

[Cite as *State v. Watkins*, 2017-Ohio-964.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 104507

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**JAMES DEMETRIUS WATKINS**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
**AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case Nos. CR-15-594118-A and CR-15-595017-A

**BEFORE:** S. Gallagher, J., Boyle, P.J., and Laster Mays, J.

**RELEASED AND JOURNALIZED:** March 9, 2017

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SEAN C. GALLAGHER, J.:

{¶1} James Demetrius Watkins seeks to overturn his convictions following a guilty plea to two counts of rape and a single count of kidnapping in cases involving two separate victims. For the following reasons, we affirm.

{¶2} Watkins did not provide a recitation of the facts as required under App.R. 16(A)(6). We take this omission to mean that the facts of Watkins’s criminal conduct are not dispositive of the assigned errors, which are limited to procedural or legal issues. App.R. 16(A)(6). (“The appellant shall include in its brief \* \* \* [a] statement of facts relevant to the assignments of error presented for review, with appropriate references to the record.”)

{¶3} Watkins pleaded guilty in two separate cases to raping victims he first encountered on the street. One of the rapes involved a kidnapping that Watkins agreed was separate and distinct from the conduct substantiating the rape. In both instances, Watkins was armed, in one case with a knife and with a saw blade in the other. During the first assault, Watkins choked the victim with a cord and stabbed her in the thigh with a knife. Watkins also tried to “leave his mark” on her by burning the victim with a lighter. The second rape victim was pregnant, and Watkins threatened her with a saw blade. Watkins intended to leave a mark on her as well. Both victims were able to escape from Watkins and summon help.

{¶4} Watkins timely appealed his convictions, advancing two assignments of error.

In the first, Watkins claims that the trial court erred by not providing reasons in support of the trial court's findings that are required before imposing consecutive service of prison terms under R.C. 2929.14(C)(4), and that the "imposition of consecutive sentences totaling 20 years is clearly and convincingly contrary to law because it is both inconsistent with sentences imposed upon similarly situated offenders and is disproportionate to the crime."

{¶5} R.C. 2929.14(C)(4) permits the court to order consecutive service of sentences if consecutive service (1) is necessary to protect the public from future crime or to punish the offender; (2) is not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public; and additionally (3) if (a) the offender committed the offense while awaiting trial or sentencing, under community control monitoring, or under postrelease control for a prior offense; (b) at least two of the offenses caused harm so great and unusual that no single term for any offense adequately reflects the seriousness of the offender's conduct; or (c) the offender's history of criminal conduct demonstrates the necessity of consecutive sentences to protect the public from future crime. *State v. Jones*, 8th Dist. Cuyahoga No. 104152, 2016-Ohio-8145, ¶ 10, citing *State v. Smeznik*, 8th Dist. Cuyahoga Nos. 103196 and 103197, 2016-Ohio-709, ¶ 6.

{¶6} The central theme of Watkins's appeal of his sentence is that he believes the 20-year aggregate sentence is inconsistent with sentences imposed on similarly situated

offenders and is disproportionate to the crimes. Despite this claim, no comparative sentencing data, to show how this sentence was inconsistent or disproportionate to others, was offered for the trial court's consideration. Simply claiming that a 20-year aggregate sentence is disproportionate to the offender's conduct and the danger he poses to the public is not sufficient under the Rules of Appellate Procedure. App.R. 16(A)(7). Without comparative data and without presenting this information for the trial court's consideration, a 20-year aggregate sentence for separate rapes committed with a knife and a saw blade cannot be deemed an excessive sentence upon appellate review.

{¶7} Watkins also believes the trial court should have offered more reasons or more analysis in justifying the sentence imposed. Despite this assertion, it is well settled that a trial court need not provide reasons in support of its consecutive-sentence findings. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 37. Although not required, the trial court did offer a fairly detailed account of the reasons for imposing the sentence. In addition to the required findings, the trial court noted the violent nature of the crimes, the fact that they involved separate victims on separate dates and locations, and the lack of any remorse by Watkins.

{¶8} At the oral argument, Watkins's counsel claimed the record had to show by clear and convincing evidence that the sentence was justified. Although we understand counsel's desire to challenge Ohio's sentencing process, the statute contains no such requirement. In fact, the pertinent language in R.C. 2953.08 is written in the negative. R.C. 2953.08(G)(2) "does not say that the trial judge must have clear and convincing

evidence to support its findings. Instead, it is the court of appeals that must clearly and convincingly find that the record does not support the court's findings." *State v. Venes*, 2013-Ohio-1891, 992 N.E.2d 453, ¶ 21 (8th Dist.). "In other words, the restriction is on the appellate court, not the trial judge. This is an extremely deferential standard of review." *Id.*; see also *State v. Rodeffer*, 2013-Ohio-5759, 5 N.E.3d 1069, ¶ 31 (2d Dist.); *State v. Morris*, 8th Dist. Cuyahoga No. 104013, 2016-Ohio-7614.

{¶9} Watkins pleaded guilty to raping two strangers he grabbed off the street at knife point — two victims that he raped and physically assaulted, one of whom was marched to an abandoned building in order for the crime to be committed. We are unable to clearly and convincingly find that the record does not support the finding that consecutive service of his two ten-year sentences is disproportionate to his conduct and the danger Watkins poses to the public. See, e.g., *Jones*, 8th Dist. Cuyahoga No. 104152, 2016-Ohio-8145, at ¶ 10 (affirming two ten-year sentences imposed upon convictions for the separate rapes of strangers the defendant first encountered on the street). As the trial court specifically recognized, consecutive service of the individual prison terms "are not disproportionate given the other sentences that have been handed down by myself and others in situations like this." Watkins's first assignment of error must be overruled.

{¶10} Finally, Watkins claims his trial counsel was ineffective because at the sentencing hearing, Watkins protested his innocence to the aggravated robbery counts and claimed he was never armed. The state originally indicted Watkins with the robbery charges stemming from the sequence of events underlying the rape charges, but the

robbery counts were dismissed in exchange for a guilty plea. According to Watkins, however, error occurred when neither the court nor trial counsel inquired into Watkins's comments because they demonstrated some type of mental incompetency even though Watkins stipulated to the psychiatric report indicating he was competent to stand trial.

{¶11} In order to support a claim for ineffective assistance of counsel, the defendant must satisfy the two-prong test developed in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The defendant bears the burden of demonstrating that his counsel's performance fell below an objective standard of reasonableness, and a reasonable probability exists that the result of the proceedings would have been different, but for counsel's error. *See generally id.*

{¶12} Watkins pleaded guilty to two counts of rape and a single count of kidnapping. Although the state originally charged Watkins with aggravated robbery, those counts were nolle as a result of plea negotiations. During his allocution, Watkins offered a short but rambling statement replete with protestations of innocence to the nolle charges. Watkins argued his innocence to the aggravated robbery counts and questioned the assertion that he possessed a kitchen knife. Watkins is not the first defendant to claim innocence at sentencing. Such assertions do not automatically raise a question of competency even if the individual has a history of mental illness.

{¶13} Nevertheless, we understand appellate counsel's concerns about Watkins raising issues about previously nolle charges at sentencing in light of his previous psychiatric history. Despite these concerns, the transcript reveals Watkins had an

understanding of the proceedings and was able to interact with the trial judge during the sentencing proceedings. Specifically, Watkins expressed an understanding that he would be required to register as a Tier III sex offender every 90 days upon his release from prison and even signed and acknowledged the required documents in open court. The fact that Watkins, or any defendant with a history of mental illness, raises irrelevant points during a hearing does not automatically mean that person is having a psychotic episode that invalidates the proceedings. At the very least, the true measure is to look at the record as a whole and assess whether that defendant had a clear understanding of the proceedings and was able to participate in them. Appellate courts cannot take one statement in isolation as a demonstration of incompetence when the entirety of the record indicates otherwise. This record supports the finding that Watkins understood and was able to participate in the sentencing process, and as a result, his counsel was not ineffective for stipulating to Watkins's competency or not seeking further review of Watkins's mental state at sentencing. In the end, Watkins bears the burden of demonstrating ineffective assistance of counsel. No error was committed by failing to inquire into Watkins's statements, much less was there any prejudicial error.

{¶14} Watkins's convictions are 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 convictions 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.

SEAN C. GALLAGHER, JUDGE

MARY J. BOYLE, P.J., and  
ANITA LASTER MAYS, J., CONCUR