

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. John W. Wise, P.J.
	:	Hon. W. Scott Gwin, J.
Plaintiff-Appellee	:	Hon. William B. Hoffman,
	:	
-vs-	:	
	:	Case No. 2018CA00047
JOHNNYLEE WILLIAM JOHNSON	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Criminal appeal from the Stark County Court of Common Pleas, Case No. 2016-CR-1811(B)

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: August 6, 2018

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Gwin, J.,

{¶1} Appellant appeals the March 29, 2018 judgment entry of the Stark County Court of Common Pleas denying his motion for resentencing and declaring his motion to strike moot.

Facts & Procedural History

{¶2} On November 4, 2016, appellant Johnnylee William Johnson was indicted on one count of rape in violation of R.C. 2907.02(A)(2), a felony in the first degree; one count of kidnapping in violation of R.C. 2905.01(A)(2), (3), and (4) with a sexual motivation specification, a felony in the first degree; one count of aggravated robbery in violation of R.C. 2911.01(A)(3), a felony of in the first degree; and one count of robbery in violation of R.C. 2911.02(A)(2), a felony in the second degree.

{¶3} On January 18, 2017, appellant withdrew his plea of not guilty, executed a Plea of Guilty Criminal Rule 11 (C) form, and pled guilty to each of the offense set forth in the indictment. The plea of guilty form, which was signed by appellant, stated, “I understand my right to appeal a maximum sentence and procedural issues regarding this plea; I understand my other limited appellate rights which have been explained to me by the Court, and that any appeal must be filed within 30 days of my sentence.”

{¶4} Appellant was sentenced to 11 years in prison on count one (rape), count two was merged with count one, appellant was sentenced to a term of 4 years in prison on the charge of aggravated robbery, count four was merged with count three, and the sentences on count one and three were ordered to be served consecutively, for a total term of 15 years in prison.

{¶5} Appellant did not file a direct appeal. On October 23, 2017, appellant filed a motion for post-conviction relief, arguing ineffective assistance of counsel. The trial court denied his petition on November 28, 2017. Appellant did not appeal the November 28, 2017 judgment entry.

{¶6} On February 5, 2018, appellant filed a motion for resentencing pursuant to Criminal Rule 32(B). Appellant argued the trial court must resentence him because the trial court failed to advise him of his appellate rights pursuant to Criminal Rule 32(B).

{¶7} The trial court issued a judgment entry on March 29, 2018 denying appellant's motion for resentencing. The trial court found that since appellant's change in plea was the result of a "negotiated plea" for a 15 year sentence, the Court imposed the agreed sentence, the sentence fell within the statutory range of available sentences, and the sentence was authorized by law.

{¶8} Appellant appeals the March 29, 2018 judgment entry of the Stark County Court of Common Pleas and assigns the following as error:

{¶9} "I. THE TRIAL COURT ERRS WHEN IT FAILS TO ADVISE A CRIMINAL DEFENDANT OF HIS RIGHT TO APPEAL HIS SENTENCE PURSUANT TO CRIMINAL RULE 32(B) THEREBY DENYING A DEFENDANT DUE PROCESS AND EQUAL PROTECTION OF THE LAW IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND ARTICLE IV, SECTION 3 OF THE OHIO CONSTITUTION, AND R.C. 2905.03 AND 2953.02.

{¶10} "II. APPELLANT JOHNSON'S PLEA WAS OBTAINED IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES

CONSTITUTION, AND ARTICLE I SECTION 10 OF THE OHIO CONSTITUTION AND CRIMINAL RULE 11(C).”

I.

{¶11} In this case, appellant argues he was not properly notified of his limited appellate rights at his plea hearing and/or his sentencing hearing. However, appellant has not provided a transcript of either the plea hearing or the sentencing hearing. Thus, we must presume the regularity of the proceedings. *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 400 N.E.2d 384 (1980); *State v. Batstra*, 5th Dist. Muskingum No. CT2016-0052, 2017-Ohio-2665.

{¶12} Further, pursuant to R.C. 2953.08(D), “a sentence imposed upon a defendant is not subject to review under this section if the sentence is authorized by law, has been recommended jointly by the defendant and the prosecution in the case, and is imposed by sentencing judge.” If all three conditions are met, the defendant may not appeal the sentence. *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923.

{¶13} In this case, appellee and appellant agreed to a sentence of fifteen years. The Court imposed the agreed sentence. The sentence fell within the statutory range of available sentences, and thus was authorized by law. Accordingly, appellant waived his right to appeal pursuant to R.C. 2953.08(D). See *State v. Barnett*, 5th Dist. Perry No. 12-CA-00010, 2013-Ohio-4936. Appellant acknowledged his limited appeal rights resulting from his negotiated plea in the plea form he signed which provided, “I understand my right to appeal a maximum sentence and procedural issues regarding this plea; I understand my other limited appellate rights which have been explained to me by the Court, and that

any appeal must be filed within 30 days of my sentence.” As noted above, since appellant has not provided a transcript, we must presume the regularity of the proceedings. *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 400 N.E.2d 384 (1980); *State v. Batstra*, 5th Dist. Muskingum No. CT2016-0052, 2017-Ohio-2665.

{¶14} Appellant’s first assignment of error is overruled.

II.

{¶15} In his second assignment of error, appellant argues the trial court failed to comply with Criminal Rule 11(C) because the trial court failed to notify him of the rights he was waiving by his guilty plea, i.e., his waiver of his right to a jury trial, to confront witnesses against him, to have compulsory process for obtaining witnesses in the defendant’s favor, and to require the state to prove the defendant’s guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself.

{¶16} Appellant did not raise this issue in his motion for resentencing before the trial court. Appellant may not then raise this issue for the first time on appeal. *State v. Neale*, 5th Dist. Stark No. 2013CA00247, 2014-Ohio-4368.

{¶17} Further, in the plea form appellant signed, he acknowledged that he was advised by entering a plea of guilty, he is waving (giving up) the following Constitutional Rights: (1) My right to have a jury trial or a trial to the Court; (2) My right to confront witnesses against me; (3) My right to have compulsory process for obtaining witnesses in my favor (the right to subpoena witnesses in my favor); (4) My right to require the State to prove my guilt beyond a reasonable doubt; and (5) My right not to be compelled to testify against myself. Since appellant has not provided a transcript, we must presume

the regularity of the proceedings. *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 400 N.E.2d 384 (1980); *State v. Batstra*, 5th Dist. Muskingum No. CT2016-0052, 2017-Ohio-2665.

{¶18} Appellant's second assignment of error is overruled.

{¶19} Based on the foregoing, appellant's assignments of error are overruled. The March 29, 2018 judgment entry of the Stark County Court of Common Pleas is affirmed.

By Gwin, J.,

Wise, John, P.J., and

Hoffman, J., concur