

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- VS -	:	CASE NO. 2014-A-0057
BRUCE E. LOFTIS,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Ashtabula County Court of Common Pleas, Case No. 14071.

Judgment: Affirmed.

Nicholas A. Iarocci, Ashtabula County Prosecutor, and *Shelley M. Pratt*, Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047-1092 (For Plaintiff-Appellee).

Bruce E. Loftis, pro se, PID: A273-640, Grafton Correctional Institution, 2500 South Avon Belden Road, Grafton, OH 44044 (Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} This criminal appeal is from a final judgment issued by the Ashtabula County Court of Common Pleas. Appellant, Bruce E. Loftis, contests the trial court's decision denying his motion to correct a void sentence. Appellant contends that he is entitled to be resentenced because the sentence imposed is not lawful. For the following reasons, the trial court's judgment is affirmed.

{¶2} Following a jury trial in April 1993, appellant was found guilty of one count

of felonious sexual penetration and one count of gross sexual imposition. The counts were merged and appellant was sentenced solely on the count of felonious sexual penetration. Specifically, the court sentenced appellant to an indefinite term “of not less than eight (8) years nor more than twenty-five (25) years” in a state penitentiary.

{¶3} After serving over twenty years, appellant moved the trial court to correct an obvious error in his sentence. According to appellant, under the version of R.C. 2929.11 which was in effect when the underlying offense was committed in November 1992, the minimum term for a first-degree felony could only be four, five, six, or seven years. Thus, since the trial court imposed a minimum term of eight terms, appellant asserted that the sentencing judgment must be vacated and a new sentencing hearing held.

{¶4} After the state filed its response, the trial court issued its judgment denying the motion to correct the sentence. As the basis for its decision, the court found that, as of November 1992, felonious sexual penetration was not a first-degree felony, but was instead an *aggravated* first-degree felony. The trial court further found that, under the version of R.C. 2929.11 cited by appellant, eight years was a sanctioned minimum term for an aggravated first-degree felony.

{¶5} In appealing, appellant asserts one assignment of error for review:

{¶6} “The trial court abused its discretion and erred to the prejudice of appellant and violated his due course and due process rights guaranteed to him by the Fourteenth Amendment to the United States Constitution and Article I, Section 16 of the Ohio Constitution, when the trial court denied appellant’s motion to correct void sentence/judgment entry based solely upon the fact that the trial court had imposed an

unauthorized and void term, to-wit, 8 to 25 year indefinite sentence upon defendant for a first degree felony to which term had exceeded the minimum and maximum term that could have been imposed upon appellant for a first degree felony.”

{¶7} In his brief, appellant restates the substance of his motion to correct his sentence. Again, he states that, by imposing eight years as the minimum term of his indefinite sentence, the trial court exceeded the scope of its authority under the then existing version of R.C. 2929.11. Appellant predicates his entire argument upon the premise that, at the time he committed the offense, it was a first-degree felony. Appellant’s premise is incorrect.

{¶8} Appellant’s conviction was based upon a November 1992 incident. Then, felonious sexual penetration was defined in R.C. 2907.12. Under this September 1989 version which remained in effect until September 1993, five months after appellant was convicted and sentenced, felonious sexual was an *aggravated* first degree felony.

{¶9} As of the dates relevant to appellant’s case, the version of R.C. 2929.11 had a section addressing sentencing for an *aggravated* first-degree felony. Subsection (B)(1) provided, in pertinent part:

{¶10} “(1) For an aggravated felony of the first degree:

{¶11} “(a) If the offender has not previously been convicted of or pleaded guilty to any aggravated felony of the first, second, or third degree, aggravated murder or murder, * * *, the minimum term, which may be imposed as a term of actual incarceration, shall be five, six, seven, eight, nine, or ten years, and the maximum term shall be twenty-five years; * * *.” R.C. 2929.11(B)(1).

{¶12} Thus, an eight-year minimum term is sanctioned. To this extent, the trial

court did not exceed the scope of its authority under R.C. 2929.11 in imposing appellant's sentence.

{¶13} Accordingly, since the denial of appellant's motion to correct his sentence was justified, his sole assignment of error is meritless. The judgment of the Ashtabula County Court of Common Pleas is affirmed.

TIMOTHY P. CANNON, P.J.,

COLLEEN MARY O'TOOLE, J.,

concur.