

[Cite as *State v. Hardy*, 2009-Ohio-5301.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 22933
v.	:	T.C. NO. 2008 CR 1104
CHRISTOPHER E. HARDY	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 2nd day of October, 2009.

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FROELICH, J.

{¶ 1} This matter is before the court on the direct appeal of Defendant-appellant Christopher Hardy from his convictions and sentence for Endangering Children (serious physical harm), Endangering Children (parent-serious physical harm), and Felonious Assault (serious physical harm).

For the following reasons, the judgment of the trial court will be Affirmed.

{¶ 2} The facts, as laid out in the trial court's decision overruling Hardy's motion to suppress are as follows:

{¶ 3} "On March 14, 2008, Officer Smith of the Trotwood Police Department was dispatched from his routine patrol duties to Hardy's residence, in response to a call from Childrens' Services regarding a father who allegedly wanted to give up custody of his two minor children. Upon arriving at the scene, Hardy allowed Smith to enter his residence, where Officer Smith observed injuries to the child, Keyshawn. Officer Smith interviewed Hardy regarding how the child's injuries were sustained. Hardy told Officer Smith that he had struck the child in the face, in anger, causing him to fall, which caused the child to sustain carpet burns on his face. The child was removed from the residence by paramedics.

{¶ 4} "Shortly after making this statement, Hardy was placed under arrest and informed of his *Miranda* rights."

{¶ 5} Later that month, Hardy was indicted on one count each of Endangering Children (serious physical harm), Endangering Children (corporal punishment-serious physical harm), Endangering Children (parent-serious physical harm), and Felonious Assault (serious physical harm). Following the trial court's decision overruling his motion to suppress, Hardy pled no contest to Endangering Children (serious physical harm), Endangering Children (parent-serious physical harm), and Felonious Assault (serious physical harm). In exchange for the plea, the State agreed to dismiss the remaining charge. On June 26, 2008, the trial court sentenced Hardy to eight years for Endangering Children (serious physical

harm) and Felonious Assault and five years for Endangering Children (parent-serious physical harm). The sentences were ordered to be served concurrently, for a cumulative sentence of eight years. Hardy filed a motion for leave to file a delayed appeal, which we allowed.

{¶ 6} Hardy's Assignment of Error:

{¶ 7} "THE TRIAL COURT ERRED IN SENTENCING THE APPELLANT TO THE MAXIMUM PRISON TERM BECAUSE THE TRIAL COURT FAILED TO FIND THAT THE OFFENDER COMMITTED THE WORST FORM OF THE OFFENSE NOR DID THE OFFENDER POSE THE GREATEST LIKELIHOOD OF COMMITTING FUTURE CRIMES."

{¶ 8} In his sole assignment of error, Hardy argues that his sentence is unlawful because in sentencing him to the maximum prison term, the trial court did not state on the record that he had committed the worst form of the offense or that he posed the greatest likelihood of committing future crimes, as required by R.C. 2929.14(B) and (C). However, the Ohio Supreme Court found those sections to be unconstitutional because they require judicial fact-finding prior to imposition of a maximum sentence. *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, paragraph one of the syllabus, *Apprendi v. New Jersey* (2000), 530 U.S. 466, 120 S.Ct. 2531, 147 L.Ed.2d 435, and *Blakely v. Washington* (2004), 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403, followed. Therefore, the Court severed those sections from the code. *Id.*, at paragraph two of the syllabus, *United States v. Booker* (2005), 543 U.S. 296, 124 S.Ct. 738, 160 L.Ed.2d 621, followed. Consequently, Hardy's argument fails, and his sole assignment of error is overruled.

{¶ 9} Having overruled Hardy's sole assignment of error, the judgment of the trial court will be affirmed.

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GRADY, J. and FRENCH, J., concur.

(Hon. Judith L. French, Tenth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

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