**[Cite as *State v. Schnitker*, 2015-Ohio-1685.]**

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

State of Ohio — Court of Appeals No. S-14-039

Appellee — Trial Court No. 14 CR 295

v.

Richard D. Schnitker — **DECISION AND JUDGMENT**

Appellant — Decided: May 1, 2015

* * * * *

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

Nathan T. Oswald, for appellant.

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**OSOWIK, J.**

**{¶ 1}** This is an appeal from a September 12, 2014 judgment of the Sandusky Court of Common Pleas, which convicted appellant of two counts of pandering sexually oriented materials involving a minor, in violation of R.C. 2907.322. Pursuant to the plea

agreement, 75 of the 77 felony pandering charges originally charged against appellant in the indictment were dismissed in exchange for appellant's plea on the remaining two counts. For the reasons set forth below, this court affirms the sentencing judgment of the trial court, but reverses and remands for the limited purpose of a nunc pro tunc sentencing entry to fully incorporate the consecutive sentencing findings made by the trial court.

**{¶ 2}** Appellant, Richard D. Schnitker, sets forth the following two assignments of error:

> THE TRIAL COURT ERRED WHEN IT IMPOSED CONSECUTIVE SENTENCES WITHOUT MAKING THE FINDINGS REQUIRED BY R.C. 2929.14.
>
> THE TRIAL COURT ERRED BY SENTENCING MR. SCHNITKER TO CONSECUTIVE TERMS OF IMPRISONMENT AFTER MAKING FINDINGS THAT LACK SUPPORT IN THE RECORD.

**{¶ 3}** The following undisputed facts are relevant to this appeal. Between September 2013, and February 2014, three separate Sandusky County, Ohio, police departments received reports from parents of minor females who had been randomly befriended by an unknown adult male on social media sites seeking to develop sexual relationships with the girls. The majority of the girls ranged in age from 9 to 14 years of age.

**{¶ 4}** Appellant's modus operandi was to search popular social media sites such as Facebook to find profiles of attractive girls in the desired age range, and initiate discourse by sending them complimentary messages, exchanging pleasantries, and making Facebook friend requests.

**{¶ 5}** Appellant would thereby build familiarity and trust with them by initially exchanging primarily benign communications. Upon achieving a level of trust through regular message exchanges, appellant would then escalate and begin to forward increasingly sexually explicit messages, photos and videos to the girls. Appellant would simultaneously encourage the girls to send back to him increasingly more explicit sexual materials of them. As his demands increased to increasingly pornographic levels, some of the girls resisted and attempted to cease communications. When they did so, appellant would threaten to post the already received compromising materials of the girls on the Internet.

**{¶ 6}** Appellant eventually persuaded several of the girls to meet him in person for the express purpose stated by appellant of engaging in various sexual acts with them. Thankfully, the girls sensed danger and upon meeting appellant at the designated site, left and did not go with appellant.

**{¶ 7}** Based upon multiple reports regarding appellant's ongoing actions, the Sandusky County Sheriff's Department created a Facebook account of a 14-year-old girl and sent a friend request to appellant, a 28-year-old former volunteer firefighter from Sandusky County. Appellant accepted and began requesting sexually explicit photos and

information from the party whom he believed to be a minor female. In addition, appellant sent sexually explicit photos and information to the Facebook account of the 14-year-old girl.

**{¶ 8}** Appellant ultimately encouraged the officer posing as the girl to slip out of her home without her parents' knowledge and covertly meet with him at a designated location. Appellant sent a picture of his vehicle and the exact location where she was to meet him. Appellant later sent a picture to the undercover officer of his aroused genitalia.

**{¶ 9}** Ultimately, sufficient information was obtained in the investigation by the Sheriff's Department so that a search warrant for appellant's residence was obtained. During the execution of the search warrant, investigating officers recovered cell phones and multiple other mobile electronic devices which contained information and images from which investigators were able to identify numerous minor female victims.

**{¶ 10}** Upon recovering this information, the Sheriff's Department contacted and interviewed multiple parents and their minor daughters. The investigation confirmed that appellant was communicating with multiple minor females as young as nine years of age, initiating extremely sexually explicit communications, sending sexually explicit pictures of himself, and systematically requesting and encouraging sexually explicit photos and videos from the girls. The investigation also revealed appellant's pattern of threatening the girls with exposure when they attempted to cease communication with him.

Appellant encouraged some of the girls to meet him in person and conveyed to them the desired sexual conduct that he wished to pursue with them.

**{¶ 11}** On May 6, 2014, appellant was indicted on 77 felony counts including pandering obscenity involving a minor, in violation of R.C. 2907.321, felonies of the fourth and fifth degree, and pandering sexually oriented matter involving a minor, in violation of R.C. 2907.322, felonies of the second degree.

**{¶ 12}** On July 30, 2014, appellant entered into a voluntary plea agreement through which he pled guilty to two counts of pandering sexually oriented matter involving a minor, in violation of R.C. 2907.322, felonies of the second degree. In exchange, the remaining 75 charges were dismissed. A presentence investigation was ordered. On September 12, 2014, appellant was sentenced to serve seven years of incarceration on each of the two counts, ordered to be served consecutively, for a total term of incarceration of 14 years. This appeal ensued.

**{¶ 13}** Both of appellant's assignments of error similarly contend that the trial court erred in sentencing appellant on a consecutive basis. Given their common legal premise, we will address the assignments of error simultaneously.

**{¶ 14}** In support of his arguments disputing the underlying sentence, appellant requests this court modify, vacate, or remand the sentence back to the trial court pursuant to R.C. 2953.08(G)(2), the statutory provision that governs appellate review of disputed felony sentences.

**{¶ 15}** In conjunction with the above, we note that it is well-established that R.C. 2953.08(G)(2) directs that the proper appellate standard of felony sentence review is no longer abuse of discretion review. The applicable standard of review is whether it is clearly and convincingly shown that the record does not support applicable findings made by the sentencing court or that the sentence is otherwise contrary to law. *State v. Tammerine*, 6th Dist. Lucas No. L-13-1081, 2014-Ohio-425, ¶ 11.

**{¶ 16}** Based upon the above governing legal parameters, we note that the permissible statutory sentencing range for a felony of the second degree, such as the convictions underlying this case, is between two and eight years. R.C. 2929.14(A). Thus, we find that the seven-year terms of incarceration imposed in this case squarely fall within the permissible range.

**{¶ 17}** The record further shows that the trial court properly applied post-release control and considered both the seriousness and recidivism factors underlying this case. The trial court properly considered appellant's criminal history and the seriousness of the crimes for which appellant was convicted. We find that the record does not demonstrate that appellant's sentence is clearly and convincingly contrary to law.

**{¶ 18}** Next, in connection to consideration of any statutory findings potentially relevant to our review of this case, the record reveals that one of the potential R.C. 2953.08 (G)(2) requisite statutory findings is applicable to the instant case.

**{¶ 19}** R.C. 2929.13(B) pertains to fourth or fifth degree felony cases. This case entails second-degree felony convictions and thus those statutory findings are not

relevant to this case. R.C. 2929.13(D) pertains to the necessity to make findings in cases in which no prison term is imposed in a second-degree felony case. Because a prison term was imposed in this case, those statutory findings are not relevant.

**{¶ 20}** R.C. 2929.14(B)(2)(e) pertains to the sentencing of offenders who are repeat violent offenders. The case before us does not pertain to a repeat violent offender and thus those statutory findings are not relevant. R.C. 2929.20(I) pertains to judicial release hearings. As such, it is not relevant to this case.

**{¶ 21}** Lastly, R.C. 2929.14 (C)(4) pertains to multiple convictions on multiple offenses. That statutory consideration is applicable to the instant case. R.C. 2929.14(C)(4) establishes that in order to properly sentence a defendant to consecutive prison terms for convictions on multiple offenses the sentencing court must find that such a sentence 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."

**{¶ 22}** The statute further establishes that the court must also find that the offender falls within one of three additional delineated statutory findings. As relevant to the instant case, R.C. 2929.14(C)(4) delineates that one of the three potential findings satisfying that portion of the statute is a finding that the harm resulting from the multiple offenses was so great that a single term of incarceration for any of the crimes committed in that course of conduct would not adequately reflect the seriousness of the of the conduct.

**{¶ 23}** We have carefully reviewed and considered the record of evidence in this matter, paying particular attention given the nature of this appeal to the transcript of the sentencing proceedings. We note that the record reflects at pages 20-22 of the sentencing transcript that the trial court specifically referenced and explained the R.C. 2929.14(C)(4) statutory findings applicable to this case.

**{¶ 24}** The sentencing transcript reflects in pertinent part that the trial court stated, "[M]y job is to attempt to protect the public from future crime, and sometimes when the crime is heinous enough, the only thing we can do is take you out of commission for a while, so that's what we're going to do." As such, the trial court properly satisfied the first prong of the R.C. 2929.14(C)(4) required statutory findings prior to the imposition of the disputed consecutive sentences.

**{¶ 25}** The transcript further reflects in connection to the three potential statutory findings satisfying the second prong that, "[N]o 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. I am finding that this provision does apply." As such, the trial court properly satisfied the second prong of the R.C. 2929.14(C)(4) required statutory findings prior to the imposition of the disputed consecutive sentences.

**{¶ 26}** With respect to appellant's related contention that these findings lacked support in the record, we note that the record is replete with evidence demonstrating appellant's conduct in systematically initiating social media communications with girls ranging primarily in age from 9 to 14 and systematically encouraging and pressuring the

exchange of explicit sexual messages and images. The record shows that appellant repeatedly encouraged the girls to send him explicit and staged sexual photos of themselves and encouraging them to make and send sexually explicit videos of themselves. The record also encompasses persuasive evidence of appellant's conduct in threatening to publicly expose the sexually explicit materials involving the girls whenever they would attempt to cease communications with him or not cooperate with his requests.

**{¶ 27}** Wherefore, we find that the record encompasses convincing evidentiary support for the trial court's findings that consecutive sentencings were necessary to protect the public from future crimes and that non-consecutive sentences would not adequately reflect the seriousness of appellants' conduct.

**{¶ 28}** Lastly, we note the sentencing entry itself states, "An analysis of ORC 2929.14(C) was conducted on the record as the result being application of consecutive sentences pursuant to 2929.14(c)(4)(b)." This is an insufficient sentencing entry as it fails to incorporate the findings described above properly made by the trial court in support of the imposition of consecutive sentences. Notably, this error only constitutes a clerical error that can be corrected through a nunc pro tunc entry. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 29.

**{¶ 29}** Wherefore, we find appellant's assignments of error not well-taken. The sentencing judgment of the Sandusky County Court of Common Pleas is hereby affirmed,

but reversed and remanded for the limited purpose of a nunc pro tunc entry as described above. Appellant is ordered to pay the cost of this appeal pursuant to App.R. 24.

Judgment affirmed, in part,
and reversed and remanded, in part.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

Stephen A. Yarbrough, P.J. _____
CONCUR.
JUDGE