

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2010-L-004
JOSHUA FRENCH,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 09 CR 000592.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, and *Joshua S. Horacek*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

Christopher P. Tucci, Attorney Tucci, L.L.C., 3 South State Street, Suite 1, Painesville, OH 44077 (For Defendant-Appellant).

TIMOTHY P. CANNON, J.

{¶1} Appellant, Joshua French, appeals the judgment of the Lake County Court of Common Pleas, sentencing him to nine years in prison after he pled guilty to one count of rape in violation of R.C. 2907.02(A)(1)(c), a felony of the first degree.

{¶2} Appellant was referred to the Lake County Adult Probation Department for a pre-sentence investigation and report, a sexual offender assessment, and a psychological factors assessment. Also, a victim impact statement was submitted for

the trial court's consideration. A sentencing hearing was conducted, and appellant was sentenced to a nine-year term of imprisonment.

{¶3} Appellant raises the following assignment of error:

{¶4} "The trial court erred by sentencing the defendant-appellant to more-than-the-minimum term of imprisonment."

{¶5} After the *State v. Foster* decision, "[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." *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, at paragraph seven of the syllabus.

{¶6} The Supreme Court of Ohio, in a plurality opinion, has held that felony sentences are to be reviewed under a two-step process. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, at ¶26. The court held:

{¶7} "First, [appellate courts] must examine the sentencing court's compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law. If this first prong is satisfied, the trial court's decision in imposing the term of imprisonment is reviewed under the abuse-of-discretion standard." *Id.*

{¶8} The *Kalish* Court affirmed the sentence of the trial court as not being contrary to law, since the trial court expressly stated that it had considered the R.C. 2929.11 and R.C. 2929.12 factors, postrelease control was applied properly, and the sentence was within the statutory range. *State v. Kalish*, at ¶18.

{¶9} An abuse of discretion is the trial court's "failure to exercise sound, reasonable, and legal decision-making." *State v. Beechler*, 2d Dist. No. 09-CA-54, 2010-Ohio-1900, at ¶62, quoting Black's Law Dictionary (8 Ed.Rev.2004) 11.

{¶10} In the instant matter, appellant pled guilty to one count of rape, a felony of the first degree. The statutory range for a first-degree felony is three to ten years, as prescribed by R.C. 2929.14(A)(1). The trial court sentenced appellant to a prison term of nine years, within the statutory range.

{¶11} In this matter, the record demonstrates that the trial court considered the purposes and principles of sentencing in R.C. 2929.11 and the applicable seriousness and recidivism factors of R.C. 2929.12. At the sentencing hearing, the trial court expressly stated that it had considered the R.C. 2929.11 and R.C. 2929.12 factors. Additionally, in its December 14, 2009 judgment entry of sentence, the trial court stated that "a prison sentence is consistent with the purpose and principles of sentencing set forth in R.C. 2929.11" and that it had "balanced the seriousness and recidivism factors under R.C. 2929.12."

{¶12} R.C. 2929.12(C) provides several factors that suggest an "offender's conduct is less serious" than conduct generally associated with the offense. Specifically, appellant argues that the trial court failed to consider R.C. 2929.12(C)(4), to wit: that "[t]here are substantial grounds to mitigate the offender's conduct, although the grounds are not enough to constitute a defense." Appellant maintains that the trial court failed to ensure that the sexual offender assessment, the psychological factors assessment, and the drug and alcohol assessment were completed prior to his

sentencing. At sentencing, however, the trial court explained why the assessments had not been completed, stating:

{¶13} “I referred [appellant] for a pre-sentence investigation and report, and set sentencing for today. I continued his bond, placed him on GPS and house arrest, with an order that he have no contact with the victim. Sometime later, [appellant] appeared at the probation office for psychological evaluation. [Appellant] was under the influence, and I revoked his bond. As a result, the Court does not have a psychological evaluation. I have received, though, the pre-sentence report ***. I’ve read these documents; I will make them part of the record.”

{¶14} The trial court thereafter asked counsel if there was any reason not to proceed with the sentencing of appellant. Appellant’s counsel failed to object, and the sentencing hearing continued. Later, the trial court again noted that appellant arrived at the probation department “under the influence.”

{¶15} R.C. 2929.12(D) provides several factors the trial court shall consider that suggest the offender is more likely to commit future crimes. Specifically, the trial court noted that appellant violated an unconscious, minor female; that appellant was on community-control sanctions at the time of the incident; that appellant had a long history of criminal convictions, although he was just 18 years of age at the time of the incident; that appellant had not responded favorably to any previously-imposed sanctions; and that appellant arrived at the probation department under the influence of alcohol, violating a condition of probation. See R.C. 2929.12(D)(1), (D)(2), and (D)(3).

{¶16} We do not determine that the trial court’s sentence is clearly and convincingly contrary to law. Furthermore, taking all of the above into consideration, we

cannot say the trial court abused its discretion by sentencing appellant to a nine-year term of imprisonment.

{¶17} Appellant's sole assignment of error is without merit, and the judgment of the Lake County Court of Common Pleas is hereby affirmed.

MARY JANE TRAPP, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.