[Cite as *State v. Culp*, 2015-Ohio-2839.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

STATE OF OHIO Appellee v. RICHARD A. CULP Appellant	C.A. No. 27500 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CR 2011-01-0018

DECISION AND JOURNAL ENTRY

Dated: July 15, 2015

WHITMORE, Judge.

{¶1} Defendant-Appellant, Richard Culp, appeals from his sentence in the Summit County Court of Common Pleas. This Court affirms.

I

{¶2} Following events that occurred in December 2010, a jury found Culp guilty of five separate counts of rape and one count of kidnapping. The jury further found him guilty of the sexually violent predator specifications linked to each of his five rape counts and the sexual motivation specification linked to his kidnapping count. Additionally, the court found him guilty of the repeat violent offender specifications linked to each of his six counts. The court sentenced Culp to 10 years to life in prison on each of his five rape counts and 10 years in prison on his kidnapping count. The court ordered Culp to serve consecutive sentences on each rape count, but allowed his kidnapping sentence to run concurrently. Consequently, Culp received a total of 50 years to life in prison.

{¶3} This Court affirmed Culp's convictions on direct appeal. *See State v. Culp*, 9th Dist. Summit No. 26188, 2012-Ohio-5395. We later agreed to reopen the appeal, however, on the basis that Culp's appellate counsel had not assigned as error that he had been convicted of allied offenses of similar import with respect to his five rape counts. In our opinion following the reopening, we remanded this matter for the trial court to consider the allied offense issue and apply *State v. Johnson*, 128 Ohio St.3d 153, 2010-Ohio-6314, in the first instance. *See State v. Culp*, 9th Dist. Summit No. 26188, 2013-Ohio-5799, ¶ 5-8.

{¶4} On remand, the trial court determined that Culp's rape counts were not allied offenses of similar import. The court once again sentenced him to 10 years to life in prison on each rape count for a total of 50 years to life in prison.

{¶5} Culp now appeals from his sentence and raises one assignment of error for our review.

II

Assignment of Error

> THE TRIAL COURT COMMITTED ERROR AND/OR PLAIN ERROR AS A MATTER OF LAW IN IMPOSING CONSECUTIVE SENTENCES OF TEN YEARS TO LIFE IMPRISONMENT FOR RAPE WITH SEXUALLY VIOLENT PREDATOR SPECIFICATIONS.

{¶6} In his sole assignment of error, Culp argues that the trial court erred when it sentenced him to serve ten years in prison on each of his five rape counts. Specifically, he argues that, under R.C. 2971.01(H)(2)(a), he could only be sentenced to a total of ten years to life in prison. We disagree.

{¶7} "When reviewing a trial court's sentence, we apply a two-step approach." *State v. Stoddard*, 9th Dist. Summit No. 26663, 2013-Ohio-4896, ¶ 14. "First, [we] must examine the sentencing court's compliance with all applicable rules and statutes in imposing the sentence to

determine whether the sentence is clearly and convincingly contrary to law." *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, ¶ 26. If the sentence is not contrary to law, we review the trial court's decision in imposing a term of imprisonment for an abuse of discretion. *Id.* Because Culp's appeal only concerns the first step of the *Kalish* analysis, we only review his sentence to determine whether it is clearly and convincingly contrary to law. *See id.* In doing so, we review the matter de novo. *See State v. Clayton*, 9th Dist. Summit No. 26910, 2014-Ohio-2165, ¶ 43.

{¶8} R.C. 2971.03 sets forth the type of sentence a court "shall impose * * * upon a person who is convicted of * * * a violent sex offense and who also is convicted of * * * a sexually violent predator specification * * *." R.C. 2971.03(A). Rape is a violent sex offense. R.C. 2971.01(L)(1), citing R.C. 2907.02. For rapes that occurred after January 2, 2007, for which a term of life imprisonment is not imposed and for which the victim is not under thirteen, the statute requires the court to "impose an indefinite prison term consisting of a minimum term fixed by the court that is not less than ten years, and a maximum term of life imprisonment." R.C. 2971.03(A)(3)(d)(ii). The statute further provides that

> [i]f the offender is convicted of * * * two or more offenses for which a prison term or term of life imprisonment without parole is required to be imposed pursuant to division (A) of this section, divisions (A) to (D) of this section shall be applied for each offense. All minimum terms imposed upon the offender pursuant to division (A)(3) * * * of this section for those offenses shall be aggregated and served consecutively, as if they were a single minimum term imposed under that division.

R.C. 2971.03(E).

{¶9} Culp was convicted of five counts of rape, violent sex offenses, as well as five sexually violent predator specifications. The rapes all occurred after January 2, 2007, his victim was not under the age of thirteen, and none of the rapes required the court to impose a term of life imprisonment upon Culp. *See* R.C. 2971.03(A)(2) (providing for a term of life imprisonment

for rape in certain scenarios). Accordingly, the court was required to sentence Culp to an indefinite prison term, consisting of a minimum sentence of ten years and a maximum sentence of life in prison, for each of his rape offenses. *See* R.C. 2971.03(A)(3)(d)(ii), (E). Moreover, because the court sentenced Culp to a prison term under R.C. 2971.03(A)(3) for two or more rape offenses, it was required to order his prison terms to be "served consecutively, as if they were a single minimum term * * *." R.C. 2971.03(E).

{¶10} Culp argues that his sentence is contrary to law because R.C. 2971.01(H)(2)(a) controls here. R.C. 2971.01(H)(1) defines the phrase "sexually violent predator." Subsection (H)(2) then provides a list of factors that "may be considered as evidence tending to indicate that there is a likelihood that [a] person will engage in the future in one or more sexually violent offenses." R.C. 2971.01(H)(2). Included in that list of factors is the fact that a person

> has been convicted two or more times, in separate criminal actions, of a sexually oriented offense * * *. For purposes of this division, convictions that result from or are connected with the same act or result from offenses committed at the same time are one conviction, and a conviction set aside pursuant to law is not a conviction.

R.C. 2971.01(H)(2)(a). Culp argues that his five rape convictions resulted from the same act and were committed at the same time. He, therefore, relies upon the second sentence of R.C. 2971.01(H)(2)(a) to argue that the court should have treated his five rape counts as "one conviction" for purposes of sentencing him.

{¶11} We do not agree that the trial court erred by not treating Culp's five rape convictions as one conviction for purposes of sentencing him. R.C. 2971.01(H)(2)(a) specifically provides that certain convictions are to be treated as one conviction only "[f]or purposes of this division." Moreover, it governs instances where offenders are convicted of sexually oriented offenses "in separate criminal actions." R.C. 2971.01(H)(2)(a). Culp was

convicted of five counts of rape in a single criminal action and, at the time the court sentenced him, the court was not attempting to determine whether he was a sexually violent predator. *See* R.C. 2971.01(H)(2)(a) (noting that certain convictions are to be treated as one conviction "[f]or purposes of this division"). The jury had already found Culp to be a sexually violent predator. Because the court was sentencing Culp for his convictions, it did not err by relying on R.C. 2971.03. *See* R.C. 2971.03 (outlining the sentences applicable to offenders who have been convicted of a violent sex offense in conjunction with a sexually violent predator specification).

{¶12} The trial court sentenced Culp to ten years to life in prison on each of his rape counts and ordered all five terms to run consecutively. Consequently, the court sentenced Culp in accordance with R.C. 2971.03. *See* R.C. 2971.03(A)(3)(d)(ii), (E). Because Culp's sentence is not contrary to law, his sole assignment of error is overruled.

III

{¶13} Culp's sole assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

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 Summit, 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(C). 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.

BETH WHITMORE
FOR THE COURT

HENSAL, P. J.
SCHAFER, J.
CONCUR.

APPEARANCES:

NICHOLAS SWYRYDENKO, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.