

[Cite as *In re Slater*, 2004-Ohio-4961.]

STATE OF OHIO)
)ss:
COUNTY OF WAYNE)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

IN RE: JOSEPH SLATER

C.A. Nos. 04CA0004 &
 04CA0005

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF WAYNE, OHIO
CASE Nos. 01-0100-DEF
 03-0853-PRV

DECISION AND JOURNAL ENTRY

Dated: September 22, 2004

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

CARR, Presiding Judge.

{¶1} Appellant, Joseph Slater, a minor child, appeals from the judgment of the Wayne County Court of Common Pleas, Juvenile Division, committing appellant to the Ohio Department of Youth Services (“DYS”) for a minimum of thirty-six months. This Court affirms.

I.

{¶2} On January 30, 2001, a complaint was filed in the Wayne County Court of Common Pleas, Juvenile Division, alleging the appellant to be a delinquent child based on nine counts of various forms of sexual assault

committed by appellant. On March 9, 2001, the State amended the charges such that the six counts of rape were amended to six counts of gross sexual imposition. Subsequently, appellant admitted to eight counts of gross sexual imposition that if committed by an adult would be third degree felonies, and one count of gross sexual imposition that if committed by an adult would be a fourth degree felony.

{¶3} On June 8, 2001, the juvenile court reserved a commitment to DYS, placed appellant on indefinite probation, and ordered that appellant complete a treatment program at Lynnway Residential Treatment Facility. On July 31, 2003, a complaint was filed in juvenile court alleging that appellant violated his probation by possessing and bringing sexually oriented materials on to the grounds of Lynnway. On August 25, 2003, appellant admitted to the probation violation. Thereafter, the juvenile court set a disposition hearing for September 24, 2003. At the disposition hearing, the trial court committed appellant to DYS for a minimum of thirty-six months and a maximum until his twenty-first birthday. Appellant timely appealed, raising one assignment of error.

II.

ASSIGNMENT OF ERROR

“R.C. 2152.17(F) VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE 1, SECTION 2 OF THE OHIO CONSTITUTION BECAUSE IT DOES NOT REQUIRE THE JUVENILE COURT TO MAKE ANY FINDINGS BEFORE IT IMPOSES A CONSECUTIVE SENTENCE FOR A FELONY OFFENSE IN A JUVENILE DELINQUENCY PROCEEDING.”

{¶4} In his sole assignment of error, appellant argues that R.C. 2152.17(F) violates his right to equal protection because it does not require that a trial judge make specific findings before sentencing a juvenile to consecutive sentences. This Court disagrees.

{¶5} Appellant has argued at length that the unbridled discretion of a juvenile court to sentence juveniles to consecutive sentences without specific findings of fact is a violation of equal protection. Appellant notes that R.C. 2929.14 requires specific findings of fact before a trial court may impose consecutive sentences in adult felony matters. Appellant contends that juveniles charged with felonies are similarly situated individuals under similar circumstances and should be afforded the same protections as adults.

{¶6} The standard for determining whether a statute violates the guarantee of equal protection is essentially the same under state and federal law. (Citations omitted). *Fabrey v. McDonald Village Police Dept.* (1994), 70 Ohio St.3d 351, 353 (citations omitted). “Where neither a fundamental right nor a suspect class is involved, a legislative classification passes muster if the state can show a rational basis for the unequal treatment of different groups.” *Id.* As such, absent a suspect class or fundamental right, this Court will only hold legislative distinctions to be invalid if they bear no relation to the state’s goals and no grounds can be conceived to justify them. *Clements v. Fashing* (1982), 457 U.S. 957, 963, 73 L.Ed.2d 508.

{¶7} Appellant has never argued that youth is a suspect class. Further, appellant's only assertion is that he is entitled to specific findings before consecutive sentences may be imposed. This Court can find no authority that states that such a right is a fundamental right. As such, we will examine whether a rational basis exists for treating adults and juveniles differently for the purposes of felony sentencing.

{¶8} Ohio courts have previously held that systemic differences exist between juvenile and adult criminal courts. *In re Kirby*, 101 Ohio St.3d 312, 2004-Ohio-970. The purposes of juvenile court dispositions include providing for the care, protection and development of children, protecting the public from wrongful acts, holding the offender accountable, and rehabilitating errant children. R.C. 2152.01. On the other hand, the purpose of adult felony sentencing is to protect the public from future crime and to punish the offender. R.C. 2929.11. As such, the legislature has made clear that the purposes of juvenile dispositions, including rehabilitation of the juvenile, are different than those of adult felony sentencing.

{¶9} Further, juveniles may apply at any time during their commitment for judicial release. R.C. 2152.22. With regard to this discretionary power the Ohio Supreme Court has stated as follows:

“The provisions of the early release statute coupled with the discretionary power of a juvenile court to order concurrent or consecutive terms of commitment strike a desired balance between the goals of confining the juvenile for purposes of rehabilitation and

the release of the juvenile to society once satisfactory progress has been made toward rehabilitation.” *In re Caldwell* (1996), 76 Ohio St.3d 156, 160.

{¶10} Therefore, a rational basis does exist for sentencing juveniles in a different fashion than adults. First, the purposes of adult felony sentencing and juvenile sentencing are different. Further, juvenile courts are given wider discretion in the early release of offenders. Either of these factors alone provides a rational basis for the legislature to treat adults and juveniles differently for the purposes of felony sentencing. As such, this Court finds that R.C. 2152.17 does not violate the equal protection guarantees of the Ohio Constitution and the U.S. Constitution. Accordingly, appellant’s sole assignment of error is overruled.

III.

{¶11} Appellant’s sole assignment of error is overruled, and the judgment of the Wayne County Court of Common Pleas, Juvenile Division, is affirmed.

Judgment affirmed.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Wayne, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellant.

Exceptions.

DONNA J. CARR
FOR THE COURT

WHITMORE, J.
BATCHELDER, J.
CONCUR

APPEARANCES:

DAVID H. BODIKER, Ohio Public Defender and JILL E. BEELER, Assistant State Public defender, 8 East Long Street, 11th Floor, Columbus, Ohio 43215, for appellant.

MARTIN FRANTZ, Prosecuting Attorney and MICHELLE FINK, Assistant Prosecuting Attorney, 115 West Liberty Street, Wooster, Ohio 44691, for appellee.