

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 2009-CA-00264
GREGORY YULE POLING	:	
	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Stark County Court of
Common Pleas Case No. 2009-CR-1100

JUDGMENT: AFFIRMED

DATE OF JUDGMENT ENTRY: June 28, 2010

APPEARANCES:

For Plaintiff-Appellee:

JOHN D. FERRERO 0018590
Stark County Prosecuting Attorney
110 Central Plaza, South, Ste. 510
Canton, Ohio 44702

KATHLEEN O. TATARSKY 0017115
Assistant Prosecuting Attorney
(Counsel of Record)

For Defendant-Appellant:

VERNON M. INFANTINO 0076021
Schnars, Baca & Infantino, LLC
610 Market Avenue, North
Canton, Ohio 44702

Delaney, J.

{¶1} Defendant-Appellant, Gregory Poling, appeals the judgment of the Stark County Court of Common Pleas, convicting him of one count of failure to comply with R.C. 2950.05(A) and (F)(1), Notice of Change of Address, a felony of the first degree.¹

{¶2} Appellant initially pled not guilty to the charge at his arraignment. On September 14, 2009, Appellant exercised his right to a jury trial, wherein the following evidence was introduced by the State.

{¶3} In 2006, Appellant pled guilty to one count of rape in Portage County, Ohio, and was sentenced to serve a three year prison sentence. He was released from prison on January 27, 2009. At the time of his release, he was homeless; however, he found a homeless shelter, the Refuge of Hope, in Canton, Ohio, and moved to Stark County to reside at the shelter.

{¶4} Appellant's parole officer, Vicki Knapp, testified that she became his parole officer when he relocated to Stark County. Knapp testified that Appellant was classified as a Tier III sex offender based on his rape conviction, which required him to register his address with the Sheriff of the county in which he resides every 90 days. As part of Appellant's registration requirements, he was required to provide, in writing, a "notice to move" to the sheriff at least 20 days prior to moving into any new residence.

{¶5} Knapp testified that overall, Appellant was compliant with his rules of parole. However, in May, 2009, Appellant notified Knapp that he had secured a residence at 1034 Mahoning Avenue, in Canton, and that he intended to move there in June, 2009. Knapp visited the site and approved it as an appropriate place for

¹ Appellant was convicted of one count of rape, a felony of the first degree, in violation of R.C. 2907.02, therefore the failure to register charge is also a felony of the first degree.

Appellant to move to. She testified that she reminded Appellant that he needed to inform the Stark County Sheriff's Department of his change of address prior to moving. According to Knapp, she witnessed Appellant calling the Sheriff's office to schedule an appointment to change his address. Appellant's appointment with the Sheriff's office was scheduled for June 2, 2009, at 4:00 p.m. However, according to Stark County Deputy, George Macris, Appellant failed to appear for the appointment.

{¶6} Appellant did move into the residence at 1034 Mahoning, but only resided there for approximately one and a half months before he was asked to vacate the residence due to drug use of some other residents of the home. Appellant then returned to the Refuge of Hope shelter sometime between July 12, 2009, and July 15, 2009, where he resided until he was arrested on July 16, 2009.

{¶7} Upon returning to the shelter, Appellant informed Knapp that he had moved out of the residence on Mahoning back to the shelter. At that time, Knapp telephoned the Sheriff's department and spoke with Deputy Macris, who informed Knapp that Poling had never registered his Mahoning Avenue address in writing. The Sheriff's Department asked Knapp to take Appellant into custody because he had violated the registration provisions of his sex offender classification duties.

{¶8} Appellant was transported to the Stark County Sheriff's Department and was read his Miranda rights. He waived his rights and spoke with Deputy John VonSpiegel. Appellant admitted to living on Mahoning Avenue from June 2, 2009, to July 12, 2009. He refused to answer the question as to why he did not register his address with the Sheriff's department.

{¶9} After the trial, the jury found Appellant guilty as charged. The trial court sentenced Appellant to ten years in prison.

{¶10} Appellant now appeals his conviction and sentence, raising two Assignments of Error:

{¶11} “I. THE TRIAL COURT’S FINDING OF GUILTY IS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE.

{¶12} “II. THE TRIAL COURT ABUSED ITS DISCRETION IN IMPOSING THE MAXIMUM SENTENCE OF INCARCERATION.”

I.

{¶13} In his first assignment of error, Appellant argues that his conviction is not supported by sufficient evidence and is against the manifest weight of the evidence.

{¶14} When reviewing a claim of sufficiency of the evidence, an appellate court’s role is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant’s guilt beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492. Contrary to a manifest weight argument, a sufficiency analysis raises a question of law and does not allow the court to weigh the evidence. *State v. Martin* (1983), 20 Ohio App.3d 172, 175. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, “any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541.

{¶15} Conversely, when analyzing a manifest weight claim, this court sits as a “thirteenth juror” and in reviewing the entire record, “weighs the evidence and all

reasonable inferences, considers the credibility of witnesses, and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed.” *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387, 678 N.E.2d 541, 548, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶16} In order to convict Appellant of failure to comply with R.C. 2950.05, the State had to prove that Appellant failed to register with the sheriff, in writing, his new address at 1034 Mahoning Avenue, at least twenty days prior to changing his residence address.

{¶17} The evidence presented at trial proved that Appellant moved from the Refuge of Hope shelter to 1034 Mahoning Avenue without registering his address with the Sheriff’s department. Appellant admitted to moving to the Mahoning Avenue address, but refused to state why he failed to register the address. His parole officer testified that she knew that he was going to move to the address at Mahoning and that she had even conducted a site visit to approve the residence.

{¶18} The coordinator of the men’s shelter at Refuge of Hope, Scott Schnyders, testified that he knew that Appellant had resided at the Refuge of Hope from February, 2009, to sometime in late May or early June, 2009. He knew that Appellant left the shelter then and moved somewhere else. He also testified that Appellant returned to the shelter in the middle of July, 2009, and resided there until he was arrested for failing to register his address as a sex offender.

{¶19} Finally, Deputies George Macris and John VonSpiegel testified. Deputy Macris testified that Appellant made an appointment to come in and register his new

address with Macris on June 2, 2009, at 4:00 p.m. Appellant failed to appear for the appointment and did not register his new address with the Sheriff's department. Deputy VonSpiegel testified that he interviewed Appellant after he was arrested for failing to register his address. Appellant waived his rights and agreed to speak with Deputy VonSpiegel. Appellant told VonSpiegel that he resided at 1034 Mahoning Avenue from June 2, 2009, to July 12, 2009. Appellant refused to tell VonSpiegel why he failed to register that address with the Sheriff's department.

{¶20} The statute is clear. A Tier III sex offender must register, in writing, his new address with the Sheriff's department at least 20 days prior to moving to the new address. The evidence is uncontroverted that Appellant failed to do so.

{¶21} Accordingly, the evidence, as presented at trial, was sufficient to support Appellant's conviction.

{¶22} Appellant's first assignment of error is overruled.

II.

{¶23} In his second assignment of error, Appellant asserts that the trial court abused its discretion when it sentenced him to a maximum sentence of ten years for his conviction of failure to register, a felony of the first degree.

{¶24} The statutes governing felony sentencing in Ohio used to require that a trial court make particular findings before sentencing a criminal defendant to maximum and consecutive sentences. However, in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-0856, 845 N.E.2d 470, the Ohio Supreme Court found much of Ohio's felony sentencing scheme unconstitutional because that scheme violated a defendant's right to a jury trial. Now, a trial court which is sentencing a felony offender "must carefully consider the

statutes that apply to every felony case. Those include R.C. 2929.11, which specifies the purposes of sentencing, and R.C. 2929.12, which provides guidance in considering factors relating to the seriousness of the offense and recidivism of the offender. In addition, the sentencing court must be guided by statutes that are specific to the case itself.” *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-0855, 846 N.E.2d 1, at ¶ 38.

{¶25} After *Foster*, trial courts now 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. *Foster*, supra, at paragraph seven of the syllabus.

{¶26} Appellant argues the trial court erred when sentencing him to a maximum sentence because Appellant could have been sentenced to a lesser prison term without demeaning the seriousness of his offense. However, after *Foster*, the trial court no longer has to tailor its sentencing to a lesser term merely because such a sentence would also be appropriate. *Foster*, at paragraphs one and two of the syllabus.

{¶27} Moreover, Appellant failed to object to the sentence imposed by the trial court at his sentencing hearing. Additionally, the court, in its judgment entry, indicated that it had considered the purposes and principles of sentencing under R.C. 2929.11 and had balanced the seriousness and recidivism factors in R.C. 2929.12.

{¶28} The court then sentenced Appellant within the statutory scheme, albeit the maximum for a first time offense.

{¶29} Appellant’s second assignment of error is overruled.

{¶30} For the foregoing reasons, the judgment of the Stark County Court of Common Pleas is affirmed.

By: Delaney, J.

Gwin, P.J. and

Wise, J. concur.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. JOHN W. WISE

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
GREGORY YULE POLING	:	
	:	
Defendant-Appellant	:	Case No. 2009-CA-00264
	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Stark County Court of Common Pleas is affirmed. Costs assessed to Appellant.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. JOHN W. WISE