

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

State of Ohio

Court of Appeals No. L-09-1117

Appellee

Trial Court No. CR0200803715

v.

Samson Cosme

DECISION AND JUDGMENT

Appellant

Decided: March 31, 2010

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Timothy F. Braun, Assistant Prosecuting Attorney, for appellee.

Deborah Kovac Rump, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant appeals his sentence, rendered on a conviction following an *Alford* plea to aggravated burglary, kidnapping, aggravated robbery and rape in the Lucas County Court of Common Pleas. For the reasons that follow, we affirm

{¶ 2} On November 10, 2008, three gunmen forced their way into a Toledo home occupied by three men and a 19 year-old woman. The intruders bound the four with duct tape, also covering the captives' eyes and mouths.

{¶ 3} After the home occupants were bound, one of the gunmen carried the woman into another room. According the woman, the man placed what she believed was a gun to her head and asked if she wanted to have sex. The man then raped the woman vaginally and anally.

{¶ 4} When the first of the intruders was through with the woman, another intruder also raped her. After this, the trio removed a large quantity of belongings from the home, including tattooing equipment, and fled.

{¶ 5} The police investigation soon focused on appellant, Samson Cosme, because appellant had once worked for the owner of the house. Police eventually arrested appellant and two others. On questioning, appellant admitted to being in the house, but denied the rape. Appellant told police that he had received oral sex from the woman and that it was consensual. DNA analyses from fluids taken from the rape victim, however, indicated that appellant was the first rapist.

{¶ 6} On November 19, 2008, appellant and the two others were named in an eleven count indictment charging them with multiple counts of aggravated burglary, kidnapping, aggravated robbery, robbery and rape. Following negotiations, on March 23, 2009, appellant entered a plea pursuant to *North Carolina v. Alford* (1970), 400 U.S. 25, to one count of aggravated burglary, one count of kidnapping, one count of rape and one

count of aggravated robbery, all first degree felonies. Following a plea colloquy, the court accepted the plea and found appellant guilty.

{¶ 7} The court classified appellant as a Tier III sex offender and sentenced him to a nine year term of incarceration for aggravated burglary, four years for kidnapping, nine years for rape and five years for aggravated robbery. The court ordered the sentences for aggravated robbery, kidnapping and rape to be served consecutively and the term for aggravated robbery to be served concurrently with the aggravated burglary sentence for a total aggregated prison term of 22 years.

{¶ 8} From this judgment of conviction and sentence, appellant now brings this appeal. Appellant sets forth a single assignment of error:

{¶ 9} "The trial court abused its discretion by imposing such a lengthy sentence, which greatly exceeded that of his co-defendants."

{¶ 10} Appellate analysis of a criminal sentence contains two steps. We must first ensure that the trial court has adhered to all the applicable statutes and rules in imposing sentence. This is a purely legal question, "* * * only to determine whether it is clearly and convincingly contrary to law * * *." *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, ¶ 14. If, for example, the sentence is outside the perimeters of the permissible statutory range, the sentence cannot stand. *Id.* at ¶ 15.

{¶ 11} "Assuming the trial court has complied with the applicable rules and statutes, the exercise of its discretion in selecting a sentence within the permissible statutory range is subject to review for abuse of discretion * * *." *Id.* at ¶ 17. An abuse of discretion is more than an error of law or judgment, the term connotes that the court's

attitude is arbitrary, unreasonable or unconscionable. *State v. Adams* (1980), 62 Ohio St.2d 151, 157.

{¶ 12} Appellant does not contend that the sentence imposed upon him violates a statute or a rule. He only asserts that, because a co-defendant received only a 13 year sentence for acts almost identical to his, this constitutes an abuse of discretion.

{¶ 13} This court is not in the business of making numerical comparison of the sentences imposed on offenders. A sentencing court properly considers numerous factors in determining an appropriate sentence. In this matter, appellant clearly accepted no responsibility for his acts. Indeed at sentencing appellant characterized it as a "mistake" and "all a means of survival" in a society that fosters mistakes. "It's either you at the bottom of the food chain or the top," appellant told the court.

{¶ 14} According to his co-defendants, appellant's involvement was greater than the others. Appellant's response to these accusations was to advise the court not to take the word of criminals.

{¶ 15} The trial court stated that it considered the record, statements and the presentence investigation report as well as the statutory purposes and principles of sentencing and the seriousness and recidivism factors to arrive at its sentence. There is nothing in the record to suggest otherwise. Accordingly, we fail to find that the court's sentence was arbitrary, unreasonable or unconscionable. Appellant's sole assignment of error is not well-taken.

{¶ 16} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. It is ordered that appellant pay the court 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, 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:
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