

STATE OF OHIO)
)ss:
COUNTY OF WAYNE)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 17AP0033

Appellee

v.

MATTHEW J. HATHAWAY

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF WAYNE, OHIO
CASE No. 2015 CRC-I 000192

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 29, 2018

HENSAL, Judge.

{¶1} Matthew Hathaway appeals a judgment of the Wayne County Court of Common Pleas that convicted and sentenced him for sexual battery. For the following reasons, this Court affirms.

I.

{¶2} The Wayne County Grand Jury indicted Mr. Hathaway on three counts of sexual battery. After he pleaded guilty to one of the counts, the trial court dismissed the others. The court sentenced him to 24 months of community control, which included 180 days of jail time. On appeal, this Court reversed his sentence because it did not include the fact that he had been classified as a Tier III sex offender. On remand, the trial court held a resentencing hearing, and imposed the same sentence. Following the hearing, the court issued a new sentencing entry, which correctly noted Mr. Hathaway’s classification as a Tier III sex offender. Mr. Hathaway

has appealed, arguing that his sex offender classification violates his constitutional right to be free of cruel and unusual punishment.

II.

ASSIGNMENT OF ERROR

THE OFFENSE-BASED SEX OFFENDER CLASSIFICATIONS UNDER SENATE BILL 10 CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT UNDER [THE] EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND ARTICLE I, SECTION 9 OF THE OHIO CONSTITUTION, WHERE THE CLASSIFICATION IS GROSSLY DISPROPORTIONATE TO THE NATURE OF THE OFFENSE AND CHARACTER OF THE OFFENDER.

{¶3} Mr. Hathaway argues that his classification as a Tier III sex offender constitutes cruel and unusual punishment, in violation of the United States Constitution and the Ohio Constitution. According to him, the offense arose out of the fact that, when he was 29, he had a consensual sexual relationship with a 17-year-old, which would not have violated the law, except for the fact that he was the assistant principal of her school. He notes that, as a Tier III sex offender, he will have to register his home address, work address, and any school address with the sheriff of the appropriate county every 90 days for the rest of his life. He argues that this lifetime requirement is not proportionate to his offense.

{¶4} The United States Supreme Court has held that “as a matter of principle[,] * * * a criminal sentence must be proportionate to the crime for which the defendant has been convicted.” *Solem v. Helm*, 463 U.S. 277, 290 (1983). “[C]ases addressing the proportionality of sentences fall within two general classifications. The first involves challenges to the length of term-of-years sentences given all the circumstances in a particular case. The second comprises cases in which the Court implements the proportionality standard by certain categorical restrictions * * *.” *Graham v. Florida*, 560 U.S. 48, 59 (2010). The Ohio Supreme Court has

applied these tests to arguments that sex-offender-registration requirements constitute cruel and unusual punishment. *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, ¶ 26; *State v. Blankenship*, 145 Ohio St.3d 221, 2015-Ohio-4624, ¶ 18.

{¶5} Mr. Hathaway notes that the offense he committed, sexual battery under Revised Code Section 2907.03(A)(7), prohibits any “teacher, administrator, coach, or other person in authority” from engaging in sexual conduct with any person enrolled in the school where they are employed. R.C. 2907.03(A)(7). He also notes that, under Section 2950.01(G)(1)(a), any person who has been convicted of sexual battery is automatically designated a Tier III sex offender, regardless of the circumstances of the offense. He argues that this classification of school-employed sexual-battery offenders is categorically disproportionate under the state and federal constitutions.

{¶6} Although Mr. Hathaway is making a categorical challenge to his sex-offender classification, he relies on a number of purported facts to support his arguments. For instance, he alleges that his sexual conduct with the 17-year-old was consensual. He alleges that he had no criminal history before this offense. He alleges that only 17 states have substantially adopted the Sex Offender Registration and Notification Act. He also alleges that he will have difficulty securing housing and employment because of his registration requirements. In addition, he makes various allegations regarding the characteristics of those who commit violations of Section 2907.03(A)(7) and about the effectiveness of sex-offender registration laws.

{¶7} Mr. Hathaway has not directed this Court to any parts of the record that support his alleged facts, as required under Appellate Rule 16(A)(7). This Court has reviewed the record and also has not located any evidence that supports his allegations. We note that the record does not contain a copy of the transcript of his plea hearing or his first sentencing hearing. Although

it contains a copy of the transcript of his second sentencing hearing, there was no discussion about the circumstances of his offense at that hearing and he made only one assertion regarding the constitutionality of the sexual offender classification system.

{¶8} “It is the appellant’s responsibility to ensure that the record on appeal contains all matters necessary to allow this Court to resolve the issues on appeal.” *State v. Yuncker*, 9th Dist. Medina No. 14CA0068-M, 2015-Ohio-3933, ¶ 17, citing App.R. 9. “[If] an appellant does not provide a complete record to facilitate our review, we must presume regularity in the trial court’s proceedings and affirm.” *State v. McGowan*, 9th Dist. Summit No. 27092, 2014-Ohio-2630, ¶ 6, quoting *State v. Taylor*, 9th Dist. Lorain Nos. 13CA010366, 13CA010367, 13CA010368, 13CA010369, 2014-Ohio-2001, ¶ 6; *see also King v. Carleton*, 9th Dist. Lorain No. 13CA01034, 2013-Ohio-5781, ¶ 30. Upon review of the record in this case, we conclude that Mr. Hathaway has not established that the trial court violated his right to be free from cruel and unusual punishment under the United States and Ohio constitutions when it classified him as a Tier III sex offender. Mr. Hathaway’s assignment of error is overruled.

III.

{¶9} Mr. Hathaway’s assignment of error is overruled. The judgment of the Wayne County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Wayne, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

JENNIFER HENSAL
FOR THE COURT

TEODOSIO, P. J.
CONCURS.

CARR, J.
CONCURRING IN JUDGMENT ONLY.

{¶10} I respectfully concur in judgment only based on the reasoning set forth in *State v. Fisher*, 4th Dist. Ross. No. 16CA3553, 2017-Ohio-7260.

APPEARANCES:

BRYAN K. BARNARD, Attorney at Law, for Appellant.

DANIEL R. LUTZ, Prosecuting Attorney, and NATHAN R. SHAKER, Assistant Prosecuting Attorney, for Appellee.