

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

State of Ohio

Court of Appeals No. OT-08-013

Appellee

Trial Court No. 05-CR-026

v.

Joshua D. McDade

DECISION AND JUDGMENT

Appellant

Decided: August 7, 2009

* * * * *

Mark Mulligan, Ottawa County Prosecuting Attorney, and
Lorrain R. Croy, Assistant Prosecuting Attorney, for appellee.

Andrew E. Mayle, for appellant.

* * * * *

SINGER, J.

{¶ 1} This appeal comes to us from the Ottawa County Court of Common Pleas wherein appellant, Joshua D. McDade, was resentenced, following a remand from this court, for three violations of child endangering.

{¶ 2} The facts relevant to this appeal are as follows. On February 23, 2007, this court affirmed appellant's convictions for illegal assembly or possession of chemicals for manufacture of drugs, a third degree felony in violation of R.C. 2925.041(A); illegal manufacture of drugs within the vicinity of a juvenile, a first degree felony in violation of R.C. 2925.04(A); possession of drugs, a fifth degree felony in violation of R.C. 2925.11(A); possession of drug paraphernalia, a first degree misdemeanor in violation of R.C. 2925.14(C)(1); and three counts of child endangering, a third degree felony in violation of R.C. 2912.22(B)(6). See *State v. McDade*, 6th Dist. Nos. OT-06-001, OT-06-004, 2007-Ohio-749.

{¶ 3} This court, however, vacated appellant's concurrent four year sentences for child endangering and remanded the matter to the trial court for resentencing on those offenses. Id. ¶ 73. Specifically, this court held that the trial court erred in finding that the seriousness factor of R.C. 2929.12(B)(6) existed for the child endangering offenses under R.C. 2919.22(B)(6).

{¶ 4} Appellant was resentenced on January 7, 2008, and he once again was sentenced to three, concurrent four-year prison terms for child endangering. Appellant now appeals setting forth the following assignment of error:

{¶ 5} "I. The trial court erred when on remand it imposed an identical sentence to the one this court previously reversed."

{¶ 6} Appellant contends that the court abused its discretion in sentencing him to the same sentence he received before his case was remanded. We disagree.

{¶ 7} 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.* An abuse of discretion implies that the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. When applying an abuse of discretion standard, an appellate court may not generally substitute its judgment for that of the trial court. See *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621.

{¶ 8} Appellant was sentenced for violating three, third degree felonies. Pursuant to R.C. 2929.14(A)(3), the prison term for a third degree felony shall be one, two, three, four, or five years. In resentencing appellant to three, four-year consecutive terms, the trial judge carefully avoided any application of R.C. 2919.22(B)(6), noting that his prior use of the statute had resulted in the remand. Appellant's sentence was within applicable statutory parameters. Accordingly, appellant's sole assignment of error is found not well-taken.

{¶ 9} The judgment of the Ottawa 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:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.