

[Cite as *State v. Hall*, 2009-Ohio-4601.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 22788
vs.	:	T.C. CASE NO. 08CR869
GLENN D. HALL	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	

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O P I N I O N

Rendered on the 4th day of September, 2009.

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GRADY, J.:

{¶ 1} Defendant was indicted in 2008 on one count of gross
 sexual imposition involving a victim under age thirteen, R.C.
 2907.05(A)(4), a felony of the third degree. The incident had
 occurred some years earlier, in 1999 or 2000, and came to light
 only when the victim, who is Defendant's niece, revealed the

matter to a school counselor. Defendant entered a plea of guilty to the charge and was sentenced to a four year prison term and designated a Tier II sex offender.

{¶ 2} Defendant timely appealed to this court from his conviction and sentence. Defendant, who is represented by counsel in this appeal, filed his own pro se brief, also challenging his sentence. We do not consider pro se briefs filed by appellants who are represented by counsel on appeal.

FIRST ASSIGNMENT OF ERROR

{¶ 3} "THE TRIAL COURT ABUSED ITS DISCRETION IN IMPOSING A PRISON TERM OF FOUR YEARS ON THIS FIFTY-EIGHT YEAR OLD DEFENDANT WHEN THE CRIME OF CONVICTION WAS THE DEFENDANT'S FIRST OFFENSE OF ANY KIND, EVIDENCING AN ERROR IN JUDGMENT AND AN UNREASONABLE, ARBITRARY OR UNCONSCIONABLE ATTITUDE."

{¶ 4} In *State v. Jeffrey Barker*, Montgomery App. No. 22779, 2009-Ohio-3511, at ¶36-38, we wrote:

{¶ 5} "The trial court has full discretion to impose any sentence within the authorized statutory range, and the court is not required to make any findings or give its reasons for imposing maximum, consecutive, or more than minimum sentences. *State v. Foster*, 109 Ohio St.3d 1, 845 N.E.2d 470, 2006-Ohio-856, at paragraph 7 of the syllabus. Nevertheless, in exercising its discretion the trial court must consider the statutory

policies that apply to every felony offense, including those set out in R.C. 2929.11 and 2929.12. *State v. Mathis*, 109 Ohio St.3d 54, 846 N.E.2d 1, 2006-Ohio-855, at ¶ 37.

{¶ 6} “When reviewing felony sentences, an appellate court must first determine whether the sentencing court complied with all applicable rules and statutes in imposing the sentence, including R.C. 2929.11 and 2929.12, in order to find whether the sentence is contrary to law. *State v. Kalish*, 120 Ohio St.3d 23, 896 N.E.2d 124, 2008-Ohio-4912. If the sentence is not clearly and convincingly contrary to law, the trial court's decision in imposing the term of imprisonment must be reviewed under an abuse of discretion standard. *Id.*

{¶ 7} “‘The term “abuse of discretion” connotes more than an error of law or judgment; it implies that the trial court's attitude is unreasonable, arbitrary, or unconscionable.’ *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144.”

Compliance with Applicable Sentencing Guidelines

{¶ 8} Defendant argues that in sentencing him the trial court failed to comply with all applicable statutory sentencing guidelines, including R.C. 2929.19(B)(1), which requires consideration of the record, any presentence investigation report and any victim impact statement. The trial court stated that it had considered the purposes and principles of felony

sentencing in R.C. 2929.11 and the seriousness and recidivism factors in R.C. 2929.12. The court also indicated that it had considered a letter written by Defendant to the court that was attached to a sentencing memorandum he filed. The court also afforded both Defendant and his counsel an opportunity to speak before imposing sentence.

{¶ 9} While the trial court did not expressly state that it considered the presentence investigation report, the court repeatedly referenced information that appears in that report, such as the fact that Defendant has worked with youth groups at his church and has coached softball, and the differences in the victim's version of the events versus Defendant's version. It is reasonable to find that the trial court considered the presentence investigation report. With respect to the character reference letters written by Defendant's sisters, his pastor, and his friends, those do not qualify as "victim impact statements" that the court must consider per R.C. 2929.19(B)(1), because they were not submitted by or on behalf of the victim. R.C. 2947.051.

{¶ 10} The record does not demonstrate that the trial court failed to comply with all applicable rules and statutes in imposing its sentence. Therefore, Defendant's sentence is not contrary to law. *Kalish*.

Abuse of Discretion

{¶ 11} Defendant argues that the trial court abused its discretion in sentencing him to a four year prison term because this was Defendant's first offense of any kind, he was fifty-eight years old at the time of sentencing, and Defendant accepted responsibility for his actions by pleading guilty and writing a letter of apology to the victim.

{¶ 12} Defendant points out that only two of the "more serious" seriousness and recidivism factors in the presentence report are checked: the age of the victim and relationship to the offender. Of the six "recidivism likely" factors, none are checked, and four of the six "recidivism unlikely" factors are checked, indicating a probability that recidivism will not occur.

{¶ 13} Furthermore, there was only one incident of sexual contact between Defendant and his niece, and no other victims have come forward during the intervening ten years or otherwise been identified.

{¶ 14} The four year prison term imposed by the trial court was less than the maximum five year sentence, and was clearly within the statutory range of available punishments for a felony of the third degree. R.C. 2929.14(A)(3). The overriding purposes of felony sentencing are to protect the public from

future crime by the offender and to punish the offender. R.C. 2929.11(A). This case is a more serious offense because it involved taking advantage of a young child over whom Defendant held a position of trust and authority. R.C. 2929.12(B)(1), (6). The trial court specifically cited a need to protect children in the community from Defendant, given his ready access to other children through his activities in coaching girls' teams, teaching Sunday School, and leading youth groups.

{¶ 15} The court also repeatedly emphasized that Defendant had not taken responsibility for his actions, as evidenced by the "disturbing" letter Defendant attached to his sentencing memorandum, wherein Defendant stated that the "wheels of justice" were doing far more harm to the victim than he had, that the prosecutor was unfairly trying to portray him as a degenerate, and that going to prison would ruin him financially because he is so near to retirement. The court also found that a comparison of the victim's version of the events and Defendant's version in the presentence report demonstrated that Defendant had not taken responsibility for his actions because he claims the victim initiated the inappropriate contact and "all he did was fail to stop her."

{¶ 16} Defendant cites our opinion in *State v. McClain*, Montgomery App. Nos. 22551, 22552, 2009-Ohio-64, at ¶8, wherein

we wrote that "a first term of imprisonment, ordinarily, should be the shortest term for the offense unless the court finds that such a term would either demean the seriousness of the offender's conduct or would fail to adequately protect the public from future crime." We further noted that "[i]n this matter, the trial court did not state it had considered the seriousness and recidivism factors." *Id.*

{¶ 17} The trial court in the present case stated that it had considered the seriousness and recidivism factors applicable to Defendant's offense of gross sexual imposition involving a seven year old girl. In relation to its seriousness, that conduct bears no comparison with either the circumstances of the violation of community control sanctions for failing to report to a job-seeking skills workshop which the court found in *McClain*, or with the underlying two felony non-support offenses for which the community control sanctions had been imposed. We merged the two eleven-month concurrent sentences the trial court imposed in *McClain* for the defendant's violation of his community control sanctions because there was "no indication that one prison term wouldn't adequately reflect the seriousness of the defendant's conduct." ¶14. That logic does not apply here.

{¶ 18} The record reflects no abuse of discretion on the

part of the trial court in imposing a four year prison term on Defendant for sexually molesting his seven year old niece. Defendant's assignment of error is overruled. The judgment of the trial court will be affirmed.

BROGAN, J., And DINKELACKER, J. concur.

(Hon. Patrick T. Dinkelacker, First District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.)

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