

[Cite as *State v. Rodrigues*, 2015-Ohio-2281.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
No. 102507

---

**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**DAVID RODRIGUES**

DEFENDANT-APPELLANT

---

**JUDGMENT:**  
**AFFIRMED**

---

Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-00-386140-ZA

**BEFORE:** McCormack, J., Keough, P.J., and S. Gallagher, J.

**RELEASED AND JOURNALIZED:** June 11, 2015

**ATTORNEY FOR APPELLANT**

Myron P. Watson  
323 W. Lakeside Ave., Suite 420  
Cleveland, OH 44113

**ATTORNEYS FOR APPELLEE**

Timothy J. McGinty  
Cuyahoga County Prosecutor

By: Frank Romeo Zeleznikar  
Assistant County Prosecutor  
9th Floor, Justice Center  
1200 Ontario Street  
Cleveland, OH 44113

TIM McCORMACK, J.:

{¶1} Defendant-appellant, David Rodrigues, appeals from his resentencing on December 3, 2014. For the reasons that follow, we affirm.

{¶2} On April 17, 2000, Rodrigues pleaded guilty to rape, in violation of R.C. 2907.02; kidnapping, in violation of R.C. 2905.01, with a sexual motive specification and a sexually violent predator specification; and aggravated burglary, in violation of R.C. 2911.11. Rodrigues was sentenced to a mandatory life imprisonment with parole eligibility after ten years for the rape, a maximum consecutive ten-years-to-life prison term on the kidnapping, and a maximum concurrent ten-year prison term on the aggravated burglary. Additionally, because of the sexually violent predator specification attached to the kidnapping count, he was classified as a sexual predator under R.C. 2950.02, Ohio's former sexual registration law more commonly known as Megan's Law. Rodrigues appealed his sentence. On appeal, this court affirmed the convictions and remanded to the trial court for resentencing, finding the trial court failed to make the requisite consecutive sentence findings. *See State v. Rodrigues*, 8th Dist. Cuyahoga No. 80610, 2003-Ohio-1334.

{¶3} On December 3, 2014, the trial court held a resentencing hearing.<sup>1</sup> The trial court sentenced Rodrigues to mandatory life with the eligibility for parole after ten

---

<sup>1</sup>On August 28, 2014, Rodrigues filed a motion for a resentencing hearing, stating that the trial court failed to schedule a resentencing following this court's remand for resentencing. The state agreed and did not oppose the motion. On September 8, 2014, the trial court granted Rodrigues's motion and scheduled a hearing.

years on the rape charge. The court imposed a sentence of five years to life on the kidnapping charge, to run consecutively to the rape charge. Finally, the court sentenced Rodrigues to three years on the aggravated burglary, with that sentence to run concurrently to the other counts.

{¶4} Rodrigues appealed this sentence, claiming that the trial court erred when it imposed consecutive sentences. Specifically, Rodrigues argues that the trial court failed to provide sufficient reasons to support its imposition of consecutive sentences.

{¶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.

{¶6} 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.

{¶7} Compliance with R.C. 2929.14(C)(4) requires the trial court to make the statutory findings at the sentencing hearing, "and by doing so it affords notice to the offender and to defense counsel." *Bonnell* at ¶ 29. "Findings," for these purposes, means that "'the [trial] court must note that it engaged in the analysis' and that it 'has considered the statutory criteria and specifie[d] which of the given bases warrants its decision.'" *Id.* at ¶ 26, quoting *State v. Edmonson*, 86 Ohio St.3d 324, 326, 715 N.E.2d 131 (1999). A trial court is not, however, required to state its reasons to support its findings, "provided that the necessary findings can be found in the record and are incorporated in the sentencing entry." *Id.* at ¶ 37.

{¶8} R.C. 2953.08(G)(2)(a) provides additional guidance when reviewing a claim of improper imposition of consecutive sentences. 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.

{¶9} Here, the record shows, and Rodrigues concedes, that the trial court made the requisite consecutive sentence findings:

With regard to Counts 1 and 2, the rape and kidnapping, the 10 years to life and the 5 years to life, the court finds that a consecutive sentence is necessary to [protect] the public from future crime and to punish

the offender, and consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public.

And the court finds specifically that the harm caused by the multiple offenses, meaning the rape and kidnapping, was so great and unusual that no single prison term for any of those two offenses committed as part of a single course of action adequately reflects the seriousness of the offender's conduct.

{¶10} The record also demonstrates that the trial court reviewed an H.B. 180 evaluation by the court psychiatric clinic and a sentencing memorandum filed with the court. The trial court noted that Rodrigues had not undergone the recommended sex offender treatment or complied with the substance abuse recommendations.

{¶11} The record further shows, as outlined by the prosecutor at the resentencing, the facts of this case:

What happened was the defendant was renting an apartment from the victim's father. He went down to his landlord's apartment to presumably pay a rent check. Walked into his apartment, then walked into the little girl's, seven year-old girl's bedroom and she was sleeping.

He placed duct tape over her mouth, which woke her up. As she was wriggling, trying to get away, he grabbed her and dragged her and took her back to his apartment where he anally raped her. After he was done, he looked at her and said, "If you tell anyone, I will kill you." Then he left. He left the little girl lying there, still in his apartment, with the tape still on her mouth.

{¶12} Prior to making its findings, the court expressed the seriousness of Rodrigues's offense, especially in light of the victim's young age and the psychological trauma likely endured:

When you take a young girl of seven years old, sleeping in her bed, and come into her room and I'm sure scare her half to death by placing duct tape over her, yank her from her bed, taking her out to another apartment, that I can't even imagine the kind of psychological, emotional fear, harm she must have experienced when this occurred to her.

Not only that, taking her from her bed by a stranger, by somebody she had no clue was coming, then taking her to his apartment where he then anally raped her, I agree \* \* \* [t]hat this is the worst form of the offense committed.

{¶13} Rodrigues argues that the court was unable to specifically demonstrate how the harm caused by the multiple offenses was so great or unusual to warrant consecutive sentences. In support of this argument, he asserts that the court could cite to no harm "other than the psychological harm and trauma associated with these offenses" and that there was no evidence of any physical injuries.

{¶14} We note, however, that psychological harm is potentially every bit as serious as physical harm. *See Schultz v. Barberton Glass Co.*, 4 Ohio St.3d 131, 135, 447 N.E.2d 109 (1983) (finding that emotional injury can be as severe and debilitating as physical harm). Inherent in Rodrigues's abhorrent crimes are both physical and psychological trauma. In the case of the rape of a child, "[r]ape has a permanent psychological, emotional, and sometimes physical impact on the child," thus subjecting a

child to “years of long anguish.” (Citations omitted.) *Kennedy v. Louisiana*, 554 U.S. 407, 435, 128 S.Ct. 2641, 2658, 171 L.Ed.2d 525 (2008). “[The children] traumatized by the violation carry with them into adulthood the emotional and psychological scars of a nightmare they were helpless to prevent.” Thomas, *Adult Survivors of Childhood Sexual Abuse and Statutes of Limitations: A Call for Legislative Action*, 26 Wake Forest L.Rev. 1245, 1247 (1991). Psychological harm, in fact, is one of the factors considered by a sentencing court that shows an offender’s conduct is more serious than conduct normally constituting the offense. See R.C. 2929.12(B)(2) (“The victim of the offense suffered serious physical, psychological, *or* economic harm as a result of the offense.”). The suggestion, therefore, that the psychological trauma likely suffered by a young child at the hands of her adult attacker is somehow not as serious as any potential physical injuries the child may suffer is deeply troubling and dangerous to propagate.

{¶15} In light of the above, we find that the trial court made the findings mandated by R.C. 2929.14(C)(4). There is no duty upon the trial court to provide reasons for its findings, as long as those findings are supported by the record. And the record in this case supports consecutive sentences.

{¶16} Judgment affirmed.

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. 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, JUDGE

KATHLEEN ANN KEOUGH, P.J., and  
SEAN C. GALLAGHER, J., CONCUR