[Cite as *State v. George*, 2015-Ohio-3065.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

GURNEY L. GEORGE, JR.

Defendant-Appellant

JUDGES:
Hon. Sheila G. Farmer, P. J.
Hon. John W. Wise, J.
Hon. Patricia A. Delaney, J.

Case No. 14 CA 45

O P I N I O N

CHARACTER OF PROCEEDING: Criminal appeal from the Court of Common Pleas, Case No. 2013 CR 00298

JUDGMENT: Dismissed

DATE OF JUDGMENT ENTRY: July 29, 2015

APPEARANCES:

For Plaintiff-Appellee

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Wise, J.

{¶1}. Appellant Gurney L. George, Jr. appeals his convictions, in the Court of Common Pleas, Fairfield County, for kidnapping and gross sexual imposition. Appellee is the State of Ohio. The relevant procedural facts leading to this appeal are as follows.

{¶2}. On June 7, 2013, the Fairfield County Grand Jury indicted appellant on one count of rape (a first-degree felony), with a sexually violent predator specification, and one count of kidnapping (a first-degree felony), with a sexually violent predator specification and a sexual motivation specification.

{¶3}. Appellant, upon arraignment, entered pleas of not guilty to all counts and specifications.

{¶4}. On September 10, 2013, appellant filed a motion for competency evaluation and insanity defense. Following evaluations and a hearing, appellant, on April 11, 2014, was found competent to stand trial.

{¶5}. On July 8, 2014, appellant appeared with counsel and entered into a plea agreement with the State. In essence, appellant pled guilty to one count of kidnapping, a felony of the first degree, and gross sexual imposition, a felony of the fourth degree. The trial court thereupon sentenced appellant, pursuant to a joint sentencing recommendation, to nine years in prison on the kidnapping count and eighteen months on the GSI count, with the terms to run concurrently. *See* Judgment Entry, July 25, 2014. The court also provided appellant with PRC notification. *Id.*

{¶6}. On August 7, 2014, appellant filed a notice of appeal. He herein raises the following sole Assignment of Error:

{¶7}. "I. THE SENTENCE IMPOSED WAS CONTRARY TO LAW AND OTHERWISE AN ABUSE OF DISCRETION."

I.

{¶8}. In his sole Assignment of Error, appellant contends the trial court's sentence is contrary to law and an abuse of discretion.

{¶9}. R.C. 2953.08 governs appeals of sentences for felonies. *See State v. Hale,* 5th Dist. Perry No. 14-CA-00014, 2014-Ohio-5028, ¶ 24. Specifically, R.C. 2953.08(D)(1) states that "[a] sentence imposed upon a defendant *is not subject to review* under this section if the sentence is authorized by law, has been recommended jointly by the defendant and the prosecution in the case, and is imposed by a sentencing judge." (Emphasis added). In *State v. Underwood,* 124 Ohio St.3d 365, 2010–Ohio–1, 922 N.E.2d 923, the Ohio Supreme Court held that "[a] sentence is 'authorized by law' and is not appealable within the meaning of R.C. 2953.08(D)(1) only if it comports with all mandatory sentencing provisions." *Id.* at paragraph two of the syllabus.

{¶10}. In the case sub judice, appellant's sentences were ordered to run concurrently; thus, his focus is on the imposition of the maximum term for GSI and the "more than minimum" terms for GSI and kidnapping. We thus must consider the pertinent statutory provisions affecting the imposition of appellant's maximum and/or more than minimum sentences.

{¶11}. For several years after the Ohio Supreme Court's decision in *State v. Foster* (2006), 109 Ohio St.3d 1, we consistently held that judicial fact-finding was not required before a trial court could impose non-minimum, maximum or consecutive

prison terms. *See, e.g., State v. Williams,* Muskingum App. No. CT2009–0006, 2009–Ohio–5296, ¶ 19. Subsequently, by way of 2011 Am.Sub.H.B. No. 86, which became effective on September 30, 2011, the General Assembly expressed its intent to revive the statutory fact-finding provisions pertaining to the imposition of *consecutive* sentences that were effective pre-*Foster.* However, the provisions requiring findings for "maximum" and "more than minimum" sentences that the legislature did not intend to revive were explicitly repealed under H.B. 86. *See State v. White,* 1st Dist. Hamilton No. C–130114, 2013–Ohio–4225, ¶ 8. In other words, "[t]he trial court has full discretion to impose any sentence within the authorized statutory range, and the court is not required to make any findings or give its reasons for imposing maximum or more than minimum sentences." *State v. King,* 992 N.E.2d 491, 2013–Ohio–2021, ¶ 45 (2nd Dist.).

{¶12}. Therefore, for purposes of the limited parameters in the present appeal, because both sentences herein are within the statutory ranges for the pertinent degrees of felony offenses, we find they are "authorized by law." *See State v. Richardson*, 8th Dist. Cuyahoga No. 87886, 2007 WL 18792, ¶ 4. Furthermore, because the sentences were also rendered pursuant to a joint sentencing recommendation, we find the statutory bar to appellate review under R.C. 2953.08(D)(1) applies in this instance. *See*, *e.g.*, *State v. Tomlinson,* 4th Dist. Pickaway No. 07CA3, 2007–Ohio–4618.

{¶13}. Accordingly, we find we lack appellate jurisdiction over appellant's sole Assignment of Error.

{¶14}. For the reasons stated in the foregoing opinion, the appeal of the judgment of the Court of Common Pleas, Fairfield County, Ohio, is hereby dismissed.

By: Wise, J.

Farmer, P. J., and

Delaney, J., concur.

JWW/d 0630