

[Please also see 2007-Ohio-1218.]

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

HENRY WOLFE

Defendant-Appellant

JUDGES:

Hon. John W. Wise, P. J.

Hon. W. Scott Gwin, J.

Hon. John F. Boggins, J.

Case No. 05 CAA 12 0087

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common
Pleas, Case No. 05CR I 10 520

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

July 21, 2006

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

DAVID H. BIRCH
2 West Winter Street
Delaware, Ohio 43015

Wise, P. J.

{¶1} Appellant Henry Wolfe appeals the sentence imposed by the Delaware County Court of Common Pleas. The following facts give rise to this appeal.

{¶2} On October 14, 2005, the Delaware County Grand Jury indicted appellant on six counts of breaking and entering, fifteen counts of theft, six counts of vandalism, three counts of possessing criminal tools and one count of engaging in a pattern of corrupt activity. These charges were the result of appellant breaking into five area businesses. Appellant entered a plea of not guilty, at his arraignment, on October 31, 2005.

{¶3} This matter proceeded to a jury trial on November 15, 2005. Following deliberations, the jury found appellant guilty of the following charges: Counts 3 and 15, breaking and entering and vandalism of Delco Drive-Thru; Counts 4, 24 and 28, breaking and entering, vandalism and possession of criminal tools involving Midway Market; Counts 5 and 25, breaking and entering and vandalism involving Pit Crew Carry-Out and Count 31, engaging in a pattern of corrupt activity based on the underlying breaking and entering charges. The trial court sentenced appellant accordingly.

{¶4} Appellant appealed and sets forth the following assignment of error for our consideration:

{¶5} “I. THE TRIAL COURT ERRED IN THAT THE IMPOSITION OF A MAXIMUM SENTENCE IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND IS CONTRARY TO LAW.”

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{¶6} In his sole assignment of error, appellant maintains the maximum penalty, under the RICO statute, is inappropriate and against the manifest weight of the evidence. We disagree.

{¶7} Count 31 of the indictment charged appellant with engaging in a pattern of corrupt activity, a felony of the first degree. Appellant argues the trial court improperly sentenced him to the maximum sentence as to Count 31. R.C. 2929.14(A)(1) sets forth the penalty for a felony of the first degree. This statute provides as follows:

{¶8} “(1) For a felony of the first degree, the prison term shall be three, four, five, six, seven, eight, nine, or ten years.”

{¶9} The trial court sentenced appellant to an eight-year prison term for Count 31. This is not the maximum sentence permitted for a felony of the first degree. Accordingly, we find the trial court's sentence is not against the manifest weight of the evidence.

{¶10} Appellant's sole assignment of error is overruled.

{¶11} For the foregoing reasons, the judgment of the Court of Common Pleas, Delaware County, Ohio, is hereby affirmed.

By: Wise, P. J.

Gwin, J., and

Boggins, J., concur.

HON. JOHN W. WISE

HON. W. SCOTT GWIN

HON. JOHN F. BOGGINS

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IN THE COURT OF APPEALS FOR DELAWARE COUNTY, OHIO
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STATE OF OHIO

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-vs-

HENRY WOLFE

Defendant-Appellant

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JUDGMENT ENTRY

Case No. 05 CAA 12 0087

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Delaware County, Ohio, is affirmed.

Costs assessed to Appellant.

HON. JOHN W. WISE

HON. W. SCOTT GWIN

HON. JOHN F. BOGGINS