

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

STATE OF OHIO, : CASE NO. 25CA3  
Plaintiff-Appellee, :  
v. : DECISION AND JUDGMENT ENTRY  
ZACHARY T. JENSEN, :  
Defendant-Appellant. :

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APPEARANCES:

L. Scott Petroff, Athens, Ohio, for appellant<sup>1</sup>.

Anneka P. Collins, Highland County Prosecuting Attorney, and  
Adam J. King, Assistant Prosecuting Attorney, Hillsboro, Ohio,  
for appellee.

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CRIMINAL APPEAL FROM COMMON PLEAS COURT  
DATE JOURNALIZED:5-5-26  
ABELE, J.

{¶1} This is an appeal from a Highland County Common Pleas  
Court judgment of conviction and sentence. Zachary Jensen,  
defendant below and appellant herein, raises one assignment of  
error for review:

“THE SENTENCING COURT ERRED WHEN IT IMPOSED  
CONSECUTIVE SENTENCES DESPITE FINDING THAT  
THE RECORD DEMONSTRATES THAT APPELLANT DOES  
NOT POSE A RISK TO THE PUBLIC.”

{¶2} In April 2024, a Highland County Grand Jury returned  
an indictment that charged appellant with (1) one count of gross

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<sup>1</sup> Different counsel represented appellant during the trial court proceedings.

sexual imposition in violation of R.C. 2907.05(A)(4), a third-degree felony, (2) one count of rape in violation of R.C. 2907.02(A)(1)(b), a first-degree felony, (3) one count of rape in violation of R.C. 2907.02(A)(1)(b), a first-degree felony, (4) one count of rape in violation of R.C. 2907.02(A)(1)(b), a first-degree felony, (5) one count of unlawful sexual conduct with a minor in violation of R.C. 2907.04(A) and (B)(3), a third-degree felony, and (6) one count of unlawful sexual conduct with a minor in violation of R.C. 2907.04(A) and (B)(3), a third-degree felony. Appellant entered not guilty pleas.

**{¶3}** Subsequently, appellee filed a Bill of Information that charged appellant with (1) one count of unlawful sexual conduct with a minor in violation of R.C. 2907.04(A), and (2) one count of unlawful sexual conduct with a minor in violation of R.C. 2907.04(A), both third-degree felonies.

**{¶4}** On October 29, 2024, the trial court held a plea hearing at which appellee recited the plea agreement that (1) appellant would plead guilty to counts 5 and 6 of the indictment and counts 7 and 8 of the bill of information, (2) appellant would be designated a Tier II sex offender, and (3) appellee would dismiss the remaining counts and take no position regarding sentencing. The court conducted a Crim.R. 11 colloquy and advised appellant of his rights and the effects of his decision to plead guilty, reviewed the signed plea form and jury

waiver, reviewed the facts and charges, and asked appellant if any drugs, alcohol, or mind-altering substances influenced him. The court advised and reviewed with appellant the constitutional rights he waived with his plea, including (1) the right to a jury trial, (2) the right to confront one's accusers, (3) the right to compulsory process to obtain witnesses, (4) the right to require appellee to prove guilt beyond a reasonable doubt, and (5) the privilege against compulsory self-incrimination.

{¶15} The trial court also explained the maximum penalties, postrelease control, and reminded appellant that the parties' sentencing recommendation did not bind the court's sentencing decision. Specifically, the court stated that:

the penalty for these four offenses . . . carry a possible prison term of 12 months to 60 months. . . There is also available a fine of \$10,000.00, and those sentences could be imposed to run consecutively, meaning that the total minimum sentence could be 12 months, as a total maximum sentence, could be 240 months, so that would be one to... twenty years.

{¶16} Appellant expressed his understanding and agreement at each stage of the plea colloquy and affirmed his execution of the written plea form. In addition, the trial court verified that appellant discussed the plea with his counsel and appellant acknowledged his satisfaction with counsel.

{¶17} The plea agreement reflects that on October 30, 2024, appellant entered a plea of guilty to Counts 5 (unlawful sexual conduct with a minor), 6 (unlawful sexual conduct with a minor),

7 (unlawful sexual conduct with a minor), and 8 (unlawful sexual conduct with a minor). The plea agreement further indicates that the trial court advised appellant that Counts 5, 6, 7, and 8 included a maximum stated prison term of 12 months to 60 months and a \$10,000 maximum fine. The court also advised appellant that he faced a mandatory 5-year postrelease control term, would pay costs, and would be designated a Tier II registered sex offender. At this juncture, appellant pleaded guilty to all four counts, and the trial court accepted the guilty pleas and set the matter for sentencing.

{¶8} At the December 17, 2024 sentencing hearing, the trial court reviewed the Tier II sex offender registration requirements. The court provided appellant with allocution, considered his stepmother's statement, the parties' statements, and the record. The court noted that the sexual abuse of the victim, appellant's sister, began when she was approximately seven years old and continued for several years, and the court stated that appellant minimized his culpability by stating that he "[was] in a sexual relationship with [his] half-sister." The court noted that the pre-sentence report indicated that appellant had "a serious sexual addiction to pornography, even encouraging the victim to download and use pornographic sites on her phone." In addition, the court noted that the record

indicated that "there are statements that this was not the first victim in your family that you abused."

{¶9} The trial court stated that it had considered the oral statements, facts of the offenses, the R.C. 2929.11(A) principles and purposes of sentencing, and the R.C. 2929.12 recidivism factors. The court noted that appellant had seemingly led a law-abiding life beyond these crimes, and had remained employed and supported his family. The court, however, observed that, although appellant contends that he was sexually abused as a child, he provided no evidence and community control would "seriously demean in my view the evidence of what occurred here and the harm that occurred to this young woman, child. Still a child, started when she was even a younger child, it would demean that and it would send the wrong message to the public . . ."

{¶10} The trial court noted that consecutive sentences are necessary to protect the public from future crime

because as I have indicated in my statements, there is not just one victim here, it's occurred over a long period of time. I think you've been trying to minimize the seriousness of this by trying to apply, in fact, I saw one reference in one of your statements to I think it was one family member that at some point she had made advances to you later on in the relationship which suggest that perhaps she was also - and again, even though it may have been consensual under the law of the offense you committed the law says that children this age can't legally consent because they don't have the maturity or the capability of knowing what is right and

wrong and what is appropriate and inappropriate for them.

{¶11} The trial court further found that the sentences are not disproportionate to the seriousness of the offense and the danger appellant poses to the public. The court noted that the victim is in a residential treatment facility "due to the impact that [appellant's] victimization has had upon her . . ." The court further found that the offenses were committed as part of a long-term course of conduct and repeated victimization.

{¶12} After consideration, the trial court sentenced appellant to (1) serve a 30-month prison term on Count 5, (2) serve a 30-month prison term on Count 6, (3) serve a 30-month prison term on Count 7, (4) serve a 30-month prison term on Count 8, all to be served consecutively for a total of 120 months, (5) serve a mandatory 5-year postrelease control term, and (6) pay costs. This appeal followed.

{¶13} In his sole assignment of error, appellant asserts that the trial court erred when it sentenced him to serve consecutive sentences, despite finding that the record demonstrates that appellant does not pose a risk to the public. Specifically, appellant contends that the court (1) made no recidivism findings in the sentencing entry, (2) noted that appellant had no criminal history and had led a law-abiding life for a significant number of years, and (3) explicitly found

factors favoring a conclusion that appellant does not pose a danger to the public. Appellee, on the other hand, argues that the trial court made the required R.C. 2929.14(C)(4) findings at the sentencing hearing and in the sentencing entry.

**{¶14}** In general, appellate courts should give broad deference to a trial court's sentencing decision and not serve as a "second-tier sentencing court." *State v. Blanton*, 2025-Ohio-237, ¶ 30 (4th Dist.), citing *State v. Glover*, 2024-Ohio-5195, ¶ 39. Ordinarily, appellate courts defer to the broad discretion trial courts have in making sentencing decisions, and R.C. 2953.08(G) reflects that deference. A trial judge usually has the benefit of presiding over the trial, hearing the witnesses testify, receiving a defendant's allocution, and often hearing directly from the victims at sentencing. *Blanton* at ¶ 30. Thus, appellate courts possess no inherent right to review a felony sentence "[e]xcept to the extent specifically directed by statute, 'it is not the role of an appellate court to substitute its judgment for that of the sentencing court as to the appropriateness of a particular sentence.'" (Citations omitted.) *Id.*, citing *Glover* at ¶ 39.

**{¶15}** R.C. 2953.08(G)(2) provides the sole basis for the appellate court's review of consecutive sentences:

The court hearing an appeal [of a felony sentence that includes consecutive sentences] ... 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 for 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 ... (C)(4) of section 2929.14 ...;

(b) That the sentence is otherwise contrary to law.

**{¶16}** Thus, this statute does not allow an appellate court to reverse or modify a sentence because a trial court arguably abused its discretion. *Glover* at ¶ 45; *Blanton* at ¶ 31. An appellate court may increase, decrease, or otherwise modify consecutive sentences only if it clearly and convincingly finds that the record does not support the trial court's findings or it clearly and convincingly finds that the sentence is contrary to law. *Glover* at ¶ 42. " '[C]lear and convincing evidence' is a degree of proof that is greater than preponderance of the evidence but less than the beyond-a-reasonable-doubt standard used in criminal cases." *Id.* at ¶ 46. Furthermore, "[n]owhere does the appellate-review statute direct an appellate court to consider the defendant's aggregate sentence." Instead, we limit our review to the trial court's consecutive sentencing findings under R.C. 2929.14(C). *Id.* at ¶ 43. Nor does the statute allow

an appellate court to reverse or modify a sentence because the trial court abused its discretion. *Id.* at ¶ 45; *Blanton* at ¶ 32; *State v. Hughes*, 2025-Ohio-894, ¶ 42 (4th Dist.).

{¶17} We initially observe that at the sentencing hearing, because appellant did not object to the court's imposition of consecutive sentences, he forfeited all but plain error. See *State v. Grate*, 2020-Ohio-5584, ¶ 204; *State v. Grashel*, 2025-Ohio-580, ¶ 22 (4th Dist.). A party asserting plain error must demonstrate the following: (1) an error occurred; (2) the error was obvious; and (3) a reasonable probability that the error affected the outcome of the proceeding. *State v. Echols*, 2024-Ohio-5088, ¶ 50. However, even when a defendant demonstrates that a plain error or defect affected the defendant's substantial rights, the Ohio Supreme Court has repeatedly emphasized that courts should "notice plain error 'with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice.'" *State v. Barnes*, 94 Ohio St.3d 21, 27 (2002), quoting *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph three of the syllabus; e.g., *State v. Bailey*, 2022-Ohio-4407, ¶ 14 ("the plain-error doctrine is warranted only under exceptional circumstances to prevent injustice"). However, consecutive sentences imposed without making the requisite findings or a sentence that is contrary to law does constitute plain error that an appellate court may

recognize. See *State v. Gill*, 2024-Ohio-2792, ¶ 48 (1st Dist.) (“trial court's failure to make the required findings before imposing consecutive sentences was plain error”); *State v. Price*, 2024-Ohio-1641, ¶ 7 (4th Dist.) (“a sentence that is contrary to law is plain error”). In the case at bar, we conclude that no error occurred.

**{¶18}** In the case sub judice, our review of the sentencing transcript reveals that the trial court made the appropriate R.C. 2929.11 and 2929.12 findings. Although appellant contends that the trial court failed to make the R.C. 2929.12 recidivism findings, our review of the sentencing entry reveals that the court stated:

The Court further finds that pursuant to Section 2929.12(B)(1) ORC, the following factors indicating that the offender's conduct is more serious than conduct normally constituting the offense are present:

. . .

The victim suffered serious physical, psychological or economic harm.

. . .

The offender's relationship with the victim facilitated the offense.

**{¶19}** Although the trial court did not explicitly select any factors under R.C. 2929.12(D), at sentencing the court made the following statements related to recidivism:

And my concern is this, you know it's clear you have real sexual deviant problems and the experience that I have and the data that I am aware of shows that sex offenders are in a high, high risk of reoffending. I don't understand the science to understand what those motivators are, you now, we do see a lot of situations, like I said, of abuse in your own childhood which could certainly be a factor. But then there is also a lot of people that have PTSD that don't commit sex offenses. A lot of times it's physical abuse, or it's other things, other crimes, but not that.

{¶20} The trial court also went on to discuss other similar cases, in which the defendants quickly violated their community control. Although the court did not check the appropriate boxes on the sentencing entry, we believe that its statements during the sentencing hearing indicate that it considered the R.C. 2929.12 recidivism factors. Thus, although the trial court did not cite the R.C. 2929.12 recidivism factors in its sentencing entry, the record does not indicate that the court failed to consider the principles and purposes of sentencing or the "seriousness" and recidivism factors. The court's findings and remarks during the sentencing hearing are consistent with the purposes of felony sentencing, such as protecting the public from future crime, punishing appellant, and rehabilitating appellant. See R.C. 2929.11(A). Further, the trial court's discussion of the high recidivism rates of sexual abusers is consistent with the statutory mandate that a trial court consider recidivism factors such as previous delinquency adjudications and responses to sanctions. See R.C.

2929.12(D)(2)-(3). See also *State v. Hart*, 2024-Ohio-4552, ¶ 15-16 (1st Dist.) (although trial court did not cite R.C. 2929.11 or 2929.12 at the sentencing hearing or in sentencing entry, record does not indicate trial court failed to consider the principles and purposes of sentencing or the “seriousness” and recidivism factors). Thus, after our review we conclude that the trial court properly considered the R.C. 2929.12 recidivism factors.

{¶21} The main question, however, in the case sub judice is whether the trial court erred when it sentenced appellant to serve consecutive sentences. Under Ohio's statutory sentencing structure, a presumption exists that a defendant's multiple prison sentences should be served concurrently, R.C. 2929.41(A). However, R.C. 2929.14(C)(3) and (4) sets forth situations in which a court may order consecutive sentences. See, e.g., R.C. 2929.14(C)(1) through (3). A trial court may also make findings to support the imposition of consecutive sentences under R.C. 2929.14(C)(4), which 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:

(a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.

(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 the courses of conduct adequately reflects the seriousness of the offender's conduct.

(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

**{¶22}** To impose consecutive sentences, a trial court is required to make the R.C. 2929.14(C)(4) findings at the sentencing hearing and incorporate them into the sentencing entry. *State v. Bonnell*, 2014-Ohio-3177, ¶ 37. However, a trial court is not required to state reasons to support its findings, " '[n]or is it 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.' " *State v. Jones*, 2024-Ohio-1083, ¶ 11, quoting *Bonnell* at ¶ 37; *State v. Ellis*, 2025-Ohio-2535, ¶ 60 (5th Dist.); *State v. Stodgel*, 2024-Ohio-5182, ¶ 62 (4th Dist.).

**{¶23}** In the case sub judice, appellant argues that, in spite of the R.C. 2929.14(C)(4) requirement that the trial court

must find that consecutive sentences are not disproportionate to the danger the offender poses to the public, here the trial court explicitly found factors that favor the conclusion that appellant does not pose a danger to the public. Thus, appellant asserts, the trial court's findings that appellant is not likely to reoffend conflicts with its finding that appellant represents a danger to the public. Appellee, on the other hand, argues that the trial court made the findings mandated by R.C. 2929.14(C) (4) at the sentencing hearing and incorporated the findings into the sentencing entry.

**{¶24}** First, we observe that the trial court in the case at bar did not make a finding that appellant is "not likely to reoffend." Rather, the court acknowledged that appellant had no prior criminal history, is married, and supports his family. The court, however, also highlighted that the abuse at issue took place over several years, involved an abuse of a familial relationship, and emphasized the high recidivism rates among sex abusers. See *State v. Williams*, 88 Ohio St.3d 513, 518, citing R.C. 2950.02(A) (2); *In re D.R.*, 2021-Ohio-1797, ¶ 7 (1st Dist.) (it should be noted that "the purpose of sex offender registration is to protect the public, and . . . the legislature's concern for recidivism and public safety.")

**{¶25}** Second, regarding consecutive sentences, we find a similar case instructive. In *State v. Wilson*, 2013-Ohio-5195

(3d Dist.), the Third District Court of Appeals affirmed a trial court's imposition of maximum-consecutive sentences. Wilson sexually abused a single victim over a nine-month period, beginning at age seven, and used his position as the family's babysitter to gain the family's trust, and the young victim suffered "serious psychological and physical harm." Wilson claimed that he had been abused as a child and argued that, because he had no prior criminal history and because no evidence existed that he had abused anyone other than the victim in the case, the facts indicated a low likelihood of recidivism. *Id.* at ¶ 18. Like appellant, Wilson was a first-time offender who apologized for his actions during sentencing. The court concluded that, in making the consecutive sentencing determination, that the trial court could consider the fact that Wilson occupied a position of trust with the victim as her babysitter and that Wilson repeatedly abused that trust for an extended period of months. *Id.* at ¶ 19. Accordingly, the appellate court affirmed the trial court's imposition of maximum consecutive sentences that totaled 25 years for five counts of third-degree gross sexual imposition. *Id.*

{¶26} We recognize that other courts have affirmed consecutive sentences for first-time offenders. *See State v. Hawkins*, 2014-Ohio-4960 (2d Dist.) (consecutive sentences supported when, although Hawkins had no prior criminal record

other than a seat belt violation, he admitted engaging in numerous sex acts that constituted rape, a first-degree felony); *State v. Pringle*, 2024-Ohio-137 (5th Dist.) (when defendant pleaded guilty to three counts of rape of a victim under the age of thirteen, three counts of gross sexual imposition of a victim under the age of thirteen, and one count of gross sexual imposition by force or threat of force, all with sexually violent predator specifications, consecutive sentences supported even when defendant expressed remorse, admitted actions were wrong, risk assessment score was low, and he had no prior criminal record other than traffic offenses); *State v. Barber*, 2025-Ohio-5061 (2d Dist.) (consecutive sentences upheld when 27-year-old defendant had no prior criminal record, trial court did not provide reasons beyond reciting the language in the statute, as it was not required to do so, but noted during the sentencing hearing that (1) “[the victim’s] physical or mental injury was exacerbated due to her age, which was only seven or eight at time; and (2) the relationship between Barber and [the victim] facilitated the offense as she was his daughter, he was a sole parent, and there was no one else there to help her.”).

{¶27} In the present case, counsel argued at sentencing that less serious factors included that appellant (1) had no criminal record, (2) suffered abuse as a child and suffered from post-traumatic stress disorder as an adult, (3) did not cause or

expect to cause physical harm to any person or property, and (4) is remorseful. However, as appellee contends, appellant sexually abused his family member victim multiple times over a minimum of 17 months to a maximum of 7 years. Regardless of whether he expected to cause harm, the victim did in fact suffer significant psychological harm, and, at the time of sentencing, lived in a residential treatment facility.

**{¶28}** We additionally recognize that the time period specified in the 4 counts of unlawful sexual misconduct with a minor (January 1, 2023, through May 1, 2024) to which appellant pleaded guilty involved multiple incidents during the time the victim was 13-14 years of age. However, other counts in the same indictment charged appellant with sexual abuse of the victim as early as age 10. And, at the sentencing hearing, the trial court observed that the victim reported that the sexual abuse began "when she was approximately 7 years old, and it continued." The court further noted that appellant encouraged the victim to download and use pornographic sites on her phone and stated, "[I]n terms of danger to others, I will say this, well, first of all, the record indicates that there are statements that this was not the first victim in your family that you abused. You weren't charged with that, but it is the Court's concern about the danger you pose to others." The court also concluded that the damage to the victim "is significant,

she is in a residential treatment program because of the psychological harm that you caused as a result of long term abuse." Moreover, appellant acknowledged during his allocution: "I'm not sorry just to you, but I'm sorry to the victim and my sister, because not only what I did was terrible but her father wasn't around and I was like a fill in father for her, she just didn't lose a brother, but she lost that too." Although indicative of remorse, appellant also acknowledges that he was in loco parentis to his sister, which facilitated his abuse.

**{¶29}** The PSI recommendation stated:

Upon review of his criminal history, it is noted he has no prior felony convictions. He was assessed using the Ohio Risk Assessment System and scored 5. In reference to his primary criminogenic needs, he has nothing but low needs in each category. This assessment indicates he is a low risk to reoffend if his needs are not addressed. The defendant has pled guilty to a heinous crime that has life-long implications for the victim. She advised that she was seven (7) years old when the abuse started. Therefore, it is respectfully recommended that he be sentenced to a term of incarceration.

**{¶30}** The PSI further indicated that appellant "is obsessed with porn. . . it is on his computer and every video game he has. . . he has a modification on them for porn." In addition, the PSI indicated that appellant "had done something to [another family member] as well." That family member described how appellant "had raped and sexually assaulted him when [the victim] was in fifth grade." Text messages discussed in the PSI

portrayed appellant as admitting that, "I don't know what is wrong with me. . . There is just this other side that I can't control sometimes. It's almost like another half that takes control." Appellant did indeed attempt to characterize the child victim as initiating and welcoming the sexual abuse.

**{¶31}** In the PSI interview with the appellant, he stated: "My crimes are a few instances of sexual interactions with the victim who was under the age of consent and for letting an inappropriate relationship develop." Appellant described the "relationship" as being initiated by the victim and that he "was shocked at first but let it happen. . . for a few moments." Appellant firmly blamed the victim in his PSI interview, with the interviewer writing in the margin, "minimizes" with respect to his long-term sexual abuse of his sister.

**{¶32}** Appellant's aggregate sentence of ten years constituted half of the statutory maximum the trial court could have imposed for these four convictions. The plea agreement resulted in dismissal of one gross sexual imposition charge, as well as three more severe first-degree-felony rape charges, but Ohio law permitted the trial court to consider the dismissed charges and unindicted acts. See *State v. Cook*, 2007-Ohio-625, ¶ 69 (8th Dist.) (" 'Unindicted acts \* \* \* can be considered in sentencing without resulting in error when they are not the sole basis for the sentence' "); *State v. Clemons*, 2014-Ohio-4248, ¶

8 (2d Dist.) (trial court at sentencing may consider a defendant's uncharged yet undisputed conduct as well as facts related to charges dismissed under a plea agreement); *State v. Dixon*, 2022-Ohio-2807, ¶ 53 (In general, at sentencing a prosecutor may comment on the crime as a whole, including, as we point out above, uncharged crimes and charges dismissed pursuant to plea agreements.). See *State v. Staggs*, 2017-Ohio-7368, ¶ 15 (4th Dist.), citing *State v. Hansen*, 2012-Ohio-4574, ¶ 22 (7th Dist.), quoting *State v. Starkey*, 2007-Ohio-6702, ¶ 17 (7th Dist.); *State v. Cooley*, 46 Ohio St.3d 20, 35 (court can consider uncharged crimes as part of defendant's social history); *State v. France*, 2015-Ohio-4930, ¶ 20 (5th Dist.) (uncharged crimes and charges dismissed pursuant to plea agreements may be considered as factors during sentencing).

**{¶33}** Specifically, at the sentencing hearing regarding consecutive sentences, the trial court stated:

The Court is ordering that those sentences be served consecutively to one another for a total of 120 months. In reviewing this, the Court feels that consecutive sentences are necessary to protect the public from future crime, because, as I have indicated in my statements, there is not just one victim here, it's occurred over a long period of time. I think you've been trying to minimize the seriousness of this by trying to apply, in fact, I saw one reference in one of your statements to I think it was one family members that at some point she had made advances to you later on in the relationship which suggest that perhaps she was also - - and again, even though it may have been consensual under the law of the offense you committed the law says that children this age can't legally consent because

they don't have the maturity or the capability of knowing what is right and wrong and what is appropriate and inappropriate for them.

The Court feels that it's also necessary to punish you for this offense for these offenses because, again, I feel you have minimized the seriousness of our conduct and you emphasized how you have acted since you were arrested, and I won't deny that has been as far as the Court is concerned you have done everything that you've been required to do. And I'm sure that you listened to your counsel in that. But again, that just doesn't overcome what the offense is. And the Court feels that therefore the sentence is necessarily not only to protect the public and other children from future victimization of the crime, but also to punish you.

The Court finds that these sentences are not disproportionate to the seriousness of your offenses and the danger that you pose to the public. And again, this victim is in residential treatment, juvenile treatment due to the impact that your victimization has had upon her, and that is a serious impact on not deterring the public because that has to be paid for by the county.

The Court will find that these offenses were committed as part of a long term course of conduct and repeated victimization. If it had been a one time thing that is different, but in this case God knows how many times it happened. It happened over a long period of time. Now the offenses occurred here I think in a two year period but there were multiple offenses. And so, just one sentence for those multiple acts would not be sufficient because of the harm. And again, because it has been so great and again referencing the fact that it's a residential treatment this victim is having to undergo because of her victimization. And therefore, one single prison term is not sufficient to reflect the seriousness of your conduct because this is an unusually serious impact on a victim.

**{¶134}** Further, in the case sub judice, the sentencing entry

states:

The Court further finds that pursuant to Section 2929.12(B)(1) ORC, the following factors indicating that

the offender's conduct is more serious than conduct normally constituting the offense are present:

The victim suffered serious physical, psychological or economic harm (the court encircled "psychological").

. . .

The offender's relationship with the victim facilitated the offense.

**{¶35}** We highlight that the trial court did not list any factors pursuant to R.C. 2929.12(C) to indicate that the offender's conduct is less serious than conduct normally constituting the offense. Moreover, the entry further states:

If consecutive sentences are imposed, the Court hereby finds as follows:

Pursuant to Section 2929.14(C)(4) that the consecutive sentences are 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 the court also finds any of the following:

. . .

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 the courses of conduct adequately reflects the seriousness of the offender's conduct.

**{¶36}** Consequently, after our review in the case sub judice we conclude that the record does not clearly and convincingly fail to support the trial court's imposition of consecutive

sentences. R.C. 2953.08(G)(2)(a) allows for modification or vacation only when an appellate court "clearly and convincingly finds" that the evidence does not support the trial court's findings. *Glover* at ¶ 46; *Hughes* at ¶ 49. Thus, in light of the foregoing, we do not clearly and convincingly find that appellant's sentence is contrary to law.

{¶37} Therefore, for all the foregoing reasons, we overrule appellant's assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

## JUDGMENT ENTRY

It is ordered that the judgment be affirmed and appellant shall pay 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 Highland 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.

Hess, J. & Wilkin, J.: Concur in Judgment & Opinion

For the Court

BY: \_\_\_\_\_  
Peter B. Abele, Judge

## NOTICE TO COUNSEL

Pursuant to Local Rule No. 22, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.