

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2005-05-034
 :
 - vs - : OPINION
 : 12/12/2005
 :
 MELISSA D. SIZEMORE, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 2004 CR 00909

Donald W. White, Clermont County Prosecuting Attorney, David Henry Hoffmann, 123 North Third Street, Batavia, Ohio 45103-3033, for plaintiff-appellee

R. Daniel Hannon, Clermont County Public Defender, Robert F. Benintendi, 10 South Third Street, Batavia, Ohio 45103, for defendant-appellant

BRESSLER, J.

{¶1} Defendant-appellant, Melissa D. Sizemore, was indicted on two third-degree felony counts of operating a vehicle under the influence of alcohol ("OVI") and one count of driving while under suspension. In exchange for a guilty plea on one of the OVI counts, the state agreed to dismiss the remaining charges.

{¶2} The trial court imposed a sentence that included a four-year prison term, prompting the immediate appeal in which appellant claims, as her sole assignment of error,

that the trial court erred by not imposing the shortest possible prison term.

{¶3} Appellant submits that because she has not previously served a prison term, the imposition of a four-year sentence violates her constitutional right to a jury trial since a jury must determine and find beyond a reasonable doubt those factors necessary to enhance a prison sentence beyond the minimum term. In support of her position, appellant relies on the Supreme Court's decision in *Blakely v. Washington* (2004), 542 U.S. 296, 124 S.Ct. 2531.

{¶4} Appellant's assignment of error is not well-taken. This court has repeatedly refused to apply the *Blakely* decision to Ohio's felony sentencing scheme and has held that the imposition of more than a minimum sentence upon an individual who has not previously served a prison term does not violate the constitutional right to a jury trial. *State v. Brumley*, Butler App. No. CA2004-05-114, 2005-Ohio-5768, ¶18; *State v. Farley*, Butler App. No. CA2004-04-085, 2005-Ohio-2367, ¶43; and *State v. Combs*, Butler App. No. CA2005-03-047, 2005-Ohio-1923, ¶38.

{¶5} We accordingly conclude that appellant's right to a jury trial was not violated and that the trial court made the necessary determinations under Ohio's sentencing laws to impose more than the minimum sentence for a third-degree felony OVI offense.

{¶6} Appellant's sole assignment of error is hereby overruled.

{¶7} Judgment affirmed.

WALSH, P.J., and YOUNG, J., concur.

[Cite as *State v. Sizemore*, 2005-Ohio-6555.]