into his Crim.R. 32.1 motion to withdraw his guilty pleas. We disagree.

{¶9} Crim.R. 32.1 governs withdrawal of guilty plea and states "[a] motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea." The right to withdraw a plea is not absolute and a trial court's decision on the issue is governed by the abuse of discretion standard. *State v. Smith,* 49 Ohio St.2d 261 (1977). In order to find an abuse of discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore,* 5 Ohio St.3d 217 (1983).

{¶10} In appellant's September 24, 2014 Crim.R. 32.1 motion to withdraw his guilty pleas, defense counsel explained "after entering his guilty plea***[he] decided that he did not want to proceed with sentencing, and, in the alternative, would like to go to trial, as he strongly feels he is not guilty of the charges herein." A hearing on the motion was held on September 26, 2014, wherein appellant withdrew the motion (T. at 3-4):

> THE COURT: Good morning. This is Case No. 2014 CR 433, the State of Ohio versus Donald Starkey. The record should reflect the Defendant is present here in open court represented by counsel, Mr.

Wolfe; counsel for the State is present, Ms. Sawyers; representative of Adult Court Services is present, Mr. Burke. I think we're here today scheduled for an oral hearing on a motion to withdraw a guilty plea, I believe. What's your pleasure, Mr. Wolfe?

MR. WOLFE: Thank you, Your Honor. At this point, after careful consideration, Mr. Starkey has determined that he would like to withdraw his motion to withdraw his guilty plea. He will participate in a presentence investigation with Adult Court Services and we're set for sentencing on October 13th. I believe Mr. Burke from Adult Court Services has indicated that he will still be able to complete the presentence investigation for the Court by that date, so then we would be good to stay with October 13th.

THE COURT: Is that your plan, Mr. Starkey?

DEFENDANT: Yes.

THE COURT: Okay. Well then we'll keep on schedule then.

{¶11} During the hearing, appellant was represented by counsel who indicated appellant wished to withdraw his motion and proceed with the presentence investigation. When specifically asked, appellant agreed that was his plan. Appellant then cooperated with the presentence investigation, and during the over two week period through sentencing, did not deny his guilt. October 13, 2014 T. at 3-6.

{¶12} Upon review, we do not find the trial court failed to fully inquire.

{¶13} Assignment of Error I is denied.

II

{¶14} Appellant claims the trial court erred in sentencing him to consecutive terms. We disagree.

{¶15} R.C. 2929.14 governs prison terms. Subsection (C)(4) states the following:

> (4) If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and 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 if the court also finds any of the following:
>
> (a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.
>
> (b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.

(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

{¶16} By judgment entry filed October 13, 2014, the trial court sentenced appellant to three years on each count, to be served consecutively, for an aggregate term of nine years in prison. Appellant argues the consecutive nature of the sentence is contrary to law.

{¶17} During the sentencing hearing held on October 13, 2014, the state set forth the impact the offenses had on the victim (T. at 6):

MS. SAWYERS: Yes, Your Honor. We are recommending a prison term be imposed. We'll defer to the Court as to the length of that.

[N.] was just 13 years old when this occurred, and I mean literally but for a few weeks it would have been a rape charge instead of the unlawful sexual conduct, Your Honor. This went on for quite some time. [N.] had just been returned to his mother from foster care. He's had a rough life. He's now with grandparents so at least he's safe but the mother has chosen Mr. Starkey over her own children in this case.

[N.]'s going to be going through therapy for probably a substantial period of his life. I think that the least we owe him is safety and security to know that Mr. Starkey's not available to abuse him again for at least some time. Thank you.

{¶18} In determining the sentence, the trial court specifically addressed the seriousness of the offenses, the likelihood of appellant re-offending, and the need for the victim's safety (T. at 7-8):

> THE COURT: Does anybody else have anything they want to say before the Court imposes any sentence here today?
>
> Well, Mr. Starkey, the Court has considered the purposes and principles of sentencing set our under Section 2929.11, as well as the seriousness and recidivism factors set out under Section 2929.12.
>
> Really you haven't ever worked. You did methamphetamine every day, maybe every day for over a decade. You were in a relationship with this - - the victim's mother, which appears to continue, so you'll always be close to the victim or able to have contact with him it would appear.
>
> I don't know what bad place you were in, but the 13-year old kid was in the bad place of being stuck in a trailer with you and being taken out by you alone two days after his father died; before he was even buried. So, you know, it's not about you, and really you haven't expressed any remorse. You haven't really taken ownership of your actions of engaging in oral sex and anal sex with a 13-year old boy on three occasions here by your plea other than to say, you know, you're not gay. You know, there's no amount of methamphetamine that could make most people do that.

> On that basis, Mr. Starkey, on each of the sexual imposition charges I'll impose sentences of 60 days. On each of the unlawful sexual conduct with a minor charges I'll impose sentences of three years at the state penitentiary. I'll order those run consecutively with each other for a nine-year prison term. I'll find that consecutive sentences are not disproportionate to the acts that you have committed. They're necessary to protect the public, to punish you, and I would find that the harm was so great or unusual that a single term would not adequately reflect the seriousness of the conduct.

{¶19} Upon review, we find these findings to be consistent with the mandate of R.C. 2929.14(C)(4) and *State v. Bonnell,* 140 Ohio St.3d 209, 2014-Ohio-3177, ¶ 36 (requiring findings that "consecutive sentences were not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public"). We find the consecutive nature of the sentences to be substantiated by the record.

{¶20} Assignment of Error II is denied.

{¶21} The judgment of the Court of Common Pleas of Licking County, Ohio is hereby affirmed.

By Farmer, J.

Hoffman, P.J. and

Wise, J. concur.

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