

[Cite as *State v. Hughes*, 2022-Ohio-107.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ADAMS COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. 21CA1133
 :
 v. :
 :
 BREANNA HUGHES, : DECISION AND JUDGMENT ENTRY
 :
 Defendant-Appellant. :

APPEARANCES:

Christina M. Strasel, Batavia, Ohio, for appellant.¹

C. David Kelley, Adams County Prosecuting Attorney, and Mark R. Weaver and Ryan M. Stubenrauch, Assistant Prosecuting Attorneys, West Union, Ohio, for appellee.

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED:1-7-22
ABELE, J.

{¶1} This is an appeal from an Adams County Common Pleas Court judgment of conviction and sentence. Breanna Hughes, defendant below and appellant herein, pleaded guilty to two counts of endangering children, both third-degree felonies. The court sentenced appellant to serve maximum, consecutive sentences that total six years.

{¶2} Appellant assigns two errors for review²:

¹ Different counsel represented appellant during the trial

FIRST ASSIGNMENT OF ERROR:

"THE TRIAL COURT ERRED TO THE PREJUDICE OF MS. HUGHES BY IMPROPERLY SENTENCING HER TO CONSECUTIVE PRISON TERMS."

SECOND ASSIGNMENT OF ERROR:

"THE TRIAL COURT ERRED BY IMPOSING A MAXIMUM SENTENCE OF 6 YEARS CONSECUTIVE WITH A 36-MONTH MAXIMUM PRISON SENTENCE THAT WAS NOT SUPPORTED BY THE RECORD."

{13} On October 21, 2019, an Adams County Grand Jury returned an indictment that charged appellant with one count of felonious assault in violation of R.C. 2903.11(A)(1), and one count of endangering children in violation of R.C. 2919.22(B)(2), both second-degree felonies. Initially, appellant pleaded not guilty.

{14} On October 19, 2020, the trial court held a change of plea hearing. At the hearing, appellant pleaded guilty to two counts of endangering children in violation of R.C. 2919.22(A)(E)(2)(c), both third-degree felonies. Appellant acknowledged she had custody and control over her minor child, O.M., then two-years-old, when she and her wife, Kristina Hughes (Hughes), forced O.M. to shower in freezing water as punishment for

court proceedings.

² It appears that appellant's brief does not comply with App.R. 16(A)(1)-(4). That rule requires a brief to include a table of contents, table of cases and authorities, references to the record that relate to assignments of error, and statement of issues. Nevertheless, we will consider the merits of this appeal.

a potty training accident. Appellant further stated that, because O.M. "cussed or something," they "grabbed [O.M.'s] cheeks and put [hot sauce] between his teeth that way he couldn't bite down." Appellant also said, "[O.M.] actually liked hot sauce he like eats it. So, there was not much of a reaction from that one."

{15} Another time, appellant stated that Hughes struck O.M. with a "piece of like, uh, hardwood flooring, struck on the bottom for that." When asked why appellant would allow her partner to strike her child with a board on bare skin, appellant stated, "the reasoning for those are anything really * * * um, my son was always in trouble." Finally, appellant testified about a whipping that involved "just a leather belt" while Hughes' three teenage children were present. Apparently, this "whipping" caused bruising, open sores and scarring. Appellant also added that O.M. viewed Hughes as a parent and referred to her as "Dad." Appellant further acknowledged that she did not stop the abuse, sought no medical treatment, and did not contact law enforcement.

{16} After consideration, the trial court sentenced appellant to: (1) serve three years on each count, to be served consecutively for a total of six years, (2) serve a mandatory three-year post-release control term, (3) pay a \$2,500 fine, and (4) have no contact with children.

{17} This appeal followed.

I.

{118} In her first assignment of error, appellant asserts that the trial court erred by sentencing her to serve consecutive prison terms. Appellant does acknowledge that the trial court recited all of the required statutory language on the record, and included that language in the sentencing entry, but contends that the record does not support the trial court's findings.

{119} The Supreme Court of Ohio held in *State v. Gwynne*, 158 Ohio St.3d 279, 2019-Ohio-4761, 141 N.E.3d 169, that R.C. 2953.08(G)(2) applies to consecutive-sentencing review and, pursuant to that statute, an appellate court may increase, reduce, modify, or vacate and remand a challenged felony sentence if the court clearly and convincingly finds either "that the record does not support the sentencing court's findings," under the specified statutory provisions, or "the sentence is otherwise contrary to law." *State v. Cottrill*, 4th Dist. Ross No. 20CA3704, 2020-Ohio-7033, ¶ 11. "[C]lear and convincing evidence is that measure or degree of proof which is more than a mere 'preponderance of the evidence,' but not to the extent of such certainty as is required 'beyond a reasonable doubt' in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three

of the syllabus; *State v. Conant*, 4th Dist. Adams No. 20CA1108, 2020-Ohio-4319, ¶ 42. Thus, appellate courts may vacate or modify any sentence that is not clearly and convincingly contrary to law only if the appellate court finds, by clear and convincing evidence, that the record does not support the sentence. *State v. Walker*, 4th Dist. Gallia No. 19CA1, 2020-Ohio-617, ¶ 19.

{¶10} R.C. 2929.41(A) establishes a statutory presumption in favor of concurrent sentences. Appellate courts review consecutive sentences for compliance with R.C. 2929.14(C)(4), which provides for the imposition of consecutive sentences and sets forth a three-step analysis. *State v. Williams*, 4th Dist. Adams No. 19CA1090, 2019-Ohio-4873. R.C. 2929.14(C)(4) provides:

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.

{¶11} "In order to impose consecutive terms of imprisonment, a trial court must make the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and incorporate its findings into its sentencing entry, but the court has no obligation to state reasons to support its findings." *State v. Blair*, 4th Dist. Athens No. 18CA24, 2019-Ohio-2768, ¶ 52, citing *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, syllabus. See also *State v. Kulchar*, 4th Dist. Athens No. 10CA6, 2015-Ohio-3703, ¶ 47; *State v. Watson*, 4th Dist. Meigs No. 18CA20 & 18CA21, 2019-Ohio-4385, ¶ 17.

{¶12} In the case sub judice, as appellant acknowledges, the trial court made the R.C. 2929.14(C)(4) required findings to support the imposition of consecutive sentences, both on the record and in the sentencing entry. The trial court concluded that, according to R.C. 2929.14(C)(4)(b), "[a]t 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."

{¶13} Appellant contends, however, that the record does not support the trial court's imposition of consecutive sentences.

Appellant argues that (1) she does not pose a threat to the public because she had no prior offenses other than minor traffic tickets, and (2) she is a victim of abuse and domestic violence, but since her indictment she has undergone therapy and her condition has improved.

{¶14} In the case sub judice, the trial court reviewed the facts and evidence, including recordings appellant made while her spouse beat her two-year-old child, forced him to stand under freezing water, and poured hot sauce down his throat. The court noted that these recordings provided vivid evidence of the victim's suffering and appellant's spouse's verbal abuse. At sentencing, the trial court described the recordings in this manner: "There's not a person in here that won't live with the stigma of this * * * tape. I watch, I don't know who the guest are, but, uh, holding their ears, crying, wanting to leave which they had the opportunity to."

{¶15} Although appellant did have a minimal record prior to the events in the case at bar, the facts of this case involved the torture of her two-year-old child. The trial court described the crimes in this manner: "I've stared down the eyes of some dark people, murderers, horrible rapist, kidnappers. And I have never experienced a more heinous crime than what was subjected on this little boy at your hands, because you failed to act." The court

also noted that appellant lacked remorse as demonstrated from her statement offered during the plea hearing that she believed the victim liked hot sauce.

{¶16} After our review of the record, and based on the above facts, we conclude, by clear and convincing evidence, that the record in the case sub judice fully supports the imposition of consecutive sentences. Appellant's egregious failure to protect her child from the hands of appellant's then spouse supports the trial court's decision that (1) appellant committed at least two of the multiple offenses as part of one or more courses of conduct, and (2) the harm caused by two or more of the multiple offenses 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.

{¶17} Accordingly, based upon the foregoing reasons, we overrule appellant's first assignment of error.

II.

{¶18} In her second assignment of error, appellant asserts that the record does not support the trial court's imposition of maximum sentences. In particular, appellant argues that she was not the perpetrator, but "rather was passive while the violence occurred." Appellant further contends that the harm she caused to her child "is not the most serious form of harm."

{¶19} Pursuant to R.C. 2953.08(G)(2), an appellate court may vacate or modify a felony sentence if the court clearly and convincingly finds that the record does not support a trial court's findings. *State v. Layne*, 4th Dist. Adams No. 20CA1116, 2021-Ohio-255, ¶ 6. This is "an extremely deferential standard of review." *Id.* at ¶ 8, quoting *State v. Pierce*, 4th Dist. Pickaway No. 18CA4, 2018-Ohio-4458.

{¶20} A trial court's imposition of a maximum prison term for a felony conviction is not contrary to law if (1) the sentence is within the statutory range for the offense, and (2) the court considers both the R.C. 2929.11 purposes and principles of felony sentencing and the R.C. 2929.12 seriousness and recidivism factors. *Cottrill*, 4th Dist. Ross No. 20CA3704, 2020-Ohio-7033, at ¶ 22, citing *State v. Mathias*, 5th Dist. Fairfield No. 19CA52, 2020-Ohio-4224, ¶ 9; *State v. Taylor*, 5th Dist. Richland No. 17CA29, 2017-Ohio-8996, ¶ 16; *State v. Keith*, 8th Dist. Cuyahoga Nos. 103413 and 103414, 2016-Ohio-5234, ¶ 10, 16.

{¶21} According to R.C. 2929.11, the overriding purposes of felony sentencing are to protect the public from future crime and to punish the offender, but using the minimum sanctions to accomplish those purposes without imposing an unnecessary burden on state or local government resources. "To achieve those purposes, the sentencing court shall consider the need for incapacitating the

offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both." R.C. 2929.11.

{¶22} R.C. 2929.12 sets forth a non-exhaustive list of factors that trial courts must consider when determining the seriousness of an offense and the likelihood that the offender will commit future offenses. *State v. Sawyer*, 4th Dist. Meigs No. 16CA2, 2017-Ohio-1433, ¶ 17; *State v. Lister*, 4th Dist. Pickaway No. 13CA15, 2014-Ohio-1405, ¶ 15. Although a trial court must consider the R.C. 2929.12 factors, "neither R.C. 2929.11 nor 2929.12 requires a trial court to make any specific factual findings on the record." *State v. Wilson*, 129 Ohio St.3d 214, 2011-Ohio-2669, 951 N.E.2d 381, ¶ 31.

{¶23} In the case sub judice, the trial court's sentence fell within the prescribed statutory range. Moreover, the trial court's sentencing entry provides that the court considered the R.C. 2929.11 principles and purposes of sentencing and the R.C. 2929.12 seriousness and recidivism factors.

{¶24} Appellant, however, argues that the record does not, in fact, support her sentence. In the companion case, *State v. Hughes*, 4th Dist. Adams No. 21CA1127, 2021-Ohio-3127, appellant's spouse requested "us to review the record and determine that the serious physical injury caused by her felonious assault offense 'is

not the most serious form of harm' which, in essence, is asking us to review the record and determine whether it supports the trial court's implicit finding under R.C. 2929.12(B)(2)." *Id.* at ¶ 42. We concluded, however, that this argument fell outside the scope of R.C. 2953.08(G)(2), and "asks us to go beyond our statutory authority." *Id.* We pointed to *State v. Jones*, 163 Ohio St.3d 242, 2020-Ohio-6729, 169 N.E.3d 649, ¶ 27, when the Supreme Court of Ohio held that R.C. 2953.08(G)(2) does not give appellate courts broad authority to review sentences to determine if they are supported by the record. *See also State v. Loy*, 4th Dist. Washington No. 19CA21, 2021-Ohio-403, ¶ 26-30 (discussing *Jones, supra*); *State v. Arbogast*, 4th Dist. Adams No. 20CA1119, 2021-Ohio-484, ¶ 7-8 (discussing *Jones, supra*).

{¶25} In the case sub judice, and as appellee points out, the trial court noted "there is no genuine remorse * * * for the offense." Further, the court highlighted appellant's statement at her plea hearing that the victim "actually liked hot sauce." Finally, the court read a heart-breaking statement from the victim's foster parents concerning the consequences of these disturbing actions. Although appellant argues that she did not perpetrate the harm caused, but "rather was passive while the violence occurred," appellant unquestionably and repeatedly failed to protect her young child from multiple heinous acts.

{¶26} After our review, we believe that the trial court properly considered the R.C. 2929.11 purposes and principles of sentencing and the R.C. 2929.12 relevant factors to determine an appropriate sentence. Moreover, appellant's sentence falls within the statutory range.

{¶27} Accordingly, based upon the foregoing reasons, we overrule appellant's second assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the 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 Adams County Common Pleas Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted by the trial court or this court, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of the proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. & Wilkin, J.: Concur in Judgment & Opinion

For the Court

BY: _____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.