

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

State of Ohio

Court of Appeals No. H-09-016

Appellee

Trial Court No. CRI-2008-1290

v.

Brandon W. Lewis

DECISION AND JUDGMENT

Appellant

Decided: January 29, 2010

* * * * *

Russell V. Leffler, Huron County Prosecuting Attorney,
for appellee.

Michael A. Partlow, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This is an accelerated appeal from the July 15, 2009 judgment of the Huron County Court of Common Pleas which sentenced defendant-appellant, Brandon W. Lewis, to one year of imprisonment following his guilty plea to attempted gross sexual imposition. For the reasons that follow, we affirm the trial court's judgment.

{¶ 2} On December 19, 2008, appellant was indicted on one count of gross sexual imposition, in violation of R.C. 2907.05(A)(4). Appellant entered a not guilty plea. The charge stemmed from an incident between October 12 and November 15, 2008, where appellant, while acting as caretaker of his girlfriend's children, then ages five and seven, bathed with the children and had one of them wash his genitals. Appellant then told them to keep the incident a secret. Thereafter, appellant withdrew his not guilty plea and entered a plea of guilty to the amended charge of attempted gross sexual imposition. The nonmandatory imprisonment range for a fourth degree felony is six to 18 months. On July 15, 2009, appellant was sentenced to one year of imprisonment, and timely commenced this appeal.

{¶ 3} Appellant has raised the following assignment of error for our consideration:

{¶ 4} "Assignment of Error No. I: The trial court abused its discretion by sentencing appellant, who had not been previously imprisoned, to serve a term of imprisonment."

{¶ 5} In appellant's sole assignment of error he argues that the trial court erred when it sentenced him to a term of imprisonment. Following the Supreme Court of Ohio's decision in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, "[t]rial courts have full discretion to impose a prison sentence within the statutory range and are no longer required to make findings or give their reasons for imposing maximum, consecutive, or more than the minimum sentences." *Id.* at paragraph seven of the syllabus.

{¶ 6} After *Foster*, sentencing courts are to continue to consider "the statutory considerations" and "factors" in the "general guidance statutes," R.C. 2929.11 and 2929.12, in imposing sentences, as these statutes do not include a "mandate for judicial fact finding." *Foster* at ¶ 36-42. "Two statutory sections apply as a general judicial guide for every sentencing. The first, R.C. 2929.11 states that the court 'shall be guided by' the overriding purposes of felony sentencing * * *." *Id.* at ¶ 36. R.C. 2929.11 lists matters to be considered "in achieving those purposes." *Id.*

{¶ 7} "The second general statute, R.C. 2929.12, grants the sentencing judge discretion 'to determine the most effective way to comply with the purposes and principles of sentencing.' R.C. 2929.12(A) directs that in exercising that discretion, the court shall consider, along with any other 'relevant' factors, the seriousness factors set forth in divisions (B) and (C) and the recidivism factors in divisions (D) and (E) of R.C. 2929.12. These statutory sections provide a nonexclusive list for the court to consider." *Foster* at ¶ 37.

{¶ 8} At appellant's July 7, 2009 sentencing hearing, the trial court stated that it had considered the presentence investigation report, the psychological evaluation, and the victim impact statements. The court further noted that it had considered the principles and purposes of sentencing under R.C. 2929.11. The court, considering the seriousness and recidivism factors in R.C. 2929.12, commented that the injury to the victims in the case was exacerbated by their young age. The court stated that the victims suffered psychological harm. The court further found that the crime was more serious because

appellant's relationship with the victims facilitated the offense. Finally, the court noted that appellant had a brief adult and juvenile criminal history and that appellant had shown no real remorse. The trial court's findings were reiterated in its July 15, 2009 judgment entry.

{¶ 9} Based on the foregoing, we find that the trial court acted within its discretion when it sentenced appellant. The trial court reviewed the necessary statutory considerations and factors, and the sentence imposed was within the statutory range. Accordingly, appellant's assignment of error is not well-taken.

{¶ 10} On consideration whereof, we find that appellant was not prejudiced or prevented from having a fair proceeding and the judgment of the Huron County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

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.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Keila D. Cosme, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.