

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

State of Ohio

Court of Appeals No. L-10-1092

Appellee

Trial Court No. CR0200902937

v.

William Clark

DECISION AND JUDGMENT

Appellant

Decided: September 16, 2011

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Michael J. Loisel, Assistant Prosecuting Attorney, for appellee.

Tim A. Dugan for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant appeals his sentence after a finding of guilty on a no contest plea for attempted kidnapping and attempted felonious assault in the Lucas County Court of Common Pleas. For the reasons that follow, we affirm.

{¶ 2} Appellant is William Clark. According to appellant's wife, on September 15, 2009, appellant attacked her while she was in the bathroom of the couple's Toledo home. Appellant's wife later told police that appellant placed her on the floor, assaulted her with a plastic coat hanger and tried to set fire to her clothing. When the couple's child attempted to enter the bathroom, appellant kicked the door shut, then broke a magazine rack, threatening his wife with a stick from the rack. When appellant's wife fought back, he struck her in the face with the piece of wood.

{¶ 3} According to appellant's wife, he then let her go from the bathroom and proceeded to talk on the cell phone for several hours. The next morning appellant's wife took their child to school after an admonition from appellant for her not to tell anyone what happened or "I will hit you with a baseball bat or kill you."

{¶ 4} On September 19, according to his wife, appellant placed a knife to her neck, insisting that she call his boss to demand money. After his wife spoke to appellant's boss, appellant became angry and began destroying things. He threw the knife and a laptop computer at his wife and then slammed the laptop into his wife's head. He then collected several knives and demanded his wife drive him to work. During the drive appellant attempted to steer the car into the path of an oncoming truck. When appellant left the car at his workplace, his wife called his boss and asked that he be detained. She then contacted police.

{¶ 5} On October 10, 2009, the Lucas County Grand Jury handed down a four count indictment, charging appellant with kidnapping, a first degree felony, attempted

felonious assault, a third degree felony, felonious assault, a second degree felony, and domestic violence, a first degree misdemeanor. Appellant initially entered a plea of not guilty to all counts, but, following negotiations, agreed to plead no contest to an amended attempted kidnapping charge, a second degree felony, and attempted felonious assault, a third degree felony. The remaining counts were to be dismissed.

{¶ 6} On February 23, 2010, following a hearing, the trial court accepted appellant's plea, found him guilty of the amended charges and ordered a presentencing investigation. On March 9, 2010, the trial court sentenced appellant to a seven year term of incarceration for the attempted kidnapping and a five year term for the attempted felonious assault. The court ordered that the sentences be served consecutively.

{¶ 7} From the trial court's judgment of conviction, appellant now brings this appeal. Appellant sets forth the following two assignments of error:

{¶ 8} "A. The Trial Court imposed a sentence contrary to law.

{¶ 9} "B. The Trial Court unreasonably sentenced Appellant to near maximum consecutive sentences."

I. Revival of Sentencing Factors

{¶ 10} In his first assignment of error, appellant notes that the trial court failed to state mandatory factual findings for imposing consecutive sentences pursuant to R.C. 2929.14. Appellant concedes that this provision was held unconstitutional in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, ¶ 83, but insists that the requirement was

revived when the Supreme Court of the United States found a nearly identical statute constitutional in *Oregon v. Ice* (2009), 555 U.S. 160.

{¶ 11} This argument has been considered and rejected by the Supreme Court of Ohio. *State v Hodge*, 128 Ohio St.3d 1, 2010-Ohio-6320, paragraph two of the syllabus. Accordingly, appellant's first assignment of error is not well-taken.

II. Unreasonable Sentence

{¶ 12} In his second assignment of error, appellant maintains that the trial court abused its discretion in imposing near maximum, consecutive sentences for appellant's offenses.

{¶ 13} "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.

{¶ 14} "Where * * * 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. * * *." *State v. Rehard*, 6th Dist. No. L-08-1194, 2010-Ohio-470, ¶ 10-11.

{¶ 15} There is no dispute that the sentence imposed is within the statutory range. In its sentencing entry and in greater detail during the sentencing hearing the trial court explained that it had considered the statutory principles and purposes of sentencing and balanced the statutory seriousness and recidivism factors. From the record as a whole we find no extraordinary circumstances to suggest that the sentence imposed represents an attitude by the court that was unreasonable, arbitrary or unconscionable. Accordingly, appellant's remaining assignment of error is not well-taken.

{¶ 16} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. It is ordered that appellant pay the court 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, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.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>.