

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

State of Ohio

Court of Appeals No. OT-08-047

Appellee

Trial Court No. 08-CR-053

v.

Edwin T. Reeves

DECISION AND JUDGMENT

Appellant

Decided: June 30, 2009

* * * * *

Kevin M. Peters, for appellant.

* * * * *

SINGER, J.

{¶ 1} This is an appeal from a decision issued by the Ottawa County Court of Common Pleas, following a guilty plea to two counts of gross sexual imposition.

Because we conclude that the trial court committed no reversible errors, we affirm.

{¶ 2} Appellant, Edwin Reeves, pled guilty to one count of gross sexual imposition, a third degree felony and a violation of R.C. 2907.05(A)(4), and one count of

attempted gross sexual imposition, a fourth degree felony and a violation of R.C. 2923.02(A) with the principal offense of R.C. 2907.05(A)(4). The charges stemmed from acts committed by appellant on two female children, ages eight and five, while he was babysitting for them at their home. The court sentenced appellant to a term of five years in prison as to Count 1 and a term of 18 months in prison as to Count 2, with the sentences to be served consecutively.

{¶ 3} Appellant now appeals from that judgment, arguing the following three assignments of error:

{¶ 4} "Assignment of Error I:

{¶ 5} "R.C. Chapter 2950 violates the appellant's substantive due process rights protected by the Fourteenth Amendment of the United States Constitution and Section 1, Article I of the Ohio Constitution as well as the appellant's right to privacy guaranteed by Section 1, Article I. of the Ohio Constitution.

{¶ 6} "Assignment of Error II:

{¶ 7} "The trial court abused its discretion when it sentenced appellant to consecutive maximum terms of incarceration.

{¶ 8} "Assignment of Error III:

{¶ 9} "Appellant was denied effective assistance of counsel in violation of the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Ohio Constitution."

I.

{¶ 10} In his first assignment of error, appellant argues that the residency restrictions in R.C. 2950.034 violate his rights to due process and to privacy as set forth in the Fourteenth Amendment to the United States Constitution and Sections 1 and 16, Article I, of the Ohio Constitution. Constitutional errors to which a defendant does not object in the trial court are forfeited for purposes of appeal. *State v. McClanahan*, 9th Dist. No. 23380, 2007-Ohio-1821, ¶ 6, citing *State v. Awan* (1986), 22 Ohio St.3d 120, syllabus.

{¶ 11} In this case, appellant pled guilty to the offenses for which he was convicted. Our review of the record indicates that the trial court fully informed appellant of the consequences of his plea. In addition, when the court classified him as a Tier II sexual offender, it also explained the consequences of that classification. Appellant did not object to this classification or the residency restrictions at the sentencing hearing. Therefore, this court declines to address his objection for the first time on appeal.

{¶ 12} Accordingly, appellant's first assignment of error is not well-taken.

II.

{¶ 13} In his second assignment of error, appellant argues that the trial court abused its discretion in imposing consecutive sentences.

{¶ 14} In *State v. Foster*, the Supreme Court of Ohio, in striking down parts of Ohio's sentencing scheme, held that "[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." 109 Ohio St.3d 1, 2006-Ohio-856, paragraph seven of the syllabus. Thus, an appellate court reviews felony sentences for an abuse of discretion. *Id.* An abuse of discretion implies that the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983) 5 Ohio St.3d 217, 219. When applying an abuse of discretion standard, an appellate court may not generally substitute its judgment for that of the trial court. See *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621.

{¶ 15} Nonetheless, R.C. 2929.11 and 2929.12, which require consideration of the purposes and principles of felony sentencing and the seriousness and recidivism factors, must still be considered by trial courts in sentencing offenders. *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, ¶ 38. R.C. 2929.11(A) provides that when a trial court sentences an offender for a felony conviction it must be guided by the "overriding purposes of felony sentencing." Those purposes are "to protect the public from future crime by the offender and others and to punish the offender." R.C. 2929.11(B) states that a felony sentence "must be reasonably calculated to achieve the purposes set forth under R.C. 2929.11(A), commensurate with and not demeaning to the seriousness of the crime and its impact on the victim, and consistent with sentences imposed for similar crimes committed by similar offenders." Finally, R.C. 2929.12 sets forth factors concerning the seriousness of the offense and recidivism factors.

{¶ 16} In this case, although at the maximum, the sentences imposed for appellant's offenses are within the ranges provided by statute. See R.C. 2929.14(A)(3) and (4). Further, the record indicates that appellant's criminal history included a prior conviction for sexual imposition. Moreover, the court noted that the current offenses were committed against victims who were only eight and five years old while he acted as their trusted babysitter. Before imposing sentence, the court specified that it considered the record, oral statements, victim impact, the presentence investigation report, and the sentencing principles and purposes under R.C. 2929.11, 2929.12, and 2929.13. Therefore, we cannot say that the trial court abused its discretion in imposing maximum, consecutive sentences for appellant's offenses.

{¶ 17} Accordingly, appellant's second assignment of error is not well-taken.

III.

{¶ 18} In his third assignment of error, appellant claims that he was denied his constitutional right to effective assistance of counsel.

{¶ 19} In order to prove ineffective assistance of counsel, a defendant must show: (1) that defense counsel's representation fell below an objective standard of reasonableness and (2) that counsel's deficient representation was prejudicial to defendant's case. *State v. Bradley* (1989), 42 Ohio St.3d 136, paragraph two of the syllabus. See, also, *Strickland v. Washington* (1984), 466 U.S. 668, 694.

{¶ 20} Appellant claims that counsel failed to have an apology letter written by appellant entered into the record and should have objected to the imposition of appellant's

consecutive sentences. Our review of the transcript of the sentencing hearing reveals that the court was made aware that appellant had attempted to send the letter of apology, but discounted it, stating that appellant did not subsequently act remorseful for his actions. In addition, in light of our disposition of appellant's second assignment of error, whether counsel had objected to the sentencing terms is of no consequence. Therefore, we conclude that appellant has failed to point out any deficient performance by counsel which was prejudicial to his case.

{¶ 21} Accordingly, appellant's third assignment of error is not well-taken.

{¶ 22} The judgment of the Ottawa County Court of Common Pleas is affirmed.

Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

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.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

CONCUR.

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:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.