

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

State of Ohio

Court of Appeals No. L-08-1268

Appellee

Trial Court No. CR07-3566

v.

Kevin Clapsaddle

DECISION AND JUDGMENT

Appellant

Decided: June 30, 2009

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Evy M. Jarrett, Assistant Prosecuting Attorney, for appellee.

Kristin A. Stahlbush, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} This appeal is from the July 29, 2008 judgment of the Lucas County Court of Common Pleas, which sentenced appellant, Kevin Clapsaddle, after he entered a guilty plea to charges of violating R.C. 2903.11, felonious assault, a second degree felony, and

was convicted. Upon consideration of the assignment of error, we affirm the decision of the lower court. Appellant asserts the following single assignment of error on appeal:

{¶ 2} "The Trial Court violated Mr. Clapsaddle's Constitutional Rights by Imposing a Sentence that was not the shortest authorized." [sic]

{¶ 3} Appellant was sentenced to five years of imprisonment. Appellant argues that by sentencing appellant to more than the minimum sentence, when he had not admitted to the facts necessary to support a greater sentence, the court violated his right to a jury trial guaranteed by the Sixth Amendment to the United States Constitution. Appellant also raises the issues of violations of the separation of powers and ex post facto provisions of the United States Constitution common to appeals raising *State v. Foster* (2006), 109 Ohio St.3d 1 issues.

{¶ 4} Appellant did not raise these issues below and, therefore, forfeited the right to assert these errors on appeal. *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, ¶ 31. Furthermore, upon examination of appellant's sentence, we find that the trial court complied with the applicable statutes and was within its power to impose a sentence of imprisonment greater than the minimum permitted by law. Appellant's sole assignment of error is not well-taken.

{¶ 5} Having found that the trial court did not commit error prejudicial to appellant, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

State v. Clapsaddle
C.A. No. L-08-1268

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

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>.