[Cite as *State v. Gilmore*, 2005-Ohio-6472.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	No. 05AP-309 (No. 04CR12-7986)
v.	:	(ACCELERATED CALENDAR)
Anthony J. Gilmore,	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on December 6, 2005

Ron O'Brien, Prosecuting Attorney, and *Seth L. Gilbert*, for appellee.

Yeura R. Venters, Public Defender, and *John W. Keeling*, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

PETREE, J.

{¶1} Defendant-appellant, Anthony J. Gilmore, appeals from a judgment of the Franklin County Court of Common Pleas sentencing him to 30 months in prison following his guilty plea to one count of operating a vehicle under the influence of alcohol or drugs, in violation of R.C. 4511.19, a felony of the fourth degree. For the following reasons, we affirm the judgment of the trial court.

{¶2} On December 7, 2004, defendant was indicted on one count of operating a vehicle under the influence of alcohol or drugs, in violation of R.C. 4511.19, a felony of the fourth degree. Defendant pled guilty to the count as charged. After determining that defendant poses the greatest likelihood of committing future crimes, the trial court sentenced defendant to 30 months in prison. The trial court also ordered that defendant's Ohio driver's license be suspended for ten years, without occupational driving privileges.

{¶3} Defendant has appealed to this court and has assigned the following assignment of error for our review:

> THE TRIAL COURT ERRED WHEN IT IMPOSED THE MAXIMUM SENTENCE ON THE OFFENSE OF DRIVING UNDER THE INFLUENCE IN THE ABSENCE OF ANY FACTS, EITHER ADMITTED BY THE DEFENDANT OR FOUND BY A JURY, THAT WOULD HAVE ALLOWED THE TRIAL COURT TO IMPOSE THE MAXIMUM SENTENCE.

{¶4} By his single assignment of error, defendant argues that the trial court erred in imposing the maximum sentence because the facts necessary to support the sentence were not admitted by defendant or found by a jury. Relying upon *Blakely v. Washington* (2004), 542 U.S. 296, 124 S.Ct. 2531, and *United States v. Booker* (2004), 543 U.S. 220, 125 S.Ct. 738, defendant argues that the trial court was not authorized to make the findings necessary to impose the 30-month sentence. Defendant also cites Ohio appellate court cases from the First and Eighth Appellate Districts in support of his argument. (See defendant's brief, at 4-5, citing *State v. Washatka*, Cuyahoga App. No. 83679, 2004-Ohio-5384, and *State v. Montgomery*, Hamilton App. No. C-040190, 2005-Ohio-1018.)

{¶5} In *Apprendi v. New Jersey* (2000), 530 U.S. 466, 490, 120 S.Ct. 2348, the United States Supreme Court held that, "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." In *Blakely*, at 303, the United States Supreme Court, in applying the rule in *Apprendi*, held that the statutory maximum is "the maximum sentence a judge may impose *solely on the basis of the facts reflected in the jury verdict or admitted by the defendant*." (Emphasis sic.) In *Booker*, at 543 U.S. 220, at ___, 125 S.Ct. 738, at 750, the United States Supreme Court reaffirmed the syllabus of *Apprendi* but also held, "when a trial judge exercises his discretion to select a specific sentence within a defined range, the defendant has no right to a jury determination of the facts that the judge deems relevant."

{¶6} This court has rejected the application of *Blakely* to Ohio's sentencing scheme. See, e.g., *State v. Molina-Almaguer*, Franklin App. No. 04AP-1295, 2005-Ohio-5798. Furthermore, this court has specifically stated that, under Ohio's felony sentencing statutes, "[a]s long as a court sentences a defendant to a prison term within the stated minimum and maximum terms permitted by law, the Sixth Amendment is not violated and *Blakely* and *Apprendi* are not implicated." *State v. Sieng*, Franklin App. No. 04AP-556, 2005-Ohio-1003, at ¶38. Here, defendant's sentence for his offense was within the stated minimum and maximum terms permitted by law; it was the maximum permitted by law. See R.C. 4511.19(G)(1)(d)(i). Therefore, in view of case law from this appellate district, we find defendant's argument unpersuasive.

{¶7} Based on the foregoing, we overrule defendant's single assignment of error and accordingly affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN, P.J., and SADLER, J., concur.

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