

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

State of Ohio

Court of Appeals No. WD-11-003

Appellee

Trial Court No. 2010CR0201

v.

James Bowen

DECISION AND JUDGMENT

Appellant

Decided: July 27, 2012

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney,
Heather M. Baker and David E. Romaker, Jr., Assistant
Prosecuting Attorneys, for appellee.

Eric Allen Marks, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from an October 27, 2010 judgment of the Wood County Court of Common Pleas, which found appellant guilty of one count of rape and one count of sexual battery. The victim was appellant's minor daughter. Appellant was sentenced to eight years of incarceration on the rape conviction and three years of incarceration on

the sexual battery conviction. The sentences were ordered to be served consecutively, for a total term of incarceration of eleven years. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant sets forth the following assignment of error:

1. THE TRIAL COURT ABUSED ITS DISCRETION BY
IMPOSING AN ELEVEN YEAR PRISON TERM WITHOUT
CONSIDERING THE STATUTORY GUIDELINES OF R.C. 2929.12.

{¶ 3} Notably, the victim in this matter is appellant's daughter, a minor. On April 5, 2010, appellant entered his daughter's bedroom between the hours of 3:00 a.m. and 4:00 a.m. Appellant removed his daughter's pajama bottoms and underwear. He digitally penetrated her. He subsequently engaged in sexual intercourse with her. Appellant's grandson was also present in the room during the rape. The victim disclosed the incident to her boyfriend. He contacted a school guidance counselor and reported the rape. The victim's school guidance counselor notified the police. The victim confirmed the events.

{¶ 4} On April 22, 2010, appellant was indicted on one count of rape, a violation of R.C. 2907.02(A)(2), a felony in the first degree, two counts of sexual battery, a violation of R.C. 2907.03(A)(5), felonies in the third degree, and one count of gross sexual imposition, a violation of R.C. 2907.05(A)(1), a felony of the fourth degree.

{¶ 5} On October 26, 2010, appellant withdrew his previous pleas of not guilty and entered pleas of guilty on one count of rape and one count of sexual battery pursuant

to a plea agreement. The remaining counts were dismissed. Appellant was found guilty. At sentencing, appellant was classified as a Tier III sex offender. On January 7, 2011, appellant filed a timely appeal to this court.

{¶ 6} In his single assignment of error, appellant argues that the trial court abused its discretion in sentencing him to an eleven-year term of incarceration. In support, although appellant concedes that his crimes are serious, inflicted serious injury, and entailed his abuse of his role as the victim's father, he asserts that the sentence was nevertheless improper as it imposed, "73% of the time available," referencing the possible maximum fifteen-year sentence.

{¶ 7} The applicable standard of review for felony sentences is an abuse of discretion standard. An abuse of discretion is more than an error of law or judgment. It implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140, 1142 (1983). When reviewing the appropriateness of a felony sentence, the court must use a two-step approach. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, 126.

{¶ 8} The first step in this approach is to, "examine the sentencing court's compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to the law." *Id.* If the first prong is satisfied then, "the second step requires that the trial court's decision be reviewed under an abuse of discretion standard." *State v. Stevens*, 179 Ohio App.3d 97, 100, 2008-Ohio-5775, 900 N.E.2d 1037, 1040.

{¶ 9} Appellant unconvincingly claims that because the trial court imposed a sentence of eleven years out of a potential maximum fifteen years of incarceration, the trial court implied that his offenses were more serious and he was more likely to commit future crimes without proper support for the less than maximum sentencing decision. Again, appellant simultaneously concedes that his criminal acts were serious, inflicted serious mental injury on the victim, and that he used his status and role as a father to facilitate these crimes. Appellant alleges that the trial court somehow failed to properly consider the recidivism factors of R.C. 2929.12 in deciding his term of incarceration. The record lacks any objective evidence in support of appellant's claim.

{¶ 10} The record shows that the trial court properly applied the R.C. 2929.12 guidelines to the case and shows that the trial court expressly factored into account at sentencing the severity of the crime, the abuse of the special relationship between parent and child, and the need to protect the victim. In addition, the trial court's sentence was well within the statutory parameters for the crimes committed. We find appellant's assignment of error not well-taken.

{¶ 11} 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, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

<p>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.</p>
