

[Cite as *State v. Richardson*, 2007-Ohio-8.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 87886

STATE OF OHIO

PLAINTIFF-APPELLEE

VS.

ALLEN RICHARDSON

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-461998

BEFORE: McMonagle, J., Celebrezze, A.J., and Sweeney, J.

RELEASED: January 4, 2007

JOURNALIZED:

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CHRISTINE T. McMONAGLE, J.:

{¶ 1} Defendant-appellant, Allen Richardson, appeals his sentence. For the reasons set forth below, we affirm.

{¶ 2} A Cuyahoga County Grand Jury indicted appellant in counts one through four, respectively, relative to the death of Robert Earl Edwards, as follows: aggravated murder, felony-murder, felonious assault (serious physical harm) and felonious assault (by means of a deadly weapon or dangerous ordnance). Each of those four counts contained both three-year firearm and criminal gang activity specifications. Appellant was also indicted in counts five through seven,

respectively, relative to harm caused to Jane Doe, as follows: attempted murder, felonious assault (serious physical harm) and felonious assault (by means of a deadly weapon or dangerous ordnance). Each of those three counts contained three-year firearm specifications. The eighth and final count of the indictment charged appellant with having a weapon while under disability.

{¶ 3} After negotiations with the State, appellant pleaded guilty to an amended count two, involuntary manslaughter, with a three-year firearm specification, and count six, as indicted, felonious assault, with a three-year firearm specification. The remaining counts and specifications contained in the indictment were nolle. As part of the plea negotiation, appellant agreed to an 18-year recommended sentence: nine years for the involuntary manslaughter, six years for the felonious assault, and a merged three-year firearm specification term, all to run consecutively. The trial court accepted appellant's plea and sentenced him to the agreed recommended 18 years. Appellant now appeals, contending in his sole assignment of error that the trial court erred in sentencing him to consecutive terms because it did not follow the statutory requirements that were in effect at the time he was sentenced.

{¶ 4} Pursuant to R.C. 2953.08 (D)(1), "[a] sentence imposed upon a defendant is not subject to review under this section if the sentence is authorized by law, has been recommended jointly by the defendant and the prosecution in the

case, and is imposed by a sentencing judge.” A sentence is authorized by law if the prison term does not exceed the maximum term prescribed by statute for the offense. *State v. Walker* (Dec. 8, 2001), Cuyahoga App. No. 79630. The statutory range for involuntary manslaughter is three to ten years. R.C. 2903.04 and 2929.14(A)(1). Appellant was sentenced to nine years for this charge. The statutory range for felonious assault is two to eight years. R.C. 2903.11 and 2929.14(A)(2). Appellant was sentenced to six years for this charge. Appellant was also sentenced to the mandatory three-year term for the merged firearm specifications. R.C. 2941.145. Thus, appellant’s sentence was in the statutory ranges and, therefore, authorized by law.

{¶ 5} Further, the sentence imposed by the sentencing judge was recommended jointly by appellant and the State. The Supreme Court of Ohio has held that “[o]nce a defendant stipulates that a particular sentence is justified, the sentencing judge need not independently justify the sentence.” *State v. Porterfield*, 106 Ohio St.3d 5, 2005-Ohio-3095, 829 N.E.2d 690, at paragraph three of the syllabus.

{¶ 6} “The General Assembly intended a jointly agreed-upon sentence to be protected from review precisely because the parties agreed that the sentence is appropriate.” *Porterfield*, supra, at ¶25. The theory behind the refusal to review agreed-upon sentences is still valid, even after *State v. Foster*, 109 Ohio St.3d 1,

2006-Ohio-856, 845 N.E.2d 470, wherein the Supreme Court of Ohio declared certain portions of Ohio’s sentencing statutes unconstitutional. See *State v. Kimble*, Trumbull App. No. 2005-T-0085, 2006-Ohio-6096; *State v. Woods*, Clark App. No. 05CA0063, 2006- Ohio-2325; see, also, *State v. Covington*, Muskingum App. No. CT2005-0038, 2006-Ohio-2700; *State v. Hammond*, Cuyahoga App. No. 86192, 2006-Ohio-1570.

{¶ 7} In sum, because appellant’s sentence was authorized by law and jointly recommended by him and the State, it is not subject to appellate review pursuant to R.C. 2953.08(D). Accordingly, appellant’s sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant’s conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

CHRISTINE T. McMONAGLE, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
JAMES J. SWEENEY, J., CONCUR

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