

[Cite as *State v. Gibbs*, 2001-Ohio-4051.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 01AP-578
Aaron K. Gibbs,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on November 27, 2001

Ron O'Brien, Prosecuting Attorney, and *Jennifer L. Coriell*, for appellee.

Yeura Venters, Public Defender, and *Paul Skendelas*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

On October 29, 1999, Aaron Kenneth Gibbs was indicted on a charge of felonious assault and a charge of endangering children. On February 28, 2001, Mr. Gibbs entered a plea of guilty to the endangering children charge and the felonious assault charge was dismissed as a part of a plea bargain. On April 17, 2001, the trial

court sentenced Mr. Gibbs to a term of incarceration of five years.

Mr. Gibbs has pursued a direct appeal of his sentence. His single assignment of error reads:

The trial court erred in imposing a term greater than the minimum period of incarceration, without making supporting findings as required by R.C. 2929.14, upon a defendant with no prior history of imprisonment.

The record before us indicates that Aaron Kenneth Gibbs seriously beat his son who was less than two years old. The child was treated for a broken right leg and had noticeable bruising on his head and abdomen. Based upon the severity of the beating, the trial court found that Mr. Gibbs had committed the worst form of the offense of endangering children and sentenced Mr. Gibbs to the maximum allowable period of incarceration.

The trial court's findings are most clearly reflected in its statements at the close of the sentencing hearing. The trial court said:

There's scars on the right temple, bruises on both ears, bruises on the right cheek, purple discoloration on the lower abdomen above the penis, a broken right leg. I would say that is a fairly accurate description of what the lady has said here about bruises all over the body. That covered most of the body. The only thing missing there is feet and knees or something.

So Children's Hospital looks at it, treatment team looks at it. You told the story about what happened, child falling off the bike and tricycle, you didn't know about a lot of the rest of it. Here's what the doctor said with the treatment team, whose purpose it is to tell whether or not these injuries are intentional or accidental, okay, here's what the treatment team says.

Dr. Charles Johnson determining whether these things are

intentional, accidental or not accidental, they determined it's unlikely the victim's injuries were accidental or nonintentional. this is their report dated 11-7-96. It is noted that the injuries to the child's extremities would be more typical of a fall down a flight of steps, or symmetrical – and symmetrical bruising, like the bruises of the ears, would be very unusual. The linear marks above the child's ears could not be explained by a fall down carpeted stairs, and it was highly unlikely a child would sustain a fractured tibia, meaning the leg, falling from a tricycle whose seat is approximately one foot above the ground. The research indicates fractures can occur in falls of three or more feet. It was also noted that considerable force would have to be necessary to result in the generalized bruising of the scrotum. In Dr. Johnson's report he states that Syr Michael apparently suffered a blow to the scrotum from a object larger than the bar on a bicycle seat, and there may have been a crushing of the scrotum with pinching of the lower abdomen.

Anyway, so what did they do after that? They put both you and the mother on a polygraph test. She passed, your version flunked, indicated you were not truthful with respect to the manner in which this child was injured.

Court is not only faced with that, but it's also faced with the fact that this child from the condition presented at Children's Hospital, it is indicated in this report has suffered mentally, emotionally, to the point where it's affected the child's development, and you continue to maintain your innocence in the face of that, which to me indicates denial of something that's happened, although it's some years ago, taken this time to get to this point. Those are the facts faced by this Court.

And it is going to be the sentence of this Court that I think the condition of this child presented is the worst form of the offense of child endangering. It's basically abuse of this child, child abuse which has now become mental abuse and injury. Court's going to impose a five-year sentence to the Ohio Department of Corrections with 27 days of jail-time credit, that you pay the costs of this case. This is a horrible case of child abuse, horrible case. (Tr. 17-19.)

These findings by the trial court more than comply with the legal

requirements set forth in R.C. 2929.14 and the procedural requirements set forth in *State v. Edmonson* (1999), 86 Ohio St.3d 324.

The assignment of error is overruled. The judgment of the trial court is affirmed.

Judgment affirmed.

LAZARUS, J., concurs.
DESHLER, J., dissents.

DESHLER, J., dissenting.

Being unable to agree with the majority, I respectfully dissent.

The majority concludes the trial court complied with the requirements of R.C. 2929.14 and the mandates of *State v. Edmonson* (1999), 86 Ohio St.3d 324.

Except, in the trial court's reference in the record to "this is a horrible case of child abuse," there is no compliance with either R.C. 2929.14 or the *Edmonson* case.

In *Edmonson*, the Ohio Supreme Court stated:

We construe this statute to mean that unless a court imposes the shortest term authorized on a felony offender who has never served a prison term, the record of the sentencing hearing must reflect that the court found that either or both of the two statutorily sanctioned reasons for exceeding the minimum term warranted the longer sentence. [*Id.* at 326.]

While it is apparent the trial court imposed a maximum sentence because it viewed the factual background here as an egregious case of child abuse, the trial court did not mention either of the findings required by *Edmonson*, as a predicate for imposing a maximum sentence.

I do not desire to deal in pettifoggery, realizing the ultimate decision here, the maximum sentence, could be well taken in view of the facts of this case. However, the statutes relating to sentencing must be followed. The *Edmonson* case makes it clear that the Ohio Supreme Court expects compliance with the sentencing statutes. The danger of not requiring statutory compliance encourages gross inconsistencies in sentencing and a disregard for statutory mandates. I would therefore sustain the claimed error and remand the case for resentencing.
