

[Cite as *State v. Iams*, 2011-Ohio-470.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94774

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JAMES D. IAMS

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-525673

BEFORE: Celebrezze, P.J., Sweeney, J., and Gallagher, J.

RELEASED AND JOURNALIZED: February 3, 2011

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FRANK D. CELEBREZZE, JR., P.J.:

{¶ 1} Appellant, James D. Iams, challenges the 17-year sentence that resulted from his guilty pleas to two counts of rape. He argues that the trial court erred in failing to make findings supporting consecutive sentences and failed to consider the purposes of sentencing. After a thorough review of the record, we affirm appellant's sentence.

{¶ 2} Appellant and his wife met at a discussion group geared toward single parents. They eventually were married. Mrs. Iams had two children from a previous relationship, a boy and a girl. Appellant began sexually

abusing the minor daughter some four years prior to his plea. She told her mother that appellant had done something to her, but was vague. When Mrs. Iams confronted appellant, he denied that anything serious had occurred and continued to abuse the daughter. Eventually, the extent of the sexual abuse came to light and appellant was arrested.

{¶ 3} On January 4, 2010, appellant agreed to plead guilty to an amended indictment consisting of two counts of rape in violation of R.C. 2907.02(A)(2), first-degree felonies. At the sentencing hearing, the victim, Mrs. Iams, and a friend of the victim spoke. The state only asked that any sentence appellant received for each count be served consecutively. The trial court examined the presentence investigation report (“PSI”), a sentencing memorandum provided by appellant documenting his voluntary participation in sex offender therapy programs, and the conclusions of Gary Echt of Advanced Psychological Services finding that appellant had a low to average risk of recidivism.

{¶ 4} The trial court gave appellant some consideration for taking responsibility for his actions, not putting the victim and her family through a public trial, and his voluntary participation in sex offender therapy, but sentenced him to an aggregate term of incarceration of 17 years.¹ The trial

¹ Appellant was sentenced to eight years of incarceration for the first count of rape and nine years for the second, to be served consecutively.

court also informed appellant that he would be labeled as a Tier III sex offender and subject to five-years of postrelease control. Appellant timely filed the instant appeal raising two assignments of error.

Law and Analysis

Findings Necessary to Impose Consecutive Sentences

{¶ 5} Appellant first argues that “[t]he trial court’s sentence was contrary to law since the court imposed consecutive sentences without making the requisite findings of fact to support such a sentence.” Relying on *Oregon v. Ice* (2009), 555 U.S. 160, 129 S.Ct. 711, 172 L.Ed.2d 517, appellant argues that the Ohio Supreme Court’s decision in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470 — invalidating R.C. 2929.14(E)(4) and R.C. 2929.41(A), which required judicial findings before consecutive or maximum sentences could be imposed — was implicitly overruled by the U.S. Supreme Court. The Ohio Supreme Court recently addressed this argument in *State v. Hodge*, Slip Opinion No. 2010-Ohio-6320, and determined that *Ice* did not revive these sentencing provisions and that “judges are not obligated to engage in judicial fact-finding prior to imposing consecutive sentences unless the General Assembly enacts new legislation requiring that findings be made.” *Id.* at paragraphs one and two of the syllabus. Therefore, appellant’s first assignment of error is overruled.

Purposes of Felony Sentencing

{¶ 6} Appellant also argues that “[t]he trial court abused its discretion in imposing consecutive sentences without consideration of the overriding purposes of felony sentencing[,] and the sentence was not reasonably calculated to achieve these purposes nor consistent with sentences imposed for similar crimes by similar offenders.”

{¶ 7} Post-*Foster*, appellate courts should apply a two-step analysis in determining the validity of a sentence. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶4.² “First, they must examine the sentencing court’s compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law. If this first prong is satisfied, the trial court’s decision shall be reviewed under an abuse-of-discretion standard.” *Id.*

{¶ 8} In the present case, appellant was convicted of two counts of rape in violation of R.C. 2907.02(A)(2), both felonies of the first degree. The range of penalties for a violation of this section include a possible prison term of between three and ten years. R.C. 2929.14(A)(1). Appellant received one eight-year term and one nine-year term. These are within the statutory range authorized by the legislature and are not clearly contrary to law.

{¶ 9} While appellant’s sentence is not contrary to law, *Kalish* instructs this court to investigate further to determine if the trial court abused its

discretion when it imposed sentence. To constitute an abuse of discretion, the ruling must be unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 450 N.E.2d 1140.

{¶ 10} In determining an appropriate sentence, a trial court is guided by the principals set forth in R.C. 2929.11(A) — “to protect the public from future crime by the offender and others and to punish the offender. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.” Further, R.C. 2929.12 outlines the factors to be considered, stating “a court * * * has discretion to determine the most effective way to comply with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code. In exercising that discretion, the court shall consider the factors set forth in divisions (B) and (C) of this section relating to the seriousness of the conduct and the factors provided in divisions (D) and (E) of this section relating to the likelihood of the offender’s recidivism and, in addition, may consider any other factors that are relevant to achieving those purposes and principles of sentencing.”

{¶ 11} Pertinent to this case, Division (B) includes such factors as the harm caused to the victim, the age of the victim, and the offender’s

² We recognize that *Kalish* is a plurality opinion, but it is instructive.

relationship with the victim, with no corresponding mitigating factors set forth in Division (C). Division (E) indicates that the trial court should also consider factors the legislature considers indicative of the chance of future crimes, such as prior criminal history, whether the offender had led a law-abiding life for a significant number of years, and the showing of genuine remorse.

{¶ 12} Appellant argues that the trial court ignored these touchstones in crafting his sentence. In support, appellant cites to his history of steady employment, voluntary enrollment in sex offender programs, the report by Echt detailing a low to average chance of recidivism, his age of 59, the fact that he accepted responsibility and apologized to the victim and her family, and his lack of any criminal history. However, the victim testified to the tremendous harm caused by appellant's actions to her and her family. The victim was a minor at the time the sexual abuse occurred, and appellant occupied a trusted parental relationship. The trial court also noted that appellant, even after confrontation continued to abuse the victim and did not seek psychological help until after authorities were involved.

{¶ 13} This evidence demonstrates that the trial court did not abuse its discretion when imposing the sentence because it was supported by the purposes and principles set forth in R.C. 2929.11. The trial court engaged in the proper analysis, as it noted in the record. While the factors set forth in

R.C. 2929.12(E) weigh in favor of a less severe sentence, this court cannot say that the trial court abused its discretion in light of the factors in R.C. 2929.12(B), which weigh in favor of a harsher sentence. Therefore, appellant's second assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., PRESIDING JUDGE

JAMES J. SWEENEY, J., and
SEAN C. GALLAGHER, J., CONCUR