

**COURT OF APPEALS
THIRD APPELLATE DISTRICT
WYANDOT COUNTY**

STATE OF OHIO

CASE NUMBER 16-04-17

PLAINTIFF-APPELLEE

v.

OPINION

KENNETH S. REINHART

DEFENDANT-APPELLANT

CHARACTER OF PROCEEDINGS: Criminal Appeal from Common Pleas Court.

JUDGMENT: Judgment affirmed.

DATE OF JUDGMENT ENTRY: June 6, 2005.

ATTORNEYS:

**HOWARD A. ELLIOTT
Attorney at Law
Reg. #0034465
330 South Main Street
Findlay, OH 45840
For Appellant.**

**JONATHAN K. MILLER
Assistant Prosecuting Attorney
Reg. #0064743
137 S. Sandusky Avenue
Upper Sandusky, OH 43351**

Case No. 16-04-17

For Appellee.

Rogers, J.

{¶1} Defendant-Appellant, Kenneth S. Reinhart, appeals from a judgment of the Wyandot County Common Pleas Court, sentencing Reinhart on one count of domestic violence in violation of R.C. 2919.25(A), a felony of the fourth degree. Reinhart claims that the trial court violated his Sixth Amendment right to a trial by jury as articulated in *Blakely v. Washington* (2004), 124 S.Ct. 2531 when it imposed a prison term upon him based on findings not admitted by him or determined by a jury. Because *Blakely* does not apply to Ohio's sentencing scheme, we overrule his sole assignment of error and affirm the judgment of the trial court.

{¶2} In June of 2004, Reinhart was charged with knowingly causing or attempting to cause physical harm to a family member in violation of R.C. 2919.25(A). Because he had been previously convicted of a similar offense, the matter was charged as a felony of the fourth degree. R.C. 2919.25(D)(3). Eventually, Reinhart pled guilty to the sole charge. The trial court accepted his guilty plea and ordered a pre-sentence investigation.

{¶3} On November 17, 2004, the trial court conducted a sentencing hearing. After considering the pre-sentence report and all of the evidence in the record, the trial court found that Reinhart had caused physical harm to a person and that he had been previously convicted of a similar offense. The trial court

further stated that after considering the seriousness and recidivism factors in R.C. 2929.12, it found that Reinhart was not amenable to community control and that a prison term was consistent with the purposes and principles of sentencing. In explaining its reasoning behind imposing the prison term, the trial court stated:

Defendant has been convicted of three prior domestic violence charges; has a probation violation associated with a domestic violence conviction in 2000; has undergone counseling and treatment for alcohol abuse, yet has not responded favorably; has completed the Turning Point domestic violence prevention program, but has re-offended; has a pattern of alcohol abuse, which is proven by his past D.U.I and disorderly conduct offenses, but refuses to acknowledge that he has a problem; and has shown no remorse for his actions, which terrorized the children in the home and harmed and frightened the victim.

{¶4} Accordingly, the trial court sentenced Reinhart to six months in prison and gave him credit for five days served. It is from this sentence that Reinhart appeals, presenting the following assignment of error for our review.

Assignment of Error

The trial court in imposing sentence on the Defendant-Appellant's plea of guilty violated his constitutional right to a trial by jury when the court imposed a sentence beyond the statutory presumed community control sanctions by making fact findings that were not admitted to by the Defendant-Appellant or had not been determined by the verdict of a jury.

{¶5} In his sole assignment of error, Reinhart contends that the trial court violated his right to a trial by jury when it imposed a prison term upon him based on findings not admitted by him or submitted to a jury. Reinhart relies upon the holding in *Blakely* for this proposition. This Court has previously ruled that the

Case No. 16-04-17

holding in *Blakely* does not apply to Ohio's sentencing scheme. *State v. Trubee*, 3rd Dist. No. 9-03-65, 2005-Ohio-552, at ¶ 16-38. Therefore, because Reinhart's appeal is based exclusively on the argument that *Blakely* applies to Ohio's laws, his sole assignment of error overruled.

{¶6} Having found no error prejudicial to the appellant herein, in the particulars assigned and argued, we affirm the judgment of the trial court.

Judgment affirmed.

BRYANT and SHAW, JJ., concur.

r