[Cite as *State v. Owens*, 2023-Ohio-49.]

IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY

STATE OF OHIO, Plaintiff-Appellee, - vs - JORDAN OWENS, Defendant-Appellant.	**CASE NO. 2022-T-0036** Criminal Appeal from the Court of Common Pleas Trial Court No. 2021 CR 01040

O P I N I O N

Decided: January 9, 2023
Judgment: Affirmed

Dennis Watkins, Trumbull County Prosecutor, and *Ryan J. Sanders,* Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481 (For Plaintiff-Appellee).

Edward M. Heindel, 2200 Terminal Tower, 50 Public Square, Cleveland, OH 44113 (For Defendant-Appellant).

FREDERICK D. NELSON, J., Ret., Tenth Appellate District, sitting by assignment.

{¶1} By his own admission, Defendant-Appellant Jordan Owens abused his position of trust as a teacher to prey upon a 15-year-old student. He "repeatedly sent nude images to the female [student], receiving [at his request, we note] multiple nude images back from her and constantly texting her trying to meet up with her, and requesting [to] pick her up to have sexual intercourse together." Appellant's Brief at 7; *see also id.* at 6 (reciting state's articulation of the bases for its charges). He pleaded guilty to two counts of importuning as fifth-degree felonies in violation of R.C. 2907.07(B)(1) and (F)(1)

and (3), to one count of disseminating matter harmful to juveniles as a fifth-degree felony in violation of R.C. 2907.31(A)(1) and (F), and to one count of illegal use of a minor in nudity oriented material or performance as a fifth-degree felony in violation of R.C. 2907.323(A) and (B). April 18, 2022 Entry on Sentence at 1. The trial court sentenced him to 12 months in prison on each count, with (only) the two importuning counts to run consecutively and the remaining counts concurrently with those and with each other for a total prison sentence of 24 months.

{¶2} Mr. Owens appeals, contending that the trial court erred in imposing the 24-month sentence. We disagree with him.

{¶3} At his sentencing hearing, Mr. Owens seemed somewhat to acknowledge the seriousness of his conduct and its potentially traumatic effect on his victim (although he also expressed perhaps greater concern for his own mental well-being). "I betrayed the trust of a lot of people," he said. April 13, 2022 Tr. at 5. "And I don't know how the victim feels, I can only hope that it didn't impact them that much. And I'll never know but it's a terrible burden that I'm going to carry with me for the rest of my life." *Id.* *See also* Defendant's February 24, 2022 written PSI statement ("And my decision will haunt me for the rest of my life. I can only pray that these events will not affect the victim long term, that that they will be able to live their life free of any trauma that I might have caused. I also hope that I can limit the situation's impact on my mental health.").

{¶4} He now posits three assignments of error:

"[1.] The trial court erred when it failed to make the required consecutive sentence findings prior to imposing consecutive sentences.

[2.] The imposition of consecutive sentences was not supported by the record.

[3.] The trial court erred when it imposed maximum and consecutive prison sentences."

Appellant's Brief at 2-3. Although these assignments are closely interrelated, we will consider them in turn even while recognizing that analysis of each assignment to some extent informs analysis of the others.

{¶5} At the outset, we note that R.C. 2953.08(G)(2) provides the standard of review for consecutive sentences:

> The court hearing an appeal under division (A), (B), or (C) of this section shall review the record, including the findings underlying the sentence or modification given by the sentencing court.
>
> The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing. The appellate court's standard of review is not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division if it clearly and convincingly finds either of the following:
>
> (a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;
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> (b) That the sentence is otherwise contrary to law.

{¶6} The Supreme Court of Ohio has held that "[i]n order to impose consecutive terms of imprisonment, a trial court is required to make the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and incorporate its findings into its sentencing entry * * *." *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, ¶37. Otherwise, the imposition of consecutive sentences is contrary to law. *See id.* The trial court is not "required to give a talismanic incantation of the words of the statute, provided that the

necessary findings can be found in the record and are incorporated into the sentencing entry." *Id.*

{¶7} R.C. 2929.14(C)(4) provides, in part:

> If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds any of the following: * * *
>
> (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.

{¶8} Again, "'a word-for-word recitation of the language of the statute is not required, and as long as the reviewing court can discern that the trial court engaged in the correct analysis and can determine that the record contains evidence to support the findings, consecutive sentences should be upheld.'" *State v. Hope*, 2019-Ohio-2174, 137 N.E.3d 549, ¶166 (11th Dist.), quoting *Bonnell* at ¶29; *see also* Appellant's Brief at 9 (acknowledging that standard).

{¶9} Under his first assignment of error, Mr. Owens argues that "[s]pecifically," the trial court erred because it "did not find that 'consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public.' Nor did it make any of the findings under section[] * * * (b) * * * of the statute." But it did.

{¶10} For example, the trial court noted that at least "because of the nature of the sex offense involving minors" [sic], "that automatically carries some things that are high risk * * *." April 13, 2022 Tr. at 10 (discussing defense counsel's explanation for "the high rating on recidivism"). "These are sex offenses involving a minor victim," the trial court told Mr. Owens. *Id.* "[Y]ou held the position as teacher which was a position of trust that you used to facilitate the offenses; * * * you have been rated as a high risk level as a result of these being sex offenses; and * * * a prison sentence is commensurate with the seriousness of your conduct and not demeaning to its impact on the victim and is consistent with similar [sentences] * * *. The Court further finds that consecutive sentences are necessary to punish you and not disproportionate to your conduct. And the harm is so great that a single term does not adequately reflect the seriousness of the conduct." *Id.* at 10-11.

{¶11} Mr. Owens's argument that "[t]he trial court incorporated [into its sentencing entry] the findings it did make, but not the full findings necessary to impose consecutive sentences," Appellant's brief at 10, works as an acknowledgment that the sentencing entry fairly encapsulates the trial court's pronouncements from the hearing. That entry again set out why the trial court found prison appropriate to the offenses and emphasized that "consecutive service is necessary to protect the public from future crime and to punish the Defendant, and * * * consecutive sentences are not disproportionate to the seriousness of the Defendant's conduct and to the danger the Defendant poses to the public. Additionally," it recited, "the Court finds that the harm caused by the Defendant is so great that a single term does not adequately reflect the seriousness of the Defendant's conduct." April 18, 2022 Entry on Sentence at 2.

{¶12} The trial court's pronouncement from the bench and its sentencing entry were sufficient in their formulation to impose consecutive sentences under the law. The trial court did note the "high risk level" of recidivism identified in the presentence investigation and that "consecutive terms are necessary to punish" Mr. Owens. Tr. At 10-11. The trial court viewed the consecutive sentences that it imposed as "not disproportionate" to Mr. Owens's criminal conduct with its associated risks for future harm. *Id.* Moreover, in describing the nature of the conduct and referring at various points to the sex "offenses" (plural) involving a minor victim, *id.* at 10, the court clearly spoke to a course of conduct that caused "harm * * * so great that a single term does not adequately reflect the seriousness of the conduct," *id.* at 11: Those findings satisfy R.C. 2929.14(C)(4)(b).

{¶13} We overrule Mr. Owens's first assignment of error.

{¶14} Contrary to Mr. Owens's second assignment of error, the record does contain evidence to support the consecutive-sentence findings. Under the test envisioned by R.C. 2953.08(G)(2), the record is not clearly and convincingly without support for those findings. *Compare State v. Gwynne*, ___ Ohio St.3d ___ , 2022-Ohio-4607, ¶*28* ("When reviewing the record under the clear and convincing standard, the first core requirement is that there be some evidentiary support in the record for the consecutive sentencing findings that the trial court made.").

{¶15} In urging that "there is little, if any, evidence that tends to supports [sic] the imposition of consecutive sentences," Mr. Owens begins by noting that he "had no criminal history." Appellant's Brief at 11. But a prior record is not a necessary precondition to consecutive sentences; under R.C. 2929.14(C)(4)(c); it is part of a basis

for one potential statutory prong that could justify consecutive sentences, but here the trial court looked to the independent, disjunctive clause in R.C. 2929.14(C)(4)(b) in finding harm caused by two or more of the multiple offenses that was so great that a single term for the multiple offenses in the course of conduct would "not adequately reflect the seriousness of the Defendant's conduct." Entry of Sentence at 2; *see also* Tr. at 11 ("harm is so great that a single term does not adequately reflect the seriousness of the conduct").

{¶16} Mr. Owens himself at least nodded to the seriousness of his conduct and the harm it caused. *See, e.g.,* Tr. at 4 (considered suicide before sentencing); 5 ("I made a terrible mistake"); Mr. Owens's written statement from PSI ("I have betrayed the trust of many people"); *id.* ("will haunt me for the rest of my life"); *id.* ("can only pray that these events will not affect the victim long term"); *id.* ("I might have caused" trauma). Mr. Owens, after all, admitted to using his position of power and authority as a teacher to induce a young student to send him nude pictures or herself and he conveyed similar images of himself to her while also "repeatedly" soliciting her for sex. Appellant's Brief at 6-7 (stating and confirming state's case; also noting that "[t]he State would have offered the testimony of the juvenile victim as well as text messages and FaceTime messages to prove its case").

{¶17} His next point, that "[t]here is no allegation that he actually had sexual relations with the victim," *id.* at 11, is wholly irrelevant to the two consecutive 12-month sentences here: He was not sentenced for rape or some other crime involving actual physical contact, but rather for the particular felonies to which he did plead guilty. *Compare* April 13, 2022, Tr. At 2 (defense counsel tells the trial court, "we're not going to deny or try to minimize what a breach of trust occurred"). And his suggestion now that

the minor victim was an instrument of her own injury because "she appeared to have wilfully [sic] participated in the activity," Appellant's Brief at 11, again ignores or seeks to trivialize the (quite) criminal nature of his course of conduct: all four of the offenses for which Mr. Owens was sentenced turn on the victim's status as a minor or schoolchild.

{¶18} Mr. Owens's further arguments, including his points that he "was not on any type of court supervision when this occurred, that he has no other "history" of this sort of conduct, or that he did not victimize "more than one person" again do not relate to the particular statutory provisions under which he was sentenced. And his renewed argument that his conduct was "hardly the worst one can imagine. It appears, most likely, to be some sort of affair between student and teacher," Appellant's Brief at 12, further betrays a fundamental misconception of the criminal standards that he violated. We observe, too, that Mr. Owens does not and could not argue that the sentences the trial court imposed were somehow outside of the statutory range.

{¶19} We overrule Mr. Owens's second assignment of error.

{¶20} Under his third assignment of error, Mr. Owens "concedes that the trial court had the authority to impose a prison sentence." Appellant's Brief at 12. But he thinks that, all things considered, 24 months in prison is too long. Mindful of very recent instruction by the Supreme Court of Ohio in *Gwynne*, we "review the record de novo and decide whether the record clearly and convincingly does not support the consecutive sentencing findings." *Gwynne* at ¶1, *see also id.* at ¶12.

{¶21} First, Mr. Owens submits that "since [he] committed sex offenses which were felonies of the fifth degree, the trial court did not have discretion to impose consecutive sentences," *id.* at 14. He is wrong. The statutory subsection he cites for that

proposition, R.C. 2929.13(B)(1)(a), does limit sentences to community control in certain situations. The very first phrase of that subsection, however, reads: "Except as provided in division (B)(1)(b) of this section * * * ." And that cross-referenced subsection provides that a "court has discretion to impose a prison term upon an offender who is convicted of or pleads guilty to a felony of the fourth or fifth degree * * * if *** (iv) The offense is a sex offense that is a fourth or fifth degree felony violation of any provision of Chapter 2907 of the Revised Code." R.C. 2929.(13)(B)(1)(b). Nothing there suggests that a trial court cannot impose consecutive sentences after having made the appropriate findings.

{¶22} Mr. Owens then in effect asks us to reweigh the matters that went into the trial court's consideration of the purposes and principles of felony sentencing pursuant to R.C. 2929.11 and of the seriousness and recidivism factors outlined in R.C. 2929.12. Appellant's Brief at 14-17 (arguing, among other things, that his abuse of authority as a local school teacher "did not pose any danger to the community at large," and that "[h]e worked and he was educated" – factors that the trial court found indeed facilitated the offense, *compare* Appellant's Brief at 15 *with* Entry on Sentence at 2 and April 13, 2022 Tr. at 10). In this regard, we note that a "trial court is not required to give any particular weight or emphasis to a given set of circumstances; it is merely required to consider the statutory factors in exercising its discretion." *State v. Dellmanzo*, 11th Dist. Lake No. 2007-L-218, 2008-Ohio-5856, ¶23. The record reflects that that is what the trial court did here. And reviewing the record as a whole, de novo, in considering the aggregate sentence imposed by the trial court, we find that the evidentiary basis was "adequate to fully support the trial court's consecutive sentence findings." *Compare Gwynne* at ¶29.

{¶23} Our de novo review of the record compels us to affirm the sentencing judgment of the trial court. In the double-negative formulation suggested by *Gwynne* in light of the review statute, we cannot conclude that the record clearly and convincingly does not support the trial court's consecutive sentence determinations. The clear and convincing statutory standard of review does by the nature of its relatively high bar (allowing for reversal only where the evidence leads us to a firm belief or conviction that it does not support the sentence, *see id.* at ¶19), "give[] some amount of deference to the trial court's decision concerning consecutive sentences." *Id.* at ¶18; *compare id.* at ¶54 (Kennedy. J., dissenting: (standard "expresses the General Assembly's intent that appellate cases employ a deferential standard to the trial court's consecutive sentence findings").

{¶24} Here, the trial court did consider the number of consecutive sentences to be imposed (*compare id.* at ¶15, regarding R.C. 2929.14(C)(4)(c) requirements not at issue here), and it ordered only two sentences to run consecutively, with sentences for the other two counts concurrent with each other and with the aggregate two-year sentence. We are not asked to consider whether a longer sentence would have been justified on this record, but limit our evaluation to "whether the record [as reviewed afresh] clearly and convincingly does not support the consecutive sentencing findings." *Gwynne* at ¶1. We cannot say that this record clearly and convincingly does not support the trial court's findings.

{¶25} We overrule Mr. Owens's third assignment of error.

{¶26} Having overruled all three of Mr. Owens's assignments of error, and because the trial court did not err in imposing the two consecutive 12-month sentences

(for an aggregate sentence of 24 months), we affirm the judgment of the Trumbull County Court of Common Pleas.

JOHN J. EKLUND, P.J.,

MATT LYNCH, J.,

concur.