

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

State of Ohio

Court of Appeals No. L-11-1049

Appellee

Trial Court No. CR0201002611

v.

Brian Roach

**DECISION AND JUDGMENT**

Appellant

Decided: March 30, 2012

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
Evy M. Jarrett, Assistant Prosecuting Attorney, for appellee.

Joseph J. Urenovitch, for appellant.

\* \* \* \* \*

**PIETRYKOWSKI, J.**

{¶ 1} Defendant-appellant, Brian Roach, appeals the February 22, 2011 judgment of the Lucas County Court of Common Pleas which, following appellant's pleas pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970), sentenced

him to a total of 16 years of imprisonment for felonious assault, aggravated robbery, and robbery. For the reasons set forth herein, we affirm.

{¶ 2} On September 8, 2010, appellant was charged in a five-count indictment with two counts of aggravated robbery, felonious assault, robbery, and failure to comply with the order of a police officer. The charges stemmed from appellant's attacks on three senior citizens from August 30, to August 31, 2010. Appellant entered not guilty pleas to the charges.

{¶ 3} On January 3, 2011, appellant entered *Alford* pleas to aggravated robbery, R.C. 2911.01(A)(1), a first degree felony, felonious assault, R.C. 2903.11(A)(2), a second degree felony, and robbery, R.C. 2911.02(A)(2), a second degree felony. Appellant was informed that the maximum sentence he faced was 26 years of imprisonment.

{¶ 4} At appellant's February 16, 2011 sentencing hearing, the judge noted that she had reviewed the presentence investigation report, the Court Diagnostic and Treatment report, the victim impact statements, and the letters on behalf of appellant. The court stated that appellant was armed with a weapon and targeted elderly people who were alone, that he caused serious psychological harm, and that, as to one victim, he caused physical harm. The court then stated that it balanced the principles and purposes of sentencing under R.C. 2929.11 and the seriousness and recidivism factors under R.C. 2929.12. Appellant was then sentenced to five-year imprisonment terms for the felonious assault and robbery counts, and a six-year imprisonment term for the aggravated robbery count. The court ordered that the terms be served consecutively for a total of 16 years of

imprisonment. A nolle prosequi was entered as to the remaining counts. This appeal followed.

{¶ 5} Appellant now raises two assignments of error for our review:

Assignment of Error No. 1: The Trial Court lacked statutory authority to impose consecutive sentences and appellant's sentence is contrary to law.

Assignment of Error No. 2: The trial court abused its discretion imposing non-minimum consecutive sentences.

{¶ 6} In appellant's first assignment of error, he argues that because *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, excised R.C. 2929.41(A) and 2929.14(E)(4), which provided statutory authority to impose consecutive sentences, appellant's consecutive sentences were contrary to law. We disagree.

{¶ 7} In *Foster*, the Supreme Court of Ohio specifically held that the above portions were capable of being severed and that, thereafter, a trial court could impose a consecutive sentence without "judicial fact-finding." *Id.* at paragraph six of the syllabus. The court reiterated this holding when it concluded that "*Foster* did not prevent the trial court from imposing consecutive sentences; it merely took away a judge's duty to make findings before doing so." *State v. Elmore*, 122 Ohio St.3d 472, 2009-Ohio-3478, 912 N.E.2d 582, ¶ 35. *Accord State v. Thompson*, 6th Dist. Nos. L-08-1208, L-09-1214, 2011-Ohio-5046; *State v. Henry*, 6th Dist. No. WD-10-080, 2011-Ohio-5044.

{¶ 8} Based on the foregoing, we find that the trial court had the authority to impose consecutive sentences and, thus, appellant's sentence was not contrary to law. Appellant's first assignment of error is not well-taken.

{¶ 9} Appellant's second assignment of error claims that the trial court abused its discretion by imposing non-minimum consecutive sentences. Abuse of discretion "implies that the court's attitude is unreasonable, arbitrary or unconscionable." *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980). An appellate court applying an abuse of discretion standard may not substitute its judgment for that of the trial court. *State v. Herring*, 94 Ohio St.3d 246, 255, 762 N.E.2d 940 (2002).

{¶ 10} Appellant argues that despite being within the statutory sentencing range, the court's sentence was an abuse of discretion because it failed to account for appellant's showing of remorse, his drug addiction, and his "moderate to severe" mental health issues. Appellant contends that he should have received minimum concurrent terms.

{¶ 11} Upon review, we cannot say that the trial court abused its discretion when it sentenced appellant. The sentencing transcript reveals that the court thoroughly reviewed the presentence investigation report, the court diagnostic report, the letters from the victims, and letters in support of appellant. The judge then indicated that she considered the principles and purposes of sentencing under R.C. 2929.11, as well as the seriousness and recidivism factors, R.C. 2929.12. Further, appellant had been notified that the maximum penalty he faced was 26 years. Appellant's second assignment of error is not well-taken.

{¶ 12} On consideration whereof, we find that appellant was not prejudiced or prevented from having a fair proceeding and the judgment of the Lucas 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.

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JUDGE

Thomas J. Osowik, J.

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JUDGE

Stephen A. Yarbrough, J.  
CONCUR.

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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:  
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