[Cite as *State v. Greenisen*, 2015-Ohio-3775.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff - Appellee	:	Hon. John W. Wise, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
TRAVIS GREENISEN	:	Case No. 2015CA00026
	:	
Defendant - Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Stark County Court of Common Pleas, Case No. 2007-CR-2217(A)
JUDGMENT:	Affirmed
DATE OF JUDGMENT:	September 14, 2015

APPEARANCES:

For Plaintiff-Appellee

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Prosecuting Attorney

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For Defendant-Appellant

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Baldwin, J.

{¶1} Defendant-appellant Travis Greenisen appeals from the January 23, 2015 Judgment Entry of the Stark County Court of Common Pleas overruling his Motion to Correct Illegal Sentences. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On December 27, 2007, the Stark County Grand Jury indicted appellant Travis Greenisen on one count of rape in violation of R.C. 2907.02(A)(1)(b), a felony of the first degree, and one count of endangering children in violation of R.C. 2919.22(B)(2) and/or (B)(3) and or (B)(4), a felony of the third degree. At his arraignment on January 4, 2008, appellant entered a plea of not guilty to the charges.

{¶3} Subsequently, on February 21, 2008, appellant withdrew his former not guilty plea and entered a plea of guilty to the charges. As memorialized in a Judgment Entry filed on March 3, 2008, appellant was sentenced to life imprisonment with the possibility of parole after serving ten years on the charge of rape and to four years on the charge of endangering children. The trial court ordered that appellant's sentences be served concurrently. Appellant also was classified a Tier II offender.

{¶4} On August 31, 2009, appellant filed a Notice of Appeal. The appeal was assigned Case No. 2009CA00222. Pursuant to a Judgment Entry filed in such case on October 13, 2009, this Court denied appellant's pro se request to file a delayed appeal and dismissed his appeal.

{¶5} In November of 2011, appellant was resentenced in order to correct the imposition of post-release control. The trial court imposed the same sentence as before.

{¶6} Thereafter, on January 21, 2015, appellant filed a Motion to Correct Illegal Sentences, arguing that his sentences for rape and child endangering should have been merged as allied offenses of similar import. The trial court, as memorialized in a Judgment Entry filed on January 23, 2015, overruled such motion.

{¶7} Appellant, on February 9, 2015, filed a Notice of Appeal from the trial court's January 23, 2015 Judgment Entry. On the same day, he filed a Motion for Preparation of Complete Transcript of Proceedings at State Expense. The trial court, pursuant to a Judgment Entry filed on April 29, 2015, denied such motion.

{¶8} Appellant now raises the following assignments of error on appeal:

{¶9} I. THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT IN FAILING TO RULE UPON HIS MOTION FOR PREPARATION OF COMPLETE TRANSCRIPT OF PROCEEDINGA (SIC) AT STATE EXPENSE PRIOR TO FILING RECORD ON APPEAL, APPELLANT THEREFORE WAS DENIED DUE PROCESS OF LAW AND HE HAD SUFFERED PREJUDICE BECAUSE COURT OF APPEALS DENIED HIS MOTION FOR EXTENSION OF TIME TO FILE OMISSION OF COMPLETE TRANSCRIPT, INDICATED ON DOCKETING STATEMENT.

{¶10} II. THE TRIAL COURT ERRED BY IMPOSING CONCURRENT SENTENCE UPON ALLIED OFFENSES OF SIMILAR IMPORT, THEREFORE, THE CONCURRENT COMPONENT IS CONTRARY TO LAW, AND IS ALSO NOT AUTHORIZED BY LAW.

I

{¶11} Appellant, in his first assignment of error, argues that the trial court erred in not providing him with a complete transcript of the proceedings below at State expense.

{¶12} As is stated above, appellant filed a Motion for Preparation of Complete Transcript of Proceedings at State Expense that was denied via a Judgment Entry filed on April 29, 2015. We concur with appellee that appellant has not appealed from the trial court's April 29, 2015 Judgment Entry and, therefore, has not preserved this claim for appeal.

{¶13} Moreover, as noted by the trial court in its April 29, 2015 Judgment Entry, appellant, in his appeal before this Court, is appealing from the denial of his Motion to Correct Illegal Sentences. There was no hearing on such motion and, therefore, there is no transcript. To the extent that appellant requested a transcript of his change of plea hearing on February 21, 2008, we concur with the trial court that "the appeal time with regard to said plea has expired."

{¶14} Appellant's first assignment of error is, therefore, overruled.

II

{¶15} Appellant, in his second assignment of error, argues that the trial court erred in failing to sua sponte inquire as to whether or not the offenses of statutory rape and child endangering constituted allied offenses of similar import under R.C. 2941.25 and for not merging the two sentences.

{¶16} We note that appellant pled guilty to both offenses and did not assert in the trial court that the offenses were allied offenses. Therefore, we review this argument

under a plain error analysis. In *State v. Rogers,* —— Ohio St.3d ——, 2015–Ohio–2459, ¶ 3, the Ohio Supreme Court held as follows:

> An accused's failure to raise the issue of allied offenses of similar import in the trial court forfeits all but plain error, and a forfeited error is not reversible error unless it affected the outcome of the proceeding and reversal is necessary to correct a manifest miscarriage of justice. Accordingly, an accused has the burden to demonstrate a reasonable probability that the convictions are for allied offenses of similar import committed with the same conduct and without a separate animus; and, absent that showing, the accused cannot demonstrate that the trial court's failure to inquire whether the convictions merge for purposes of sentencing was plain error.

{¶17} R.C. 2941.25, Multiple counts states:

> (A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.
>
> (B) Where the defendant's conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind

> committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.

{¶18} In *State v. Ruff,* ––– Ohio St.3d ––––, 2015–Ohio–995, ––– N.E.2d ––––, 2015 WL 1343062, the Ohio Supreme Court revised its allied-offense jurisprudence as follows:

> In determining whether offenses are allied offenses of similar import within the meaning of R.C. 2941.25, courts must evaluate three separate factors-the conduct, the animus, and the import.
>
> Two or more offenses of dissimilar import exist within the meaning of R.C. 2941.25(B) when the defendant's conduct constitutes offenses involving separate victims or if the harm that results from each offense is separate and identifiable.

Ruff, at syllabus.

The Court further explained as follows at paragraph 25:

> A trial court and the reviewing court on appeal when considering whether there are allied offenses that merge into a single conviction under R.C. 2941.25(A) must first take into account the conduct of the defendant. In other words, how were the offenses committed? If any of the following is true, the offenses cannot merge and the defendant may be

> convicted and sentenced for multiple offenses: (1) the offenses are dissimilar in import or significance—in other words, each offense caused separate, identifiable harm, (2) the offenses were committed separately, and (3) the offenses were committed with separate animus or motivation.

{¶21} In the case sub judice, the indictment and Bill of Particulars, which was filed on January 17, 2008, alleged, with respect to the charge of rape, that appellant had a girl under the age of 13 perform fellatio on him numerous times and that appellant confessed to having had his penis in her mouth on at least one occasion. The Bill of Particulars alleged that appellant committed the crime of child endangering as follows**:**

> Travis Gennisen, as a continuous course of conduct did torture or cruelly abuse Jane Doe, a child under eighteen years of age and/or administer corporal punishment or other physical disciplinary measure, or physically restrain Jane Doe, in a cruel manner or for a prolonged period, which punishment, discipline, or restraint was excessive under the circumstance and created a substantial risk of serious physical harm to the child, and/or repeatedly administer unwarranted disciplinary measures to Jane Doe, a child under eighteen years of age, when there was a substantial risk that such conduct, if continued, would seriously impair or retard the child's mental health or development, and/or did

> aid or abet another in so doing, in violation of sections 2919.22 (B) (2) and/or (B) (3) and/or (B) (4) of the Ohio Revised Code, to wit: Travis Greenisen did state that there was a lock on the bedroom door of Jane Doe and that she did eat alone in her room.

{¶22} By pleading guilty, appellant admitted to the crimes. We concur with appellee that the "offenses clearly involve separate and identifiable harm to this young girl as a result of [appellant's] separate and identifiable criminal conduct." Thus, the trial court did not err in failing to merge the two offenses.

{¶22} Based on the foregoing, we find no plain error and that the trial court did not err in overruling appellant's Motion to Correct Illegal Sentence.

{¶23} Appellant's second assignment of error is, therefore, overruled.

{¶24} Accordingly, the judgment of the Stark County Court of Common Pleas is affirmed.

By: Baldwin, J.

Gwin, P.J. and

Wise, J. concur.