

[Cite as *State v. Bennett*, 2018-Ohio-287.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105737

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CHRISTOPHER BENNETT

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-15-593498-A

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

RELEASED AND JOURNALIZED: January 25, 2018

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TIM McCORMACK, J.:

{¶1} Defendant-appellant Christopher Bennett appeals from his conviction following a guilty plea. For the reasons that follow, we affirm.

{¶2} Bennett was charged in a ten-count indictment for charges relating to three separate incidents in 1999 and 2000 involving three different victims. The charges included rape, aggravated burglary, and kidnapping, along with attendant firearm specifications, sexual predator specifications, and sexual motivation specifications.

{¶3} On November 16, 2015, Bennett pleaded guilty to the following amended charges: Count 1 — rape in violation of R.C. 2907.02(A)(2), with firearm specifications and sexually violent predator specification; Count 2 — aggravated burglary in violation of R.C. 2911.11(A)(1), with firearm specifications; Count 3 — aggravated burglary in violation of R.C. 2911.11(A)(2), with firearm specifications; Count 5 — rape in violation of R.C. 2907.02(A)(2), with sexually violent predator specification; Count 6 — aggravated burglary in violation of R.C. 2911.11(A)(2); Count 8 — rape in violation of R.C. 2907.02(A)(2), with sexually violent predator specification; and Count 9 — aggravated burglary in violation of R.C. 2911.11(A)(2). The remaining charges and specifications were nolle. The court then ordered a presentence investigation report (“PSI”) and scheduled the matter for sentencing.

{¶4} On December 21, 2015, after advising Bennett of his registration requirements as a sexually oriented offender under R.C. 2950.03, the court imposed the following sentence: Count 1 (rape) — 8 years in prison on the base charge, 1 and 3

years on the respective firearm specifications, with the firearm specifications to be served concurrently, and a life sentence on the sexually violent predator specification; Counts 2 and 3 (aggravated burglaries) — 8 years on each charge, to be merged for sentencing, and to be served concurrently with the sentence in Count 1; Counts 5 (rape) and 6 (aggravated burglary) — 8 years on each count, to be served concurrently with each other but consecutive to the sentence in Counts 1, 2, and 3, along with a life sentence on the sexually violent predator specification; and Count 8 (rape) and Count 9 (aggravated burglary) — 8 years on each base charge and a life sentence on the sexually violent predator specification on the rape charge, with the 8-year sentences to be served concurrently with each other but consecutive to the sentence in Counts 5 and 6 and consecutive to the sentence in Counts 1, 2, and 3. The court then made consecutive sentence findings pursuant to R.C. 2929.14(C)(4). The aggregate sentence is a life sentence with parole eligibility after serving 27 years. Bennett now appeals this sentence.

{¶5} Bennett argues in his sole assignment of error that the trial court’s imposition of consecutive sentences is not supported by the record.

{¶6} Although acknowledging on appeal that the offenses were “simply reprehensible,” Bennett argues that “the man who committed those offenses was not the same man who appeared at sentencing.” In support, Bennett stated that the crimes were committed when he was in his late 20’s or early 30’s (he is now 46 years old); since the commission of the crimes, he has attended community college and obtained skills in

numerous fields of study; his father left him at a young age and his mother was an alcoholic; and he has expressed remorse for his actions.

{¶7} In order to impose consecutive sentences, the trial court must make findings set forth in R.C. 2929.14(C)(4) and incorporate those findings into the journal entry of sentence. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 37.

{¶8} R.C. 2929.14(C)(4) provides that the trial court must find that consecutive sentences are necessary to protect the public from future crime or to punish the offender, that such sentences would not be disproportionate to the seriousness of the conduct and to the danger the offender poses to the public, and that one of the following applies:

(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 postrelease 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.

{¶9} A reviewing court may increase, reduce, or modify a sentence on appeal if it "clearly and convincingly" finds that the record does not support the sentencing court's findings made under R.C. 2929.14(C)(4). *See* R.C. 2953.08(G)(2)(a); *State v. Johnson*, 8th Dist. Cuyahoga No. 102449, 2016-Ohio-1536, ¶ 9.

{¶10} Here, as the sentencing hearing began, the trial court noted that it reviewed the PSI as well as several letters it received on Bennett's behalf. The court heard from Bennett, defense counsel, a character witness on behalf of the defendant, the prosecutor, and one of the three victims. The court also noted that it received a statement from Bennett's first victim.

{¶11} The state provided a summary of the crimes that led to Bennett's indictment. The prosecutor advised the court that one victim was present and wished to address the court. The other two victims, however, were unable to attend, including one woman who felt so "terrorized" by what had occurred that she could not face the defendant or the court.

{¶12} According to the prosecutor, on September 30, 1999, Bennett broke into a home shortly after the mother left for work in the early hours of the morning, approached the sleeping 16-year-old girl in her bedroom with his face covered, chased her as she attempted to escape, put a gun to her head, threatened to kill her, and then raped her on the staircase. On October 8, 1999, Bennett once again broke into a home where a young girl was sleeping. The 18-year-old girl lived in the home with two younger children. When she awoke in the early morning, Bennett, who was standing over her with a covering on his face, flipped her onto her stomach, tied her hands behind her back with a phone cord, ripped her clothing off her, threatened her, and raped her. On September 9, 2000, once again, Bennett broke into a home after the mother left for work in the early morning, approached a sleeping 16-year-old girl in her bedroom, fought the girl as she

struggled against him, threatened to kill her, tried to tie her hands behind her back to no avail, and raped her.

{¶13} The third victim spoke at Bennett’s sentencing. She explained to the court how Bennett took advantage of her mother leaving for work, that he came into her bedroom with a mask on his face, intending to harm her. She told the court that after the rape, she had difficulty trusting people, her good grades were slipping, she was kicked out of the school’s honors program, she could no longer focus, and she has had to cope with what happened to her for more than 14 years. She also stated that she is scared for her children because “the place you [are] supposed to be able to leave your worries away is at home.”

{¶14} The prosecutor noted for the record that the victims were unable to identify their attacker for 15 years. Ultimately, the victims’ rape kits were sent to the Bureau of Criminal Investigation for testing as part of the sexual assault kit testing initiative, where Bennett was identified as their attacker. The prosecutor also noted that through this identification process, one of the victims learned that she had, in fact, known her attacker as someone with whom she had grown up. Finally, the prosecutor urged the court to impose consecutive sentences, noting Bennett’s extensive criminal background.

{¶15} Prior to imposing sentence, the court acknowledged Bennett’s remorse and that Bennett has accepted responsibility for his actions. The court noted, however, the seriousness of Bennett’s conduct and the “reprehensible” nature of the crimes:

I appreciate that you’ve accepted responsibility here. Quite frankly, that’s the only thing keeping you from a much more serious sentence than you

would be eligible for because I think we talked about it in the plea, it could be a life sentence up to a maximum I think of 102 years if my notes are correct.

But I do acknowledge that you've accepted responsibility, you get credit for that. You get credit for not putting these poor women through a trial and so I feel compelled to tell you that. However, there are components to these cases that I'm not sure you have the ability to fully appreciate and it's already said, so I'm not going to belabor the point. Certainly these young ladies' ages at the time of the offenses, that's pretty compelling. The level of apparent planning and prepping that you took to facilitate these offenses, that also speaks volumes of the conduct that was involved here. This wasn't just a per chance victimization, it was a level of planning and preparation that went into it and sounds like if I'm understanding [the prosecutor], you at least waited twice before the mothers left the house. And then your conduct that happened while in the home obviously is just reprehensible.

What you also I think fail to appreciate is that your conduct has affected generations. It's affected generations. It's obviously affected these ladies, it has affected their parents, and it affects their children. So while I accept your apology, there's just a — I have an obligation to protect the community in addition to punish you for these vile acts.

{¶16} Prior to making the consecutive sentence findings pursuant to R.C.

2929.14(C)(4), the court added:

You know, I will share with you this one other component, which is to say that not only did you take their innocence away from them by these vile acts, you did take their security. Their sense of security. And I truly think that that's another component. You don't have the capacity to appreciate when people lay their head in their home at night, that's when they need to relax, that's their sense of security. You took that as well. And there is a penalty for that.

{¶17} Finally, as statutorily mandated, the trial court found that consecutive sentences are necessary to protect the public from future crimes or to punish the offender, and consecutive sentences “are not disproportionate to the seriousness of your conduct and to the danger you pose to the public.” The court continued:

This was certainly a course of conduct that you partook in, the harm caused by these multiple offenses was so great or unusual that no single term for any of the sentences of the offenses committed as part of this course of conduct would adequately reflect the seriousness. Additionally, you do have a history of criminal conduct that demonstrates consecutive sentences are necessary to protect the public from future crimes by you.

{¶18} In light of the foregoing, we cannot “clearly and convincingly” find that the record does not support the trial court’s findings. Thus, Bennett’s sole assignment of error is overruled.

{¶19} 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. 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, JUDGE

MARY EILEEN KILBANE, P.J., and
EILEEN T. GALLAGHER, J., CONCUR