

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

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| STATE OF OHIO, | : | O P I N I O N |
| Plaintiff-Appellee, | : | |
| - VS - | : | CASE NO. 2015-T-0111 |
| LARRY BROOKS, | : | |
| Defendant-Appellant. | : | |

Criminal Appeal from the Trumbull County Court of Common Pleas, Case No. 2015 CR 00018.

Judgment: Affirmed.

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

Michael A. Partlow, 112 South Water Street, Suite C, Kent, OH 44240 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Larry Brooks, appeals his conviction and sentence on a single count of Gross Sexual Imposition in the Trumbull County Court of Common Pleas. The issue before this court is whether a court may impose the maximum sentence for fourth-degree Gross Sexual Imposition where there is minimal criminal

history or likelihood of recidivism. For the following reasons, we affirm the decision of the court below.

{¶2} On January 12, 2015, the Trumbull County Grand Jury returned an Indictment against Brooks, charging him with one count of Gross Sexual Imposition, a felony of the third degree in violation of R.C. 2907.05(A)(4) and (C)(1).

{¶3} On January 13, 2015, Brooks appeared in court and entered a plea of not guilty. Trial was scheduled for Monday, July 27, 2015.

{¶4} On Thursday, July 23, 2015, Brooks and the State entered into a Criminal Rule 11 agreement whereby Brooks entered a plea to an amended charge of fourth-degree Gross Sexual Imposition, in violation of R.C. 2907.05(A)(1) and (C)(1). The State set forth the following factual basis for the plea:

Specifically, this defendant, being the step grandfather of the minor victim in this case, her date of birth [being] March 29, 2008, did force her to masturbate him to completion in Trumbull County, specifically Hubbard City, Ohio. The State would have called the alleged victim herself, who is ready to testify today, would have called the victim's family, as well as law enforcement and medical testimony to prove its case.

{¶5} On September 1, 2015, a sentencing hearing was held. Counsel for Brooks argued for probation, based on his "minimal adult [criminal] history," his assessment as "low risk" in the pre-sentence investigation report, and the fact that Brooks is currently employed. Brooks did not address the court except to state: "Your

Honor, everything I think I've had to say you're already aware of, so I'll just leave it in your hands."

{¶6} The victim's mother addressed the court and described her daughter as having been "through hell," including nightmares and behavioral issues.

{¶7} The prosecutor argued for an eighteen-month prison sentence, as "this child is going to live with this for the next fifty years."

{¶8} The trial court imposed a prison term of eighteen months, noting the age of the victim, Brooks' relationship (step-grandparent) to the victim, and a lack of remorse. The court determined Brooks to be a Tier II sex offender, explained his registration requirements, and advised him that he would be subject to five years of post-release control upon release from prison.

{¶9} On September 11, 2015, the trial court memorialized Brooks' sentence in an Entry on Sentence.

{¶10} On October 9, 2015, Brooks filed a Notice of Appeal. On appeal, Brooks raises the following assignments of error:

{¶11} "[1.] The trial court erred and abused its discretion by denying the appellant's motion to withdraw his guilty plea."

{¶12} "[2.] The trial court erred by sentencing the appellant to the maximum term of incarceration available."

{¶13} On June 3, 2016, Brooks filed a Notice of Withdrawal of First Assignment of Error, indicating his intention that "[t]his appeal * * * proceed as to the sentencing issue only."

{¶14} Under the second assignment of error, Brooks challenges the trial court's imposition of an eighteen-month prison sentence.

{¶15} "For a felony of the fourth degree, the prison term shall be six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, or eighteen months." R.C. 2929.14(A)(4).

{¶16} A sentencing court is not required "to make any particular 'findings' before imposing a statutory maximum prison sentence." *State v. Whitt*, 2d Dist. Clark No. 2014-CA-125, 2016-Ohio-843, ¶ 8; *State v. Sutton*, 8th Dist. Cuyahoga Nos. 102300 and 102302, 2015-Ohio-4074, ¶ 74. Rather, the court has "full discretion to impose a prison sentence within the statutory range." *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1, paragraph three of the syllabus. The court is "merely * * * required to consider the principles and purposes of sentencing as well as the seriousness and recidivism factors." *Whitt* at ¶ 8; R.C. 2929.12(A) ("[i]n exercising that discretion, the court shall consider the factors set forth in divisions (B) and (C) of this section relating to the seriousness of the conduct, the factors provided in divisions (D) and (E) of this section relating to the likelihood of the offender's recidivism, and * * * any other factors that are relevant to achieving those purposes and principles of sentencing"). Moreover, "the trial court is not obligated * * * to give any particular weight or consideration to any sentencing factor." *State v. Holin*, 174 Ohio App.3d 1, 2007-Ohio-6255, 880 N.E.2d 515, ¶ 34 (11th Dist.).

{¶17} "The court hearing an appeal [of a felony sentence] shall review the record, including the findings underlying the sentence or modification given by the sentencing court." R.C. 2953.08(G)(2). "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 * * * if it clearly and convincingly finds * * * [t]hat the record does not support the sentencing court's findings under division * * * (C)(4) of section 2929.14, or * * * [t]hat the sentence is otherwise contrary to law." R.C. 2953.08(G)(2)(a) and (b).

{¶18} Where the sentence imposed does "not require the findings that R.C. 2953.08(G) specifically addresses * * *, it is fully consistent for appellate courts to review those sentences that are imposed solely after consideration of the factors in R.C. 2929.11 and 2929.12 under a standard that is equally deferential to the sentencing court." *State v. Marcum*, __ Ohio St.3d __, 2016-Ohio-1002, __ N.E.3d __, ¶ 23. "That is, an appellate court 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." *Id.*

{¶19} Brooks contends that the maximum sentence of eighteen months in his case is error in light of the determination that he is a low risk for recidivism, his minimal criminal history, and, "had the victim not been of tender years, the charge in the case would not necessarily have been a crime at all." Appellant's brief at 5. We disagree.

{¶20} Although Brooks scored low on the Ohio Risk Assessment System, the probation officer conducting the assessment noted that "the offender is in denial and clearly shows no remorse or sympathy for the victim."

{¶21} Brooks pled guilty to Gross Sexual Imposition based on his conduct in causing the victim to have sexual contact with him "by force or threat of force," rather than based on the age of the victim. R.C. 2907.05(A)(1). "Force" for the purposes of

the present case is demonstrated by Brooks' compulsion of the victim by virtue of his authority over her. See, e.g., *State v. Poling*, 11th Dist. Ashtabula No. 2008-A-0071, 2010-Ohio-1155, ¶ 79 (the step-grandparent "was sufficiently a figure of power and authority to the victim to overcome her will by fear or duress"). Regardless of her age, the pre-sentence report attests the victim was not a willing victim ("PaPa * * * made her do this") and the trial court was justified in considering the victim's age in assessing the seriousness of Brooks' conduct.

{¶22} In light of Brooks' lack of remorse, the young age of the victim, as well as his relationship (caregiver/grandparent) with the victim and the psychological harm caused, the record clearly and convincingly supports the sentence imposed. R.C. 2929.11(A) ("[t]he overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender").

{¶23} The second assignment of error is without merit.

{¶24} For the foregoing reasons, Brooks' conviction of and sentence for Gross Sexual Imposition are affirmed. Costs to be taxed against the appellant.

CYNTHIA WESTCOTT RICE, P.J.,

TIMOTHY P. CANNON, J.,

concur.