

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 15AP-90
 : (C.P.C. No. 14CR-3761)
 Nicholas B. McCord, :
 : (REGULAR CALENDAR)
 Defendant-Appellant. :

D E C I S I O N

Rendered on July 30, 2015

Ron O'Brien, Prosecuting Attorney, and *Michael P. Walton*,
for appellee.

Carpenter Lipps & Leland LLP, *Kort Gatterdam* and *Erik P.*
Henry, for appellant.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Nicholas B. McCord is appealing from the sentence imposed upon him following his conviction for violating R.C. 2927.01, "abuse of a corpse" as a felony of the fifth degree. He assigns a single error for our consideration:

THE TRIAL COURT ERRED AND IMPOSED A SENTENCE CLEARLY AND CONVINCINGLY CONTRARY TO LAW AND CONTRARY TO THE DUE PROCESS CLAUSES OF THE UNITED STATES AND OHIO CONSTITUTIONS AFTER FINDING APPELLANT CAUSED PHYSICAL HARM WHILE COMMITTING THE OFFENSE OF GROSS ABUSE OF A CORPSE.

{¶ 2} R.C. 2927.01 reads:

(A) No person, except as authorized by law, shall treat a human corpse in a way that the person knows would outrage reasonable family sensibilities.

(B) No person, except as authorized by law, shall treat a human corpse in a way that would outrage reasonable community sensibilities.

(C) Whoever violates division (A) of this section is guilty of abuse of a corpse, a misdemeanor of the second degree. Whoever violates division (B) of this section is guilty of gross abuse of a corpse, a felony of the fifth degree.

{¶ 3} The underlying facts are that Jordyn Hollingsworth died at McCord's apartment from a heroin overdose. McCord was not present when Hollingsworth used the heroin but returned to his apartment to find her overdosed, but still alive. McCord and Corey Roberts decided not to get her medical attention, apparently thinking that she would recover without it.

{¶ 4} Corey Roberts had active arrest warrants, so he did not want police or fire fighters summoned. After Jordyn died, as opposed to recovering, the decision was made to take her body to a remote location and dump it.

{¶ 5} McCord was initially charged with both tampering with evidence and abuse of a corpse. He agreed to a plea bargain under the terms of which the tampering with evidence charge was dismissed in return for his guilty plea to the abuse of a corpse charge.

{¶ 6} McCord's defense counsel apparently believed that the plea bargain did not allow for McCord to be sentenced to prison since the charge was a felony of the fifth degree and McCord had no prior felony convictions. Counsel relied upon R.C. 2929.13(B)(1), which reads in pertinent part:

(a) Except as provided in division (B)(1)(b) of this section, if an offender is convicted of or pleads guilty to a felony of the fourth or fifth degree that is not an offense of violence or that is a qualifying assault offense, the court shall sentence the offender to a community control sanction of at least one year's duration if all of the following apply:

(i) The offender previously has not been convicted of or pleaded guilty to a felony offense.

(ii) The most serious charge against the offender at the time of sentencing is a felony of the fourth or fifth degree.

(iii) If the court made a request of the department of rehabilitation and correction pursuant to division (B)(1)(c) of this section, the department, within the forty-five-day period specified in that division, provided the court with the names of, contact information for, and program details of one or more community control sanctions of at least one year's duration that are available for persons sentenced by the court.

(iv) The offender previously has not been convicted of or pleaded guilty to a misdemeanor offense of violence that the offender committed within two years prior to the offense for which sentence is being imposed.

(b) The court has discretion to impose a prison term upon an offender who is convicted of or pleads guilty to a felony of the fourth or fifth degree that is not an offense of violence or that is a qualifying assault offense if any of the following apply:

(i) The offender committed the offense while having a firearm on or about the offender's person or under the offender's control.

(ii) If the offense is a qualifying assault offense, the offender caused serious physical harm to another person while committing the offense, and, if the offense is not a qualifying assault offense, the offender caused physical harm to another person while committing the offense.

(iii) The offender violated a term of the conditions of bond as set by the court.

(iv) The court made a request of the department of rehabilitation and correction pursuant to division (B)(1)(c) of this section, and the department, within the forty-five-day period specified in that division, did not provide the court with the name of, contact information for, and program details of any community control sanction of at least one year's duration that is available for persons sentenced by the court.

(v) The offense is a sex offense that is a fourth or fifth degree felony violation of any provision of Chapter 2907. of the Revised Code.

(vi) In committing the offense, the offender attempted to cause or made an actual threat of physical harm to a person with a deadly weapon.

(vii) In committing the offense, the offender attempted to cause or made an actual threat of physical harm to a person, and the offender previously was convicted of an offense that caused physical harm to a person.

(viii) The offender held a public office or position of trust, and the offense related to that office or position; the offender's position obliged the offender to prevent the offense or to bring those committing it to justice; or the offender's professional reputation or position facilitated the offense or was likely to influence the future conduct of others.

(ix) The offender committed the offense for hire or as part of an organized criminal activity.

(x) The offender at the time of the offense was serving, or the offender previously had served, a prison term.

(xi) The offender committed the offense while under a community control sanction, while on probation, or while released from custody on a bond or personal recognizance.

{¶ 7} The trial court judge assigned to the case disagreed with defense counsel's view and sentenced McCord to ten months in prison. The trial court judge found that McCord had caused physical harm to Hollingsworth while committing the offense.

{¶ 8} The trial court judge had the discretion to either accept or not accept the plea bargain placed before him. The trial court judge did not have the discretion, having accepted the plea bargain, to disregard R.C. 2929.13(B)(1) at the time of sentencing. McCord's criminal conviction was based upon his transporting Hollingsworth's dead body. The transporting did not harm Hollingsworth. Tragically, she was already dead.

{¶ 9} The laws of Ohio frequently require judges to reach results and enter judgments they do not personally favor. This is one of those situations. Ohio's sentencing statutes require that McCord be given community control, not a prison sentence.

{¶ 10} The sole assignment of error is sustained. The sentencing entry is vacated and the cause is remanded for a new sentencing hearing which complies with R.C. 2929.13(B).

*Sentencing entry vacated and
cause remanded with instructions.*

SADLER and LUPER SCHUSTER, JJ., concur.
