

COURT OF APPEALS
HOLMES COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff - Appellee

-vs-

RANDY KAESBERG

Defendant – Appellant

Case No. 24CA020

Opinion and Judgment Entry

Appeal from the Holmes County Court of
Common Pleas, Case No. 24 CR 12

Judgment: Affirmed

Date of Judgment Entry: September 26,
2025

BEFORE: Craig R. Baldwin, William B. Hoffman, Kevin W. Popham, Appellate Judges

APPEARANCES: Matthew Muzic, Prosecuting Attorney, for Plaintiff-Appellee; David M. Hunter, for Defendant-Appellant

OPINION

Hoffman, J.

{¶1} Defendant-appellant Randy Kaesberg appeals the judgment entered by the Holmes County Common Pleas Court convicting him following a jury trial of gross sexual imposition (R.C. 2907.05(A)(4), (C)(2)), and sentencing him to a term of incarceration of forty-eight months. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On September 16, 2023, Appellant attended a gathering at the home of the seven-year-old victim. The victim and another child were in the living room of the home. Appellant sat next to the victim on the couch, unbuckled his pants, and touched her vaginal area underneath her clothes. Appellant also touched the victim's chest.

{¶3} Appellant was indicted by the Holmes County Grand Jury with one count of gross sexual imposition. The case proceeded to jury trial in the Holmes County Common Pleas Court. The jury found Appellant guilty. The trial court convicted Appellant in accordance with the jury's verdict, and sentenced Appellant to a term of incarceration of forty-eight months.

{¶4} Appellate counsel for Appellant has filed a Motion to Withdraw and a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), *rehearing den.*, 388 U.S. 924, indicating the within appeal is wholly frivolous. In *Anders*, the United States Supreme Court held if, after a conscientious examination of the record, a defendant's counsel concludes the case is wholly frivolous, then he or she should so advise the court and request permission to withdraw. *Id.* at 744. Counsel must accompany the request with a brief identifying anything in the record which could arguably support the appeal. *Id.*

Counsel also must: (1) furnish the client with a copy of the brief and request to withdraw; and, (2) allow the client sufficient time to raise any matters the client chooses. *Id.* Once the defendant's counsel satisfies these requirements, the appellate court must fully examine the proceedings below to determine if any arguably meritorious issues exist. If the appellate court also determines the appeal is wholly frivolous, it may grant counsel's request to withdraw and dismiss the appeal without violating constitutional requirements, or may proceed to a decision on the merits if state law so requires. *Id.*

{¶5} We find counsel has complied with *Anders*. Appellant has not filed a pro se brief, and the State has not filed a response brief.

{¶6} Counsel has not set forth proposed assignments of error which could arguably support the appeal, but has asked this Court to “review whether sufficient evidence existed to find Appellant guilty of the Burglary charge in the Indictment¹ and whether the sentence imposed by the Trial Court is contrary to law.”

Sufficiency of the Evidence

{¶7} An appellate court's function when reviewing the sufficiency of the evidence is to determine whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St. 3d 259, paragraph two of the syllabus (1991).

{¶8} Appellant was convicted of gross sexual imposition in violation of R.C. 2907.05(A)(4):

¹ Appellant was neither charged with nor convicted of burglary. We presume this is a typographical error in the brief, and counsel instead is asking this Court to consider whether the judgment convicting Appellant of gross sexual imposition was supported by sufficient evidence.

(A) No person shall have sexual contact with another; cause another to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

(4) The other person, or one of the other persons, is less than thirteen years of age, whether or not the offender knows the age of that person.”

{¶9} “Sexual contact” is defined by R. C. 2907.01(B) as “any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.”

{¶10} The victim testified Appellant was present with a group of people at her house when she was seven years old. While seated next to her on the couch, Appellant touched her “no-no square” underneath her clothes, and also touched her chest. Tr. 209, 211, 214. On a drawing, she identified her “no-no square” as her vaginal area. We find the victim’s testimony was sufficient evidence, if believed by the jury, to support Appellant’s conviction of gross sexual imposition.

Sentence

{¶11} Appellant was sentenced to forty-eight months incarceration.

{¶12} We review felony sentences using the standard of review set forth in R.C. 2953.08. *State v. Roberts*, 2020-Ohio-6722, ¶13 (5th Dist.), *citing State v. Marcum*, 2016-Ohio-1002. R.C. 2953.08(G)(2) provides we may either increase, reduce, modify, or vacate a sentence and remand for sentencing where we clearly and convincingly find either the record does not support the sentencing court’s findings under R.C. 2929.13(B)

or (D), 2929.14(B)(2)(e) or (C)(4), or 2929.20(I), or the sentence is otherwise contrary to law. *Id.*, citing *State v. Bonnell*, 2014-Ohio-3177.

{¶13} When sentencing a defendant, the trial court must consider the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the seriousness and recidivism factors in R.C. 2929.12. *State v. Hodges*, 2013-Ohio-5025, ¶ 7 (8th Dist.).

{¶14} “The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others, to punish the offender, and to promote the effective rehabilitation of the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources.” R.C. 2929.11(A). To achieve these purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both. *Id.* Further, the sentence imposed shall be “commensurate with and not demeaning to the seriousness of the offender's conduct and its impact on the victim, and consistent with sentences imposed for similar crimes by similar offenders.” R.C. 2929.11(B).

{¶15} R.C. 2929.12 lists general factors which must be considered by the trial court in determining the sentence to be imposed for a felony, and gives detailed criteria which do not control the court's discretion, but which must be considered for or against severity or leniency in a particular case. The trial court retains discretion to determine the most effective way to comply with the purpose and principles of sentencing as set forth in R.C. 2929.11. R.C. 2929.12.

{¶16} Nothing in R.C. 2953.08(G)(2) permits this Court to independently weigh the evidence in the record and substitute our own judgment for that of the trial court to determine a sentence which best reflects compliance with R.C. 2929.11 and R.C. 2929.12. *State v. Jones*, 2020-Ohio-6729, ¶ 42. Instead, we may only determine if the sentence is contrary to law.

{¶17} A sentence is not clearly and convincingly contrary to law where the trial court “considers the principles and purposes of R.C. 2929.11, as well as the factors listed in R.C. 2929.12, properly imposes post release control, and sentences the defendant within the permissible statutory range.” *State v. Pettorini*, 2021-Ohio-1512, ¶¶ 14-16 (5th Dist.).

{¶18} The sentence in the instant case is within the statutory range. The trial court stated it considered the principles set forth in R.C. 2929.11, as well as the factors listed in R.C. 2929.12. The trial court took note there was a presumption of a prison sentence in the instant case, and found the presumption had not been overcome. We find the record does not demonstrate the sentence is contrary to law.

{¶19} After independently reviewing the record, we agree with Counsel's conclusion no arguably meritorious claims exist upon which to base an appeal. Hence, we find the appeal to be wholly frivolous under *Anders*, grant counsel's request to withdraw, and affirm the judgment of the Holmes County Court of Common Pleas.

{¶20} For the reasons stated in our accompanying Opinion, the judgment of the Holmes County Court of Common Pleas is affirmed. Costs to Appellant.

By: Hoffman, J.

Baldwin, P.J. and

Popham, J. concur