

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

State of Ohio

Court of Appeals No. OT-08-031

Appellee

Trial Court No. CRB-0701209A

v.

Gregory J. Busch

DECISION AND JUDGMENT

Appellant

Decided: June 30, 2009

* * * * *

Mark E. Mulligan, Ottawa County Prosecuting Attorney, and
David R. Boldt, Assistant Prosecuting Attorney, for appellee.

Howard C. Whitcomb, III, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} This case is before the court on appeal from the judgment of the Ottawa County Municipal Court which, following a plea of no contest on April 23, 2008, found appellant, Gregory J. Busch, guilty of reckless operation of a vessel, in violation of R.C. 1547.07, a misdemeanor of the fourth degree. On May 16, 2008, after considering the

presentence investigation ("PSI") report prepared in this case, the trial court sentenced appellant to 30 days in jail, with 20 days suspended on the condition that appellant remain law-abiding for a period of one year, and fined him \$250. Appellant timely appealed the decision of the trial court and raises the following sole assignment of error:

{¶ 2} "The sentence imposed upon the defendant-appellant was excessive, inconsistent with the facts in this case and an abuse of the trial court's discretion."

{¶ 3} This case arises out of an incident that occurred on Lake Erie on June 23, 2007, at approximately 1:50 a.m, wherein appellant, while operating a commercial tugboat, collided with a sailboat. The collision sank the sailboat and caused injury to two of the three people aboard the sailboat. Prior to the collision, appellant had operated the tugboat for at least 17 consecutive hours and the operator of the sailboat, Dominic Aprea, had consumed several alcoholic beverages. Aprea, however, disputes that he was intoxicated.

{¶ 4} Appellant argues that the trial court's sentence was arbitrary and unreasonable because the trial court failed to consider and apply all relevant facts when determining appellant's sentence. Appellant also argues that the trial court's explanation of its reasons for imposing the maximum sentence was illegitimate and the sentence was therefore unconscionable. Further, appellant disagrees with the trial court's comment that he has not accepted his share of responsibility for the accident.

{¶ 5} On appeal, we review this case to determine whether the trial court abused its discretion in sentencing appellant. As the Ohio Supreme Court has previously stated,

"[t]he term 'abuse of discretion' connotes more than an error of law or of judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *State v. Adams* (1980), 62 Ohio St.2d 151, 157. In determining the latitude given a trial court in imposing a sentence, the Ohio Supreme Court held that, "trial 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, ¶ 100. "A trial court's discretion to impose a sentence within the statutory guidelines is very broad and an appellate court cannot hold that a trial court abused its discretion by imposing a severe sentence on a defendant where that sentence is within the limits authorized by the applicable statute." *State v. Harmon*, 6th Dist. No. L-05-1078, 2006-Ohio-4642, ¶ 16.

{¶ 6} While the trial court imposed the maximum sentence, it was within its authority to do so. See *Foster*, supra, ¶ 100. Where, as here, a trial court's sentence is within the statutory limits, we find that the trial court's sentence cannot be considered an abuse of discretion, absent some extraordinary circumstances. See *Harmon*, supra, ¶ 16.

{¶ 7} In this case, after thoroughly considering its sentencing options, the PSI report, and statements made in mitigation, the trial court stated that appellant's sentence was imposed "based on the aggravating nature and circumstances in this case, the defendant's lack * * * of acceptance of responsibility as well as his failure to cooperate with the court's probation department * * *." While appellant disputes the trial court's statement that he failed to comply with the probation department, the PSI shows that

appellant either neglected or refused to answer substantial portions of the PSI packet. In particular, appellant failed to disclose any prior criminal record, although it was later established that he had previously been convicted and fined for unlawfully discharging oil into the water.

{¶ 8} Accordingly, we find that the trial court did consider the facts and circumstances in this case when determining appellant's sentence and that no extraordinary circumstances exist to warrant a finding of abuse of discretion. Having found that the sentence imposed by the trial court was not unreasonable, arbitrary or unconscionable, we find appellant's sole assignment of error not well-taken.

{¶ 9} On consideration whereof, this court finds that the trial court did not abuse its discretion in sentencing appellant and the judgment of the Ottawa County Municipal Court 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.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, 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>.