

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon: John F. Boggins, P.J.
Plaintiff-Appellee	:	Hon: W. Scott Gwin, J.
	:	Hon: John W. Wise, J.
-vs-	:	
	:	Case No. 04-COA-75
GREGORY C. BRADWAY	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Criminal appeal from the Ashland County Court of Common Pleas, Case No. 04-CRI-068

JUDGMENT: Reversed and Remanded

DATE OF JUDGMENT ENTRY: July 6, 2005

APPEARANCES:

For Plaintiff-Appellant

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ASHLAND COUNTY PROSECUTOR
SUITE 307, ORANGE TREE SQUARE
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For Defendant-Appellee

DOUGLAS A. MILHOAN
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Gwin, J.,

{¶1} On August 30, 2004, appellant Gregory C. Bradway pled guilty to one count of sexual battery, a felony of the third degree. The court ordered a pre-sentence investigation report and deferred sentencing. The court conducted a sentencing hearing on October 4, 2004. By judgment entry filed October 6, 2004, the court sentenced appellant to the maximum term of five years in prison. Appellant filed an appeal and this matter is now before this court for consideration. Appellant's sole assignment of error is as follows:

{¶2} "I. THE IMPOSITION OF A MAXIMUM SENTENCE IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND CONTRARY TO THE LAW."

I.

{¶3} Appellant challenges the trial court's maximum sentence as being against the manifest weight of the evidence and contrary to law.

{¶4} In its brief at 6, appellee concedes the sentence does not meet the following mandates of R.C. 2929.14(C) which provides: "[T]he court imposing a sentence upon an offender for a felony may impose the longest prison term authorized for the offense pursuant to division (A) of this section only upon offenders who committed the worst forms of the offense, upon offenders who pose the greatest likelihood of committing future crimes, upon certain major drug offenders under division (D)(3) of this section, and upon certain repeat violent offenders in accordance with division (D)(2) of this section."

{¶5} The matter is reversed and remanded to the trial court for re-sentencing pursuant to *State v. Comer*, 99 Ohio St. 3d 463, 2003-Ohio-4165 and *State v. Evans*(2004), 102 Ohio St.3d 240, 2004-Ohio-2659.

{¶6} Assignment of Error I is granted.

{¶7} The judgment of the Court of Common Pleas of Ashland County, Ohio is hereby reversed and the matter is remanded to said court for re-sentencing.

By Gwin, J.,

Boggins, P.J., and

Wise, J., concur

JUDGES

