

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

State of Ohio

Court of Appeals No. L-11-1166

Appellee

Trial Court No. CR0201101081

v.

Dudley Cole

DECISION AND JUDGMENT

Appellant

Decided: September 21, 2012

* * * * *

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

Nicole I. Khoury, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} This appeal is from the May 31, 2011 judgment of the Lucas County Court of Common Pleas, which sentenced appellant, Dudley Cole, to five years of imprisonment, the maximum term allowed. Appellant was convicted by the court, following the entry of a no contest plea, to two counts of violating R.C. 2907.05(A)(4)

and (C), gross sexual imposition, felonies of the third degree. Upon consideration of the assignment of error, we affirm the decision of the lower court. Appellant asserts the following single assignment of error on appeal:

The Trial Court Abused its Discretion by Imposing a Sentence that was the maximum sentence. [sic]

{¶ 2} On appeal, appellant argues his rights protected by the Sixth Amendment to the United States Constitution were violated when the trial court did not impose the minimum sentence. Appellant contends, based upon the factors of R.C. 2929.11 and 2929.12, the facts of this case do not warrant a finding that he committed a form of this offense that would require anything but the minimum sentence.

{¶ 3} This argument challenges whether the trial court abused its discretion in sentencing. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶ 4. 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 (1983), quoting *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980).

{¶ 4} Appellant attempted to paint this crime as an isolated incident arising out of his long history of anxiety, depression, and anti-social behavior. Appellant was remorseful and willing to seek treatment for his behavior. Appellant also sought leniency and a noncustodial sentence due to his advanced age and his wife's need for support. The father of the victim presented a victim impact statement explaining how the victim has

suffered as a result of the crimes committed by appellant, her grandfather, and how her family has been negatively impacted as well.

{¶ 5} The court referenced the considerations it was required to make under R.C. 2929.11 and 2929.12. The court indicated that the sentence imposed was an attempt to make restitution to the victim as well as deter other offenders. The court also indicated that the maximum prison term was necessary despite the fact that appellant was a first-time offender because of the nature of the crime and the factual circumstances of this case. Thus, we find the trial court considered the applicable statutory provisions and the facts of this case before imposing a sentence. Appellant has failed to demonstrate that the court's sentence was unreasonable, arbitrary, or unconscionable. Appellant's sole assignment of error is not well-taken.

{¶ 6} Having found that the trial court did not commit error prejudicial to appellant, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to 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

Mark L. Pietrykowski, 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>.