

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

State of Ohio

Court of Appeals No. L-09-1027

Appellee

Trial Court No. CR0200803669

v.

Andrew Leslie aka Leslie Andrew

DECISION AND JUDGMENT

Appellant

Decided: October 23, 2009

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Jennifer M. Lambdin, Assistant Prosecuting Attorney, for appellee.

Nicole I. Khoury, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Defendant-appellant, Andrew Leslie, appeals the March 13, 2009¹

judgment of the Lucas County Court of Common Pleas which, following appellant's no

¹The original judgment from which this appeal was taken was journalized on January 12, 2009, but failed to comply with the requirements of *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330. The matter was remanded and the corrected judgment entry was journalized on March 13, 2009.

contest plea to rape, in violation of 2907.02(A)(2) and (B), sentenced appellant to seven years of imprisonment. Because the trial court did not abuse its discretion in sentencing appellant, we affirm.

{¶ 2} On November 12, 2008, by information, appellant was charged with one count of rape, in violation of R.C. 2907.02(A)(2) and (B). The charge stemmed from the allegation that appellant, then 18, had sex with a 12 year old female.

{¶ 3} On November 17, 2008, appellant entered a no contest plea to the charge. On March 13, 2009, appellant was sentenced to seven years of imprisonment and classified as a Tier III Child Victim Offender. This appeal followed.

{¶ 4} Appellant raises the following assignment of error for our review:

{¶ 5} "1. The trial court abused its discretion by imposing a sentence that was not the shortest authorized."

{¶ 6} We first note that appellant was convicted of R.C. 2907.02(A)(2) and (B), a first degree felony, with a sentencing range from three to ten years. R.C. 2929.14(A)(1). Under *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, "[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." *Id.* at paragraph seven of the syllabus. However, *Foster* still requires sentencing courts to consider "the statutory considerations" and "factors" in the "general guidance statutes," R.C. 2929.11 and 2929.12, in imposing sentences, as these statutes do not include a "mandate for judicial fact-finding." *Id.* at ¶

36-42. "R.C. 2929.11 states that the court 'shall be guided by' the overriding purposes of felony sentencing * * *." Id. at ¶ 36. R.C. 2929.11 lists matters to be considered "in achieving those purposes." Id.

{¶ 7} "The second general statute, R.C. 2929.12, grants the sentencing judge discretion 'to determine the most effective way to comply with the purposes and principles of sentencing.' R.C. 2929.12(A) directs that in exercising that discretion, the court shall consider, along with any other 'relevant' factors, the seriousness factors set forth in divisions (B) and (C) and the recidivism factors in divisions (D) and (E) of R.C. 2929.12. These statutory sections provide a nonexclusive list for the court to consider." Id. at ¶ 37.

{¶ 8} In the present case, before imposing sentence, the trial court stated that it had reviewed the record in the case (which included various diagnostic test results and reports and several letters on appellant's behalf), the presentence investigation report, the oral statements, and the victim impact statement. The court also stated that it had considered the principles and purposes of sentencing under R.C. 2929.11, as well as R.C. 2929.12, the seriousness and recidivism factors. The trial court stated that appellant's desire to have sexual relations with young girls and the fact that his school district had previously been notified of appellant's proclivity was very troubling.

{¶ 9} Based on the foregoing, we find that the trial court acted within its discretion when it sentenced appellant. The trial court reviewed the necessary statutory considerations and factors, and the sentence imposed was within the statutory range.

This court has consistently held, post-*Foster*, that the sentencing court is not required to make any findings on the record in considering R.C. 2929.11 and 2929.12. Cf. *State v. Like*, 6th Dist. No. WM-08-002, 2008-Ohio-4615, ¶ 11; *State v. Salinas*, 6th Dist. No. WM-07-017, 2008-Ohio-3580, ¶ 8-9; and *State v. Kocian*, 6th Dist. No. OT-07-018, 2008-Ohio-74, ¶ 10. Accordingly, appellant's assignment of error is not well-taken.

{¶ 10} On consideration whereof, the court finds that substantial justice has been done the party complaining and 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.

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, P.J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, 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>.