

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
**No. 94807**

---

**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**DESMOND FLETCHER**

DEFENDANT-APPELLANT

---

**JUDGMENT:  
AFFIRMED**

---

Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-513213

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

**RELEASED AND JOURNALIZED:** February 3, 2011

## **ATTORNEY FOR APPELLANT**

Peter A. Sackett, Esq.  
P.O. Box 771306  
Lakewood, Ohio 44107

## **ATTORNEYS FOR APPELLEE**

William D. Mason, Esq.  
Cuyahoga County Prosecutor  
By: Mahmoud Awadallah, Esq.  
Assistant County Prosecutor  
1200 Ontario Street  
Cleveland, Ohio 44113

JAMES J. SWEENEY, J.:

{¶ 1} Defendant-appellant Desmond Fletcher (“defendant”) appeals from the sentence imposed upon him by the trial court. For the reasons that follow, we affirm.

{¶ 2} Defendant was charged with multiple counts, including three counts of rape involving a person under the age of 13 years old (counts 1-3); three counts of kidnaping with sexual motivation specifications (counts 4-6); and two counts of unlawful sexual conduct with a minor (counts 7 and 8). Defendant pled guilty to three counts of sexual battery as amended under counts 1-3 of the indictment, each felonies of the third degree. In exchange the remaining counts were nolle. The court referred defendant to the

probation department for completion of a presentence investigation report (“PSI”).

{¶ 3} At sentencing, the court placed on the record the fact that it had received and reviewed the PSI. The court then heard comments from the victim’s mother who described how the defendant’s conduct has impacted her and her children. Defense counsel addressed the court and noted that defendant had no prior criminal history and expressed defendant’s remorse. Defendant addressed the court and apologized for his actions and what he caused the victim’s family. The court indicated “these are very serious charges \* \* \* extremely serious charges. And this is a young girl. And the acts, the sexual acts, are abhorrent in and of themselves, but what really becomes the issue is the long-lasting damage. This is something nobody ever recovers from. \* \* \* The best you can hope for is that you learn to cope with it and you try to have some healthy relationship afterwards \* \* \* You knew better.” To which, the defendant agreed.

{¶ 4} The court then explained that the only reason the defendant would not receive the maximum sentence is because he accepted responsibility, which spared the young victim from testifying in court. Then, the court imposed a four year prison sentence on each count and ordered them to run consecutively but concurrent with a sentence imposed in another case, for a total prison term of twelve years. Defendant filed a motion to

reconsider his sentence citing his military service, his young age, as well as his acceptance of responsibility, the lack of criminal history, and his remorse. The trial court declined to reconsider his sentence.

{¶ 5} Defendant's sole assignment of error is as follows:

{¶ 6} "The trial court erred in imposing consecutive sentences for a first-time felony offender."

{¶ 7} The appropriate standard of review is, as defendant's states, a two-step process that first requires us to determine if the sentence is clearly and convincingly contrary to law and if not, whether the trial court abused its discretion by imposing it. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶4.

{¶ 8} Defendant maintains that the trial court erred by imposing consecutive sentences on a first time offender. He argues that the legislative policy notes to the Ohio's sentencing laws indicate that first time offenders like him should receive minimum sentences absent a reason to impose a greater sentence. It is true that the law once required judges to make certain findings before imposing certain sentences on first time offenders. However, Ohio courts have not been required to make these statutory findings, since they were severed from the legislation by virtue of the Ohio Supreme Court's decision in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856,

{¶ 9} A sentence of 12 years is a long sentence, however, it is within the sentencing range for the multiple crimes to which defendant pled guilty. Therefore, it is not contrary to law and we turn to examine whether it constituted an abuse of discretion.

{¶ 10} We continue to observe that a “trial court’s failure to give any reasons for the imposition of consecutive sentences hampers effective appellate review of [an offender’s] sentence.” See *State v. Ponce*, Cuyahoga App. No. 91329, 2010-Ohio-740, ¶55. However, in this case, the trial court both considered the PSI and did set forth specific reasons in support of the imposition of consecutive sentences. Further, the sentencing journal entry reflects that the court considered all the required factors of the law and found that prison was consistent with the purpose of R.C. 2929.11. The abuse of discretion standard does not permit the appellate court to substitute its judgment for that of the trial judge. Instead, it requires us to find “more than an error of law or judgment; it implies that the court’s attitude is

---

<sup>1</sup>To the extent defendant indicates that the United States Supreme Court’s decision in *Oregon v. Ice* (2009) 555 U.S. 160, 129 S.Ct. 711, 172 L.Ed.2d 517 effected the continued viability of the imposition of consecutive sentences in the absence of statutory findings, the Ohio Supreme Court has recently determined that it does not. *State v. Hodge*, \_\_\_\_\_ Ohio St.3d. \_\_\_\_\_, 2010-Ohio-6320, paragraph three of the syllabus (“Trial court 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.”)

unreasonable, arbitrary, or unconscionable.” *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140; *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144. Based on the record, we cannot say the trial court abused its discretion by imposing consecutive sentences in this case.

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. The defendant’s conviction having been affirmed, any bail pending appeal is terminated. 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.

JAMES J. SWEENEY, JUDGE

FRANK D. CELEBREZZE, JR., P.J., and  
SEAN C. GALLAGHER, J., CONCUR