

[Cite as *State v. Maynard*, 2015-Ohio-1744.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 101896**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**MARQUISE E. MAYNARD**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
AFFIRMED

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-14-581404-A

**BEFORE:** McCormack, J., Jones, P.J., and Kilbane, J.

**RELEASED AND JOURNALIZED:** May 7, 2015

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TIM McCORMACK, J.:

{¶1} Defendant-appellant, Marquise Maynard, appeals his sentence imposed on June 17, 2014. For the following reasons, we affirm.

{¶2} Maynard was indicted on four counts of gross sexual imposition, in violation of R.C. 2907.05(A)(4), and four counts of kidnapping, in violation of R.C. 2905.01(A)(4). On May 12, 2014, he withdrew his motion to dismiss the indictment and his previously entered not guilty plea. He pleaded guilty to one count of gross sexual imposition, in violation of R.C. 2907.05(A)(1), and one count of attempted abduction, in violation of R.C. 2923.02 and 2905.02(A)(1), as amended. In exchange for the plea, the state dismissed the remaining charges. The state agreed that the two offenses merged, and it elected to proceed with sentencing on the gross sexual imposition charge. On June 17, 2014, the trial court sentenced Maynard to 16 months imprisonment and found him to be a sexually oriented offender.

{¶3} At the sentencing, the court noted that it ordered a psychiatric clinic mitigation in penalty report and a presentence investigation report, and counsel indicated that they reviewed the reports. The court heard a statement from Maynard's attorney, who offered factors in support of mitigation for the court's consideration. Defense counsel then advised the court that Maynard's brother, Terry Maynard, was available in the courtroom and wished to address the court. Counsel inquired of the court, "Would that be okay at this time?" to which the court replied, "No. Thank you." At that point, the court then heard from Maynard, who expressed remorse and offered an apology to the victim, who was not present in the courtroom. Following an additional statement from defense counsel, the state next addressed the court. In accordance with the victim's wishes, the state read the victim's statement to the court for its consideration. The trial court then imposed sentence.

{¶4} On appeal, Maynard claims that the trial court erred when it refused to permit his brother to address the court at the sentencing hearing. He also claims that defense counsel was ineffective for failing to renew the request to allow his brother to address the court.

{¶5} R.C. 2929.19(A) governs the requirements of a sentencing hearing. It provides as follows:

The court shall hold a sentencing hearing before imposing a sentence under this chapter upon an offender who was convicted of or pleaded guilty to a felony \* \* \*.

At the hearing, the offender, the prosecuting attorney, the victim or the victim's representative \* \* \*, and, with the approval of the court, any other person may present information relevant to the imposition of sentence in the case. The court shall inform the offender of the verdict of the jury or finding of the court and ask the offender whether the offender has anything to say as to why sentence should not be imposed upon the offender.

{¶6} According to R.C. 2929.19(A), any person other than the offender, counsel, or the victim, or the victim's representative, may present information relevant to the sentence only upon approval of the court. It is therefore within the court's discretion to permit the testimony of defense witnesses. *State v. Pempton*, 8th Dist. Cuyahoga No. 80255, 2002-Ohio-5831, ¶ 26 (finding the trial court had discretion to not allow defendant's family members to speak at sentencing); *State v. Turnage*, 8th Dist. Cuyahoga No. 79923, 2002-Ohio-1802, (Apr. 18, 2002) (finding the trial court did not abuse its discretion in precluding the testimony and report of a polygraph examiner offered by the defense for consideration at the sentencing hearing).

{¶7} Similarly, Crim.R. 32(A) provides that, at the time of imposing sentence, the trial court shall do all of the following:

- (1) Afford counsel an opportunity to speak on behalf of the defendant and address the defendant personally and ask if he or she wishes to make a statement in his or her own behalf or present any information in mitigation of punishment.
- (2) Afford the prosecuting attorney an opportunity to speak;
- (3) Afford the victim the rights provided by law;
- (4) In serious offenses, state its statutory findings and give reasons supporting those findings, if appropriate.

{¶8} Under Crim.R. 32(A)(1), a trial court must allow defense counsel and the defendant, if they wish, to address the court at sentencing. This rule, however, does not require a sentencing court to hear from defense witnesses. *State v. Skerness*, 5th Dist. Coshocton No. 09-CA-28, 2011-Ohio-188, ¶ 84. Moreover, under R.C. 2947.06(A)(1), a trial court “may hear testimony in mitigation of a sentence.” Whether to hear such testimony is at the discretion of the trial court. *State v. Anderson*, 172 Ohio App.3d 603, 2007-Ohio-849, 876 N.E.2d 632, ¶20 (11th Dist.).

{¶9} Here, Maynard has not demonstrated that the court abused its discretion in not allowing his brother to address the court at the sentencing hearing. As noted above, the court reviewed a psychiatric clinic mitigation in penalty report and a presentence investigation report prior to sentencing. The court also heard extensive statements from defense counsel, as well as Maynard himself, who expressed remorse for his actions and offered an apology to the victim.

{¶10} Maynard’s first assignment of error is therefore without merit.

{¶11} In his second assignment of error, Maynard claims that his counsel was ineffective for failing to renew his request to allow Maynard’s brother to testify on his behalf at sentencing. In order to establish a claim of ineffective assistance of counsel, Maynard must prove (1) his

counsel was deficient in some aspect of his representation, and (2) there is a reasonable probability that, were it not for counsel's errors, the result of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In Ohio, every properly licensed attorney is presumed to be competent, and therefore, a defendant claiming ineffective assistance of counsel bears the burden of proof. *State v. Smith*, 17 Ohio St.3d 98, 100, 477 N.E.2d 1128 (1985).

{¶12} Here, we previously found that the trial court did not err in failing to allow Maynard's brother to address the court at sentencing. It was entirely within the court's discretion to refuse to permit a defense witness to testify at sentencing, and the record demonstrates the court provided ample opportunity for Maynard and his counsel to present mitigating factors for the court's consideration. Defense counsel's failure to renew the request, therefore, does not demonstrate deficient performance. Moreover, Maynard failed to demonstrate how his brother's testimony would have changed his sentence.

{¶13} Maynard's second assignment of error is overruled.

{¶14} Judgment affirmed.

It is ordered that appellee recover of 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.

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TIM McCORMACK, JUDGE

LARRY A. JONES, SR., P.J., and  
MARY EILEEN KILBANE, J., CONCUR