

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

State of Ohio

Court of Appeals No. L-12-1227

Appellee

Trial Court No. CR0201201441

v.

Michael Tabb

DECISION AND JUDGMENT

Appellant

Decided: July 26, 2013

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
David F. Cooper, Assistant Prosecuting Attorney, for appellee.

Tim A. Dugan, for appellant.

* * * * *

YARBROUGH, J.

I. Introduction

{¶ 1} Appellant, Michael Tabb, appeals the judgment of the Lucas County Court of Common Pleas, finding him guilty of child endangerment and sentencing him to a

prison term of five years and a mandatory three-year term of postrelease control. We affirm.

A. Facts and Procedural Background

{¶ 2} In March 2012, appellant went to St. Anne’s Hospital to get medical treatment for an infected cut on his finger. Unhappy with the care he was receiving, appellant left the hospital with his IV still intact. The hospital contacted Sylvania Township Police to ensure appellant’s safety. Police visited appellant’s home on March 4. When Officer Tollison entered the home, he saw that the two-year-old child, J.N., was covered with bruises. Officer Tollison insisted the child’s mother take him to the hospital immediately. J.N. had bruises on his face, legs, back, toes, and penis, as well as a cigarette burn on his hand. When asked who hurt him, J.N. said, “Mike did it.”

{¶ 3} Appellant was arrested and charged with child endangerment pursuant to R.C. 2919.22(B)(1), (E)(1), and (E)(2)(d), a felony of the second degree. Appellant entered an initial plea of not guilty. After careful consideration, appellant withdrew his not guilty plea and entered an *Alford* plea pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970). In exchange for that plea, the state agreed not to pursue an indictment on similar conduct that took place prior to the current incident.

{¶ 4} Following the plea change, the trial court found appellant guilty and sentenced him to a five-year prison term with an additional mandatory three years of postrelease control. The trial court found that appellant was not remorseful, never taking responsibility for his actions. This appeal followed.

B. Assignment of Error

1. The trial court abused its discretion in sentencing appellant to a five-year prison term.

II. Analysis

{¶ 5} In his sole assignment of error, appellant argues that the trial court abused its discretion in sentencing him to a five-year prison term. Appellant argues that, due to his extensive history of drug abuse, he needed to be placed in an intensive treatment and rehabilitation program. Furthermore, appellant notes that his record only contains two adult misdemeanors.

{¶ 6} In reviewing a felony sentence, the appellate court uses a two-pronged approach. First, the court must ensure that the trial court adhered to all applicable rules and statutes in imposing the sentence to determine whether the sentence given is clearly and convincingly contrary to the law. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶ 4. Second, assuming the trial court has acted in accordance with all applicable rules and statutes, the exercise of its discretion in choosing a sentence within the permissible statutory range is subject to review for an abuse of discretion. *Id.* at ¶ 17. An abuse of discretion suggests that the trial court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 7} Because a five-year sentence is within the permissible statutory range for a felony of the second degree, it is clear that, under the first prong, appellant's sentence is not contrary to the law.

{¶ 8} Turning to whether the trial court abused its discretion, we note that the court considered the record, oral statements, and presentence report, as well as the principles and purposes of sentencing under R.C. 2929.11, and balanced the seriousness and recidivism factors under R.C. 2929.12. The trial court found that appellant did not take full responsibility for his actions, never admitting that he endangered the child in the presentence investigation report. In addition, the court found that appellant did not seem remorseful for his actions. Lastly, while the trial court found that drug treatment would be helpful for appellant, it found that appellant was not amenable to community control. In considering the circumstances, including the nature of the crime and the age of the victim, we do not find that the trial court's decision to sentence appellant to five years in prison was unreasonable, arbitrary, or unconscionable.

{¶ 9} Accordingly, appellant's assignment of error is not well-taken.

III. Conclusion

{¶ 10} For the foregoing reasons, we affirm the judgment of the Lucas County Court of Common Pleas. 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.

Arlene Singer, P.J.

JUDGE

Stephen A. Yarbrough, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

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