

[Cite as *State v. Jackson*, 2015-Ohio-1023.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101575

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

BRUCE R. JACKSON

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-576980-A

BEFORE: McCormack, P.J., E.T. Gallagher, J., and Boyle, J.

RELEASED AND JOURNALIZED: March 19, 2015

ATTORNEYS FOR APPELLANT

Robert L. Tobik
Cuyahoga County Public Defender

By: Cullen Sweeney
Assistant Public Defender
310 Lakeside Ave.
Cleveland, OH 44113

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor

By: Katherine Mullin
Assistant County Prosecutor
9th Floor, Justice Center
1200 Ontario Street
Cleveland, OH 44113

TIM McCORMACK, P.J.:

{¶1} Defendant-appellant, Bruce Jackson, appeals from a judgment of the Cuyahoga Court of Common Pleas Court, which sentenced him to 25 years of imprisonment for raping his biological daughter over a period of 13 years, between 1980 and 1993. On appeal, Jackson claims the trial court failed to make the necessary statutory findings before it imposed consecutive sentences. Finding no merit to the appeal, we affirm the trial court's sentence but remand to the trial court to issue a nunc pro tunc entry to incorporate the findings made at the sentencing hearing into the journal entry.

I.

{¶2} Jackson started sexually abusing his biological daughter in 1980. In 1980, his daughter, the victim, was five years old. The abuse continued until she was 17. In 2013, Jackson was charged in an 18-count indictment. He pleaded guilty to four counts of rape and one count of gross sexual imposition. In 2014, the trial court sentenced Jackson under the sentencing law amended by H.B. 86, which went into effect on September 20, 2011. For his conviction of four counts of rape and one count of gross sexual imposition, the trial court sentenced him to five years for each count of rape, to be served consecutively, and five years for gross sexual imposition, to be served concurrently with the terms for rape.

{¶3} Both the state and Jackson appealed the trial court's sentence. The state filed in 8th Dist. Cuyahoga No. 101543, 2015-Ohio-874, claiming that the trial court erred in applying the sentencing law in effect at the time of sentencing, instead of the law in effect at the time Jackson committed the offenses. On this issue, this court, guided by *State v. Taylor*, 138 Ohio St.3d 194, 2014-Ohio-460, 5 N.E.3d 612, and *State v. Limoli*, 140 Ohio St.3d 188, 2014-Ohio-3072, 16 N.E.3d 641, has held in several recent decisions that a defendant in Jackson's position is to be sentenced under sentencing provisions of H.B. 86. *State v. Jackson*,

8th Dist. Cuyahoga No. 100877, 2014-Ohio-5137; *State v. Girts*, 8th Dist. Cuyahoga No. 101075, 2014-Ohio-5545; *State v. Steele*, 8th Dist. Cuyahoga Nos. 101139 and 101140, 2014-Ohio-5431; *State v. Thomas*, 8th Dist. Cuyahoga No. 101202, 2015-Ohio-415. Following the precedents from this court, we held in the state's appeal, 8th Dist. Cuyahoga No. 101543, that the trial court did not err in sentencing Bruce Jackson under the sentencing provisions of H.B. 86. *State v. Jackson*, 8th Dist. Cuyahoga No. 101543, 2015-Ohio-874.

{¶4} The appeal before us, 8th Dist. Cuyahoga No. 101575, was filed by Jackson. He argues the trial court did not make the necessary statutory findings before imposing consecutive sentences for his offenses.

II.

{¶5} H.B. 86 revived a presumption of concurrent sentences. Consecutive sentences can be imposed only if the trial court makes the required findings pursuant to R.C. 2929.14(C)(4). *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 20-22; *State v. Trotter*, 8th Dist. Cuyahoga No. 100617, 2014-Ohio-3588, ¶ 18. R.C. 2929.14(C)(4) states:

If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service 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, and if the court also finds any of the following:

(a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.

(b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no 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.

(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

{¶6} In addition, when reviewing a claim of improper imposition of consecutive sentences, we are guided by R.C. 2953.08(G)(2)(a). That statute directs the appellate court to review the record, including the findings underlying the sentence, and to modify or vacate the sentence if the appellate court "clearly and convincingly" finds that the record does not support the findings. *Bonnell* at ¶ 28.

{¶7} Compliance with R.C. 2929.14(C)(4) requires the trial court to make the statutory findings as part of the sentencing hearing. However, "a word-for-word recitation of the language of the statute is not required. As long as the reviewing court can discern that the trial court engaged in the correct analysis and can determine that the record contains evidence to support the findings, consecutive sentences should be upheld." *Id.* at ¶ 29. The Supreme Court of Ohio further explained that the word "finding" in this context means that the trial court "must note that it engaged in the analysis" and that it "considered the statutory criteria and specific[d] which of the given bases warrants its decision." *Bonnell* at ¶ 26, quoting *State v. Edmonson*, 86 Ohio St.3d 324, 326, 715 N.E.2d 131 (1999). The court emphasized that the trial court is not required to give a "talismanic incantation" of the words of the statute, provided the necessary findings can be found in the record. *Id.* at ¶ 37.

{¶8} Applying the analysis, the court in *Bonnell* concluded that the record in that case did not support a conclusion that the trial court made all of the findings required by R.C. 2929.14(C)(4), because the reviewing court "cannot glean from the record that the trial court

found consecutive sentences were not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public.” *Id.* at ¶ 36.

III.

{¶9} In this case, Jackson claims the trial court failed to make the proportionality finding.

{¶10} Our review of the sentencing transcript shows that before sentencing Jackson, the victim, now in her thirties, gave an extensive, deeply disturbing description of the repeated sexual abuse she endured at the hands of her father since the young age of five. The victim's husband also spoke of her recurring nightmares, self-hatred, inability to trust men, daily struggles to stay alive, and exhausting efforts to heal.

{¶11} The state requested consecutive sentences because of the atrocious nature of the defendant's conduct. Before imposing consecutive sentences, the trial court stated:

And the issue that I need to discuss next is whether or not I'm going to run those concurrent, meaning they all run together, you serve one by serving the other, or I run them consecutive, meaning you serve one five year period and then the next and the next and so on.

And there is a specific statute that requires me to make findings in that regard. In order to have a consecutive sentence I must find that it's necessary to punish the offender or protect the public from future crime, and that it's not disproportionate to the conduct or danger imposed by the defendant.

In my view, that aspect of consecutive sentence has been satisfied. It is necessary to punish the offender. And the amount of five years is not disproportionate to the conduct. And it has to be one more element, and the one that applies in this case for consideration is whether two or more offenses are part of a course of conduct, and the harm caused is so great or unusual that a single prison term would not adequately reflect the seriousness of the conduct.

The other two do not apply and I won't burden the record with those.

Based on all of the analyses that I have listened to and all of the weighing of the factors and the evidence presented, I find that it is appropriate to make these sentences consecutive.

This conduct occurred over a thirteen year period, starting from a child of five years old going to 17 or 18 years old. Each one, for the purposes of the plea, is a sufficient harm and the course of conduct is such that I think it's appropriate that these run consecutive to each other.

That is a total of 25 years in prison. And if you look at the time period involved that the victim * * * has had to suffer with regard to that, I think that is also the appropriate sentence in this regard.

I have listened to all of the people speaking on your behalf, I listened to you, Mr. Jackson, you've lived a very rewarding and successful life. You have done a lot of good things in your life, but you have also a major disservice, stating it at a minimum, to your daughter over an extended period of time. The conduct is really reflected with the nature of the charge, and this Court is convinced that consecutive time is appropriate.

{¶12} Applying *Bonnell*, we find the trial court made the proportionality finding as required by the statute. The trial court correctly acknowledged the statutory findings required for consecutive sentences, including the finding that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public. The record contains evidence that the defendant groomed and preyed on his own biological daughter for his own sexual gratification over a very extended period of time, starting when she was at a tender age of five and continuing throughout her entire childhood. Although the trial court did not recite the statutory finding word for word, based on the record before us, we are clearly able to discern that the trial court made the necessary findings in full compliance with Ohio sentencing law. *Bonnell* at ¶ 29.

{¶13} Although the trial court stated that "the amount of five years is not disproportionate" when it should have referred to the aggregate term of 25 years, we do not find

it so flawed as to invalidate the finding — when the statement is considered *in context*, it is abundantly clear the court was referring to the total term of 25 years.

{¶14} Jackson also argues that the not-disproportionate finding regarding “the danger the offender poses to the public” is not warranted because his Static-99 score indicated he is in a low-risk category for sexual recidivism. We note that there are no specific statutory factors for the finding regarding “the danger the offender poses to the public”; neither is the trial court obligated to state reasons to support its findings. *Bonnell* at syllabus. The trial court was not limited to the defendant’s likelihood to commit future sex offenses when assessing whether the consecutive sentence was not disproportionate regarding “the danger the offender poses to the public.” Jackson’s ability to conceal the crime from the community over an extended period of time could also be a factor in the court’s assessment of the danger he poses to the public. Reviewing the record before us, we do not “clearly and convincingly” find that the record does not support the trial court’s finding. Jackson’s assignment of error is overruled.

{¶15} Pursuant to *Bonnell*, however, the trial court is not only required to make the statutory findings but also to incorporate its findings into its sentencing entry. *Id.* at syllabus. In this case, the trial court did not incorporate the statutory findings for consecutive sentences into its judgment entry. The trial court’s omission is a clerical mistake and may be corrected through a nunc pro tunc entry. *Bonnell* at ¶ 30.

{¶16} Appellant’s sentences are affirmed, and the matter is remanded for the limited purpose of having the trial court incorporate, nunc pro tunc, its consecutive-sentence findings into the sentencing entry.

{¶17} Sentences affirmed. Case remanded.

It is ordered that appellee recover of 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.

TIM McCORMACK, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and
MARY J. BOYLE, J., CONCUR