

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

State of Ohio

Court of Appeals No. S-11-029

Appellee

Trial Court No. 10 CR 390

v.

Antonio Hernandez

DECISION AND JUDGMENT

Appellant

Decided: November 16, 2012

* * * * *

Thomas L. Stierwalt, Sandusky County Prosecuting Attorney,
and Norman P. Solze, Assistant Prosecuting Attorney, for appellee.

Eric J. Allen, for appellant.

* * * * *

SINGER, P.J.

{¶ 1} Appellant appeals the imposition of the maximum sentence, imposed for attempted rape of a child under age 13, by the Sandusky County Court of Common Pleas. Because we conclude that the trial court did not abuse its discretion in sentencing appellant to the maximum term allowable by law, we affirm.

{¶ 2} On April 22, 2010, the Sandusky County Grand Jury handed down a three-count indictment charging appellant, Antonio Hernandez, with two counts of gross sexual imposition and one count of rape, all alleged to have involved a victim under age 13. Appellant initially entered a plea of not guilty to all counts, but, following negotiations, agreed to plead guilty to a single count of attempted rape of a victim under age 13.

{¶ 3} Following a plea colloquy, the trial court accepted appellant's plea, found him guilty of the amended charge and ordered a presentence investigation. At sentencing, the court ordered that appellant be incarcerated for a period of eight years, the maximum sentence allowable for a second degree felony. R.C. 2929.14(A)(2). The court also adjudicated appellant as a tier three sex offender. From this judgment of conviction, appellant brings this appeal. Appellant sets forth a single assignment of error:

The trial court erred in sentencing appellant to the maximum sentence for a second degree felony.

{¶ 4} Appellant complains that the court's statements during the sentencing hearing revealed that, in fashioning its sentence, the court gave too much weight to appellant's lengthy juvenile and misdemeanor record and ignored the fact that appellant had not previously been convicted of a sex offense. Moreover, appellant insists, the presentence investigation report fails to support the court's conclusion that a maximum sentence was appropriate.

{¶ 5} On an appeal from felony sentencing judgment, a reviewing court must first determine whether the sentence imposed complies with the applicable sentencing rules

and statutes. If the sentence is clearly and convincingly contrary to law, it must be vacated. When the sentence is in conformity with the law, the sentencing decision is reviewed under an abuse of discretion standard. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶ 4. An abuse of discretion is more than a mistake of law or a lapse of judgment, the term connotes that the court's attitude is arbitrary, unreasonable or unconscionable. *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980).

{¶ 6} Trial courts are not required to make findings or give reasons for imposing maximum, consecutive or more than minimum sentences. *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, ¶ 100. A sentencing court must consider the guidance provided in R.C. 2929.11 and 2929.12, but it is unnecessary that the court make specific findings or give reasons for imposing a sentence at the sentencing hearing. *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1, ¶ 38.

{¶ 7} A sentencing term of eight years imprisonment is permissible for a second degree felony. R.C. 2929.14(A)(2).

{¶ 8} The most important thing that the court said at sentencing was that it had considered the statutory sentencing guidance articulated in R.C. 2929.11 and 2929.12. There is nothing in the record to suggest otherwise. Neither is there anything in the case to suggest that the court's final sentencing decision was arbitrary, unreasonable or unconscionable. Accordingly, appellant's sole assignment of error is not well-taken.

{¶ 9} On consideration whereof, the judgment of the Sandusky 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, P.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>
