

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

State of Ohio

Court of Appeals No. L-08-1194

Appellee

Trial Court No. CR08-1366

v.

Tim Rehard

DECISION AND JUDGMENT

Appellant

Decided: February 12, 2010

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Timothy F. Braun, Assistant Prosecuting Attorney, for appellee.

Patricia Horner, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} This case is before the court on appeal from the judgment of the Lucas County Court of Common Pleas which, following a guilty plea on April 23, 2008, found appellant, Tim Rehard, guilty of one count of pandering sexually oriented matter involving a minor, in violation of R.C. 2907.322(A)(1), a felony of the second degree,

and three counts of gross sexual imposition, in violation of R.C. 2907.05(A)(4) and (B), each felonies of the third degree, and sentenced him to seven years in prison as to the pandering conviction and four years in prison as to one count of gross sexual imposition, to be served consecutively, for a total term of incarceration of eleven years. With respect to the remaining two counts of gross sexual imposition, the trial court ordered that, upon completion of sentence, appellant should be "conveyed to the Lucas County Correctional Center, for sentencing to community control, in count 9 and count 10. Five years of community control, along with terms and conditions, will be imposed, as to count 9, and count 10."

{¶ 2} A nolle prosequi was entered as to the remaining six charges of which appellant had been indicted. The trial court also found that appellant was not a proper candidate for placement in a program of shock incarceration, pursuant to R.C. 2929.14(K). Having found that appellant had, or reasonably may be expected to have, the means to pay all or part of the applicable costs of supervision, confinement, assigned counsel, and prosecution as authorized by law, the trial court ordered appellant to reimburse the state of Ohio and Lucas County for these incurred costs and ordered appellant to pay costs assessed pursuant to R.C. 9.92(C), 2929.18 and 2951.021. The trial court further found that appellant was a Tier II child victim offender and ordered that appellant would be required to report for a period of 25 years with in-person verification every 180 days.

{¶ 3} On appeal, appellant raises the following assignments of error:

{¶ 4} 1. "The community control portion of defendant's sentence failed to meet the statutory requirements."

{¶ 5} 2. "The trial court abused its discretion sentencing defendant."

{¶ 6} In appellant's first assignment of error, appellant argues that the trial court failed to inform him, when imposing community control, of the specific prison term he would face if he violated any term or condition of community control. Having failed to include this information, appellant argues that the trial court failed to strictly comply with R.C. 2929.19(B)(5). We agree.

{¶ 7} As set forth in *State v. Brooks*, 103 Ohio St.3d 134, 2004-Ohio-4746, paragraph one of the syllabus, a trial court sentencing an offender to a community control sanction is required to deliver the statutorily detailed notifications in R.C. 2929.19(B)(5) at the sentencing hearing. R.C. 2929.19(B)(5) states that when a sentencing court determines that a community control sanction should be imposed, "the court shall impose a community control sanction [and] * * * notify the offender that, if the conditions of the sanction are violated, if the offender commits a violation of any law, or if the offender leaves this state without the permission of the court or the offender's probation officer, the court may impose a longer time under the same sanction, may impose a more restrictive sanction, or may impose a prison term on the offender and shall indicate the specific prison term that may be imposed * * *." Strict compliance with R.C. 2929.19(B)(5) is required. *Brooks*, 2004-Ohio-4746, ¶ 24.

{¶ 8} In this case, the trial court stated that appellant would be placed on community control for five years following his release from prison, but did not notify appellant regarding the consequences if he failed to abide by the terms and conditions of community control, committed a violation of any law, or left the state without permission. Accordingly, we find appellant's first assignment of error well-taken.

{¶ 9} Appellant argues in his second assignment of error that the trial court abused its discretion in sentencing appellant. Specifically, appellant argues that the trial court failed to consider the purposes and principles of felony sentencing guidelines as set forth by R.C. 2929.11 and 2929.12. We disagree.

{¶ 10} In reviewing a sentence on appeal, this court must determine whether the trial court abused its discretion in sentencing appellant. As the Ohio Supreme Court has previously stated, "[t]he 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. In determining the latitude given a trial court in imposing a sentence, the Ohio Supreme Court held that, "trial 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." *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, ¶ 100. "A trial court's discretion to impose a sentence within the statutory guidelines is very broad and an appellate court cannot hold that a trial court abused its discretion by imposing a severe sentence on a defendant where that sentence is

within the limits authorized by the applicable statute." *State v. Harmon*, 6th Dist. No. L-05-1078, 2006-Ohio-4642, ¶ 16.

{¶ 11} Where, as here, the trial court's sentence was within the statutory limits, we find that the trial court's sentence cannot be considered an abuse of discretion, absent some extraordinary circumstances. See *Harmon*, 2006-Ohio-4642, ¶ 16. In this case, the trial court specifically stated that sentencing was held pursuant to R.C. 2929.19, that appellant was afforded all his rights pursuant to Crim.R. 32, and that the court considered the record, oral statements, any victim impact statement, pre-sentence report, and the principles and purposes of sentencing under R.C. 2929.11 and other applicable statutory and case law. Appellant viewed pornographic materials involving children on the internet and then began touching the victim inappropriately, when the victim was only nine years old. The victim was the daughter of appellant's girlfriend. Since disclosing appellant's behavior, the victim felt unsafe in her home, causing the victim and her mother to move, the victim's school work suffered, and the victim underwent therapy for her victimization.

{¶ 12} Based on the foregoing, we find that the trial court did consider the facts and circumstances in this case when determining appellant's sentence and that no extraordinary circumstances exist to warrant a finding of abuse of discretion. Having found that the sentence imposed by the trial court was not unreasonable, arbitrary or unconscionable, we find appellant's second assignment of error not well-taken.

{¶ 13} Further, it has come to the court's attention sua sponte that the trial court's judgment of conviction, journalized on June 2, 2008,¹ does not comply with Crim.R. 32(C). The judgment of conviction must contain the guilty plea, the jury verdict, or the finding of the court upon which the conviction is based in addition to the sentence and the judge's signature. *Culgan v. Medina Cty. Court of Common Pleas*, 119 Ohio St.3d 535, 2008-Ohio-4609, ¶ 10. In other words, the judgment of conviction must state either that the defendant *pleaded guilty* or was *found guilty* by either the jury or the court. The trial court's judgment merely states that appellant "has been convicted of pandering sexually oriented matter involving a minor, * * *." This language is insufficient to comply with Crim.R. 32(C) and must be revised.

{¶ 14} On consideration whereof, this court finds that, but for the failure to strictly comply with R.C. 2929.19(B)(5), the sentence of the Lucas County Court of Common Pleas was not an abuse of discretion. Accordingly, this matter is reversed and remanded to the trial court for resentencing in compliance with R.C. 2929.19(B)(5), and for the revised judgment of conviction to comply with Crim.R. 32(C). The balance of appellant's sentence is affirmed. The parties are ordered to divide equally the costs of this appeal pursuant to App.R. 24.

JUDGMENT REVERSED IN PART
AND AFFIRMED IN PART.

¹There is a discrepancy between the document and the trial court's computerized journal, which states that the judgment entry of sentencing was journalized on June 3, 2008.

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, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, 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.
