

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-08-055

Appellee

Trial Court No. 2008CR0040

v.

Brian Kessler

DECISION AND JUDGMENT

Appellant

Decided: August 7, 2009

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, and
Gwen Howe-Gebers, Assistant Prosecuting Attorney, and
Jacqueline M. Kirian, Assistant Prosecuting Attorney, for appellee.

Scott T. Coon, for appellant.

* * * * *

SINGER, J.

{¶ 1} This appeal comes to us from the Wood County Court of Common Pleas wherein appellant, Brian Kessler, was convicted of aggravated trafficking in drugs, a violation of R.C. 2925.03(A)(1)(C)(1)(d) and a second degree felony.

{¶ 2} Following a guilty plea, appellant was sentenced to serve four years in prison and ordered to pay a mandatory fine in the amount of \$7,500. He now appeals setting forth the following assignments of error:

{¶ 3} "I. The trial court erred in failing to consider the appellant's present and future ability to pay the \$7,500.00 mandatory fine imposed by the court.

{¶ 4} "II. The trial court erred in abusing its discretion in sentencing the appellant to four years in the Ohio Department of Rehabilitation and Correction.

{¶ 5} In his first assignment of error, appellant contends that the court erred in imposing a \$7,500 fine without considering his ability to pay the fine.

{¶ 6} For certain crimes, the court must impose a mandatory fine unless the offender is indigent and is unable to pay. R.C. 2929.18(B)(1). Before imposing a financial sanction under R.C. 2929.18 or a fine under R.C. 2929.32, the court shall consider the offender's present and future ability to pay the amount of the sanction or fine. R.C. 2929.19(B)(6).

{¶ 7} The decision to impose or waive a fine rests within the sound discretion of the court and will not be reversed on appeal absent an abuse of that discretion. See *State v. Kruse*, 6th Dist. No. WD-05-001, 2006-Ohio-3179, ¶ 49, citing *State v. Gipson* (1998), 80 Ohio St.3d 626, 634. "The term 'abuse of discretion' connotes more than an error of law or of judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *State v. Adams* (1980), 62 Ohio St.2d 151, 157.

{¶ 8} In imposing the \$7,500 fine, the court acknowledged that appellant, age 22 at the time of sentencing, had filed an affidavit of indigency. The record shows that appellant had previously been employed and was living with his parents. He had attended college and did not suffer from any significant health problems. Accordingly, we conclude that the trial court did not err by determining that appellant was not unable to pay the fine. Appellant's first assignment of error is found not well-taken.

{¶ 9} In his second assignment of error, appellant contends that the court erred in sentencing him to four years in prison.

{¶ 10} In *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, paragraph seven of the syllabus, the Supreme Court of Ohio, in striking down parts of Ohio's sentencing scheme, held that "[t]rial courts have full discretion to impose a prison sentence within the statutory range and are no longer required to make findings or give their reasons for imposing maximum, consecutive, or more than the minimum sentences." Thus, an appellate court reviews felony sentences for an abuse of discretion. *Id.*

{¶ 11} Appellant was convicted of a second degree felony. Pursuant to R.C. 2929.14(A)(2), the prison term for a felony of the second degree shall be two, three, four, five, six, seven, or eight years. As appellant's sentence was within applicable statutory parameters, appellant's second assignment of error is found not well-taken.

{¶ 12} On consideration whereof, the judgment of the Wood County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, P.J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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