

[Cite as *State v. Meyers*, 2009-Ohio-6838.]

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

NEIL J. MEYERS JR.

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Julie A. Edwards, J.

Hon. Patricia A. Delaney, J.

Case No. 09CAA 07 0063

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Delaware County Court of
Common Pleas, Case No. 08CR I 11 0575

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

December 21, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

DAVID A. YOST
Delaware County Prosecuting Attorney

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Hoffman, P.J.

{¶1} Defendant-appellant Neil J. Meyers, Jr. appeals his sentence in the Delaware County Court of Common Pleas. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE CASE

{¶2} On April 17, 2009, Appellant entered a plea of guilty to attempted rape, in violation of R.C. 2923.02(A) and a plea of no contest to disseminating matter harmful to juveniles, in violation of R.C. 2907.31(A)(1). The incident involved Appellant attempting to rape a young boy whom Appellant was babysitting.

{¶3} Prior to sentencing, the trial court ordered a pre-sentence investigation, which report indicated Appellant had two prior convictions for gross sexual imposition.

{¶4} Via Judgment Entry of June 9, 2009, the trial court sentenced Appellant to the maximum sentence of eight years on the attempted rape count, and the maximum sentence of eighteen months on the disseminating matter harmful to juveniles count. The trial court further ordered the prison terms be served consecutively.

{¶5} Appellant now appeals, assigning as error:

{¶6} "I. THE TRIAL COURT ERRED BY SENTENCING THE DEFENDANT/APPELLANT TO THE MAXIMUM AND CONSECUTIVE PRISON TERM."

{¶7} In *State v. Foster*, the Supreme Court of Ohio, in striking down parts of Ohio's sentencing scheme, held "[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, 845 N.E.2d 470, 2006-Ohio-856, paragraph seven of the syllabus.

{¶8} Thus, an appellate court reviews felony sentences for an abuse of discretion. *Id.* An abuse of discretion implies 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, 450 N.E.2d 1140. 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, 614 N.E.2d 748.

{¶9} Here, Appellant entered a plea of guilty to one count of attempted rape and one count of disseminating matter harmful to juveniles. The trial court sentenced Appellant within the statutory range for the offenses. See, R.C. § 2929.14(A).

{¶10} In the June 9, 2009 Sentencing Entry, the trial court sets forth its rationale for the sentence imposed. The court found Appellant attempted to cause physical harm or to make an actual threat of physical harm to a person; had a prior history of criminal convictions, and held a position of trust in that he was babysitting at the time of the act. The trial court indicated it considered the factual background of the case, the pre-sentence report, the victim impact statement and the felony sentencing statutes. We do not find the trial court abused its discretion in rendering its sentence.

{¶11} Appellant's sole assignment of error is overruled, and Appellant's sentence in the Delaware County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Edwards, J. and

Delaney, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

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

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
NEIL J. MEYERS JR.	:	
	:	
Defendant-Appellant	:	Case No. 09CAA 07 0063

For the reason stated in our accompanying Opinion, Appellant’s sole assignment of error is overruled, and Appellant’s sentence in the Delaware County Court of Common Pleas is affirmed. Costs to Appellant.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY