[Cite as *State v. Veres*, 2004-Ohio-4141.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

State of Ohio	Court of Appeals No. S-03-030
Appellee	Trial Court No. 03-CR-292
v.	
Thomas M. Veres	**DECISION AND JUDGMENT ENTRY**
Appellant	Decided: August 6, 2004

* * * * *

Thomas L. Stierwalt, Sandusky County Prosecuting Attorney, and
Norman P. Solze, Assistant Prosecuting Attorney, for appellee.

Richard A. Heyman, for appellant.

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HANDWORK, P.J.

{¶1} This is an appeal from the Sandusky County Court of Common Pleas' sentencing of appellant, Thomas Veres.

{¶2} Appellant was sentenced on August 11, 2003. In return for appellant's guilty plea to one count of rape, a felony of the first degree, the state of Ohio agreed to enter a nolle prosequi to Counts 2, 3, 4, 5, 6, 7, 8, 9, and 10. Appellant was sentenced to 8 years in prison.

{¶3} Count 1, as amended, states "between the months of June 1 and September 17, 2002, at 537 Union Place, Fremont, Sandusky County, Ohio, the defendant did engage in sexual conduct with another who is not the spouse of the offender, when the other person is less than thirteen years of age, whether or not the offender knows the age of the other person, to wit: K.A.R., a female juvenile, whose date of birth is 9/18/89." A felony of the first degree carries a penalty of three, four, five, six, seven, eight, nine, or ten years imprisonment and up to a $20,000 fine.

{¶4} Appellant appeals the trial court's sentence and alleges the following assignments of error:

{¶5} "The trial court erred and abused its discretion by failing to set forth the law and rationale that supported sentencing the defendant to any sentence other than the minimum sentence provided for under the law."

{¶6} "The trial court misinterpreted R.C. 2929.14(B) in finding that the statute permitted the trial court to make an example of the appellant for deterrence purposes."

{¶7} In his first assignment of error, appellant contends that the trial court never found on the record 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. Appellant contends that the trial court is required to state the legal and factual rationale for any sentence that is not the minimum sentence.

{¶8} R.C. 2929.14(B) provides in pertinent part "if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the

offender, the court shall impose the shortest prison term authorized for the offense pursuant to division (A) of this section, unless * * * the following applies:

{¶9} "(1) * * *

{¶10} "(2) 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."

{¶11} A trial court is required to state its findings orally on the record at the sentencing hearing when imposing a nonminimum sentence to a first time offender. *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165, at ¶26.

{¶12} Appellant argues that *Comer* requires a sentencing court to state the reasons for imposing a nonminimum sentence on a first time offender. The Ohio Supreme Court in *Comer* required the sentencing court to state reasons for imposing a nonminimum sentence on a first time offender because the offender was subject to consecutive sentences. However, this appeal does not involve a consecutive sentence.

{¶13} In addition, R.C. 2929.14(B) does not require a trial court to give its reasons for finding that the seriousness of the offense will be demeaned or that the public will not be adequately protected by a minimum sentence. Id., citing *State v. Edmonson* (1999), 86 Ohio St.3d 324, 1999-Ohio-110. Therefore, the trial court judge satisfied R.C. 2929.14(B) during the sentencing hearing by orally stating on the record that a community control sanction would demean the seriousness of appellant's conduct and a more severe sentence was necessary to protect the public and deter future crime by other offenders.

{¶14} Appellant also argues the trial court failed to follow the exact language of R.C. 2929.14(B)(2) when imposing a nonminimum sentence on appellant. However, a sentencing court is not required to follow the language of a statute exactly; rather, it must be clear based on the record that the sentencing court made the required findings. *State v. Jordan*, 6th Dist. No. OT-03009, 2004-Ohio-2775, at ¶21, citing *State v. Miah*, 8th Dist. No. 80792, 2002-Ohio-3800, at ¶16. Although the trial court did not use the exact language of R.C. 2929.14(B), the record indicates that the trial court judge made the required findings on the record at the sentencing hearing. The trial court judge found that (1) the shortest prison term would demean the seriousness of the offender's conduct; (2) a nonminimum sentence was necessary to protect the public from future crime by the offender; and (3) a nonminimum sentence was necessary to deter others. Accordingly, appellant's first assignment of error is found not well-taken.

{¶15} In his second assignment of error, appellant initially contends that the term "others" in R.C. 2929.14(B)(2) applies only to co-conspirators. Both parties agree that co-conspirators were not involved in this matter. Therefore, appellant argues that the trial court judge sentenced appellant based on a factor that was not supported by the record.

{¶16} In interpreting the term "others" under R.C. 2929.14(B)(2), we must first look at the statute itself in determining the legislative intent. *State v. Steward*, 4th Dist. No. O2CA43, 2003-Ohio-4082. R.C. 1.42 states, in part, that when interpreting statutes, "words and phrases shall be read in context and construed according to the rules of grammar and common usage." R.C. 2929.01 does not define the term "others." When a

statute does not define a term, it is accorded its common, ordinary meaning. *State v. Thomas*, 8th Dist. No. 82674, 2004-Ohio-1907, at ¶31. The common and ordinary meaning of "others" does not indicate that only co-conspirators would be included in this definition. See Merriam Webster's Collegiate Dictionary (11 Ed. 2003) 879. Therefore, the term "others" does not only apply to co-conspirators.

{¶17} Next, appellant argues that the legislative intent behind R.C. 2929.14(B) is to deter other criminal associates of the offender and not the general public. R.C. 181.23 specifically states, however, that deterrence is an objective of Ohio's sentencing policy.[1] Therefore, the trial court judge correctly stated that deterring the general public may be considered in sentencing. Therefore, appellant's second assignment of error is found not well-taken.

{¶18} On consideration whereof, this court finds that substantial justice has been done the party complaining, and the judgment of the Sandusky County Court of Common Pleas is affirmed. It is ordered that appellant pay the court costs of this appeal.

JUDGMENT AFFIRMED.

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[1]R.C. 181.23 states in part "(B) the commission shall develop a sentencing policy for the state that is based upon the findings and conclusions of its study under division (A) of this section. The policy shall be designed to enhance public safety by achieving certainty in sentencing, deterrence, and a reasonable use of correctional facilities, programs, and services and shall be designed to achieve fairness in sentencing.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

Peter M. Handwork, P.J. _____

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JUDGE

Mark L. Pietrykowski, J. _____

_____
Judith Ann Lanzinger, J. _____ JUDGE
CONCUR.

_____
JUDGE