

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-130655
	:	TRIAL NO. B-1303046
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
LANDON BOETTCHER,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Landon Boettcher was charged with three counts of importuning and two counts of disseminating matter harmful to juveniles. He pleaded guilty to two counts of importuning, both fifth-degree felonies, in exchange for the state's dismissal of the other charges. The trial court sentenced Boettcher to 12 months in prison on the first count of importuning and nine months in prison on the second count. It ordered the terms to be served consecutively, for a total sentence of 21 months in prison. Boettcher now appeals.

In three assignments of error, Boettcher challenges his 21-month prison sentence. He argues his sentence was contrary to law because the trial court failed to consider the seriousness and recidivism factors set forth in R.C. 2929.12(B)-(E) and

its findings were not supported by the record. He also argues the trial court abused its discretion in imposing a term of incarceration rather than community control.

After the effective date of 2011 Am. Sub. H.B. 86, this court no longer reviews felony sentences under an abuse-of-discretion standard. *State v. White*, 2013-Ohio-4225, 997 N.E.2d 629, ¶ 9 (1st Dist.). Instead, we apply the standard set forth in R.C. 2953.08(G). *Id.* at ¶ 11. Thus, we may only modify or vacate [a defendant's sentence] if we 'clearly and convincingly find' that either (1) the record does not support the mandatory sentencing findings, or (2) that the sentence is 'otherwise contrary to law.'" *Id.*

Contrary to Boettcher's assertions, the trial court's imposition of a 21-month prison sentence was not contrary to law. Prior to imposing Boettcher's sentence, the trial court expressly addressed the factors in R.C. 2929.11 and 2929.12. The trial court made the following findings: Boettcher was 28-years-old; he had a juvenile sexual-imposition charge in 2002; he had sent the 14-year-old victim pictures of his genitalia; and he had solicited her to send him nude pictures of herself. The court further found that the injury to the victim was worsened by her youth; that there was a statutory presumption of prison because importuning was considered a sex offense; and that Boettcher had shown no genuine remorse in connection with the offenses.

The court additionally found that even though his risk of sexually reoffending was moderate, bordering on the high range, Boettcher's immaturity and lack of social support increased his likelihood of seeking out potential victims to meet his emotional and sexual needs. The court, relying upon court clinic and presentence investigation reports, further found that Boettcher had regularly sought out relationships with underage individuals and that he had continued to seek out the 14-year-old victim despite warnings from the police to avoid her. Boettcher had

additionally failed to recognize the inappropriateness of his actions. Instead, he had justified his behavior by claiming to have been in love with the victim and by thinking of eventually marrying her.

The trial court acknowledged that the court clinic evaluation had recommended Boettcher be sent to River City for sex offender treatment, but the court stated that Boettcher had already completed sexual offender rehabilitation as a juvenile and his completion of the program had not prevented him from committing the current offenses. The court further found that Boettcher's lack of adult convictions did not outweigh the risk of recidivism shown by other factors. As a result, the trial court concluded that prison terms were appropriate for both offenses. The trial court's imposition of nine- and 12-month prison terms, moreover, was within the range of terms for the importuning offenses.

The trial court additionally made the necessary findings to impose consecutive sentences under R.C. 2929.14(C). *See State v. Alexander*, 1st Dist. Hamilton Nos. C-110828 and C-110829, 2012-Ohio-3349, ¶ 8-26. At the sentencing hearing, the trial court stated that consecutive terms were necessary to protect the public and/or punish Boettcher, and were not disproportionate to the seriousness of Boettcher's conduct and the danger he posed to the public. The trial court further stated that the harm caused by the offenses was so great or unusual that no single term would adequately reflect the seriousness of Boettcher's conduct and that his criminal history showed a need to protect the public.

Because the record reflects that the trial court expressly considered the seriousness and recidivism factors in R.C. 2929.12; it made the necessary findings for imposing consecutive sentences; and its findings were supported by the record, we cannot clearly and convincingly conclude that Boettcher's aggregate sentence is

OHIO FIRST DISTRICT COURT OF APPEALS

contrary to law. We, therefore, overrule Boettcher's first, second, and third assignments of error, and affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27.

HENDON, P.J., DINKELACKER AND FISCHER, JJ.

To the clerk:

Enter upon the journal of the court on April 18, 2014
per order of the court _____.
Presiding Judge