

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

State of Ohio

Court of Appeals No. H-11-007

Appellee

Trial Court No. CRI 20101122

v.

Jason E. Copsey

**DECISION AND JUDGMENT**

Appellant

Decided: December 2, 2011

\* \* \* \* \*

Russell V. Leffler, Huron County Prosecuting Attorney, for appellee.

Curtis J. Koch, for the appellant

\* \* \* \* \*

OSOWIK, J.

{¶ 1} This is an appeal of a sentencing judgment of the Huron County Court of Common Pleas. Appellant entered a plea of guilty to one count of sexual battery, in violation of R.C. 2907.03(A)(5), a felony of the third degree. The trial court sentenced

appellant to the maximum term of five years incarceration. For the reasons set forth more fully below, the judgment of the trial court is hereby affirmed.

{¶ 2} Appellant, Jason E. Copsey, sets forth two assignments of error:

{¶ 3} "I. THE COMMON PLEAS COURT OF HURON COUNTY, OHIO ERRED BY FAILING TO SUPPRESS THE APPELLANTS [SIC] CONFESSION AS IT WAS NOT VOLUNTARY.

{¶ 4} "II. A MAXIMUM PRISON SENTENCE WAS NOT SUPPORTED BY THE FACTS OR BACKGROUND OF THIS CASE."

{¶ 5} The following undisputed facts are relevant to the issues raised upon appeal. Appellant and his wife worked at a local factory, cleaning the offices during the evening hours. Appellant's wife became unable to work because of an illness. The couples' daughter filled in at the factory during her mother's recuperation and assisted her father with the cleaning. One evening after the minor daughter had commenced assisting her father with the cleaning, while they were working in an office, appellant forcibly threw his 13-year-old daughter onto a table and sexually assaulted her.

{¶ 6} During the fall of 2010, the incident was brought to the attention of the Greenwich Police Department when the victim called and reported the assault.

{¶ 7} Appellant, by his own admission, had been overwhelmed with guilt and depression following these events and sought mental health treatment at a local hospital. Following release from the hospital, appellant reported to the Greenwich police station to be interviewed. Although he was not in custody at the time, appellant was fully

Mirandized. In explicit detail, appellant confessed to the sexual assault committed against his daughter. Appellant claimed that the deprivation of sexual activity on his part due to the adverse health of his wife drove him to commit the assault.

{¶ 8} On December 15, 2010, appellant was indicted by the Huron County Grand Jury on one count of sexual battery, a felony of the third degree. Appellant filed a motion to suppress his confession on the grounds that the Miranda warnings were not properly conveyed to him and that he was on medication at the time so that any waivers of his Miranda rights were not voluntary. A motion to suppress hearing was conducted on March 10, 2011. The trial court denied the motion to suppress.

{¶ 9} On March 15, 2011, appellant entered a plea of guilty to the one count of sexual battery. On April 28, 2011, appellant was sentenced to a maximum term of five years of incarceration. The trial court also sentenced appellant to five years of postrelease control and to comply with applicable sex offender registration requirements.

{¶ 10} In his first assignment of error, appellant argues that the trial court erred in failing to suppress his confession, as it was not given voluntarily. In support, appellant maintains the medication to treat his depression hindered his ability to give a voluntary waiver of Miranda rights.

{¶ 11} The Supreme Court of Ohio has stated:

{¶ 12} "In *Tollett v. Henderson* (1973), 411 U.S. 258, 267, 93 S.Ct. 1602, 1608, 36 L.Ed.2d 235, 243, the Supreme Court of the United States held in part: "We thus affirm the principle recognized in the *Brady* [*v. United States* (1970), 397 U.S. 742, 90

S.Ct. 1463, 25 L.Ed.2d 747] trilogy: a guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. He may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within the standards set forth in *McMann* [*v. Richardson* (1970), 397 U.S. 759, 90 S.Ct. 1441, 25 L.Ed.2d 763]."  
*State v. Spates* (1992), 64 Ohio St.3d 269, 271-272.

{¶ 13} The guilty plea entered by appellant barred his claim to constitutional rights violations that may have occurred prior to the plea. By admitting his guilt through a guilty plea, appellant is left only to challenge the sentencing judgment or the voluntariness of the plea. A challenge of a guilty plea not made knowingly or intelligently involves whether the trial court proceeded properly when appellant entered the plea.

{¶ 14} As the Supreme Court of Ohio has consistently affirmed:

{¶ 15} "A trial court must strictly comply with Crim.R. 11(C)(2)(c) and orally advise a defendant before accepting a felony plea that the plea waives (1) the right to a jury trial (2) the right to confront one's accusers, (3) the right to compulsory process to obtain witnesses, (4) the right to require the state to prove guilt beyond a reasonable doubt, and (5) the privilege against compulsory self incrimination. When a trial court

fails to strictly comply with this duty, the defendant's plea is invalid." *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, ¶ 31.

{¶ 16} After thorough review of the transcript of the plea hearing, it is clear that the trial judge properly and fully advised appellant of his rights before entering his plea of guilty. The trial court advised appellant of all waived rights in complete compliance with Crim.R. 11. Appellant unambiguously affirmed his understanding of the consequences of the guilty plea. Appellant's first assignment of error is not well-taken.

{¶ 17} In his second assignment of error, appellant argues the trial court abused its discretion in sentencing appellant to the maximum sentence of five years of incarceration.

{¶ 18} This issue is reviewed pursuant to the standards established by *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio 856. *Foster* held several of Ohio's sentencing statutes unconstitutional in violation of the Sixth Amendment to the United States Constitution in the manner enumerated in *Apprendi v. New Jersey* (2000), 530 U.S. 466 and *Blakely v. Washington* (2004), 542 U.S. 296.

{¶ 19} Trial courts are no longer required to make specific findings or give their reasons for imposing maximum, consecutive, or more than minimum sentences. *Foster* vests trial courts with full discretion to impose any duration of prison sentence which falls within the statutory range.

{¶ 20} "In applying *Foster* to the existing statutes, appellate courts must apply a two-step approach. First, they must examine the sentencing court's compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence

is clearly and convincingly contrary to law. If this first prong is satisfied, the trial court's decision shall be reviewed under an abuse-of-discretion standard." *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, ¶ 4.

{¶ 21} In sentencing appellant, the trial court did not violate any sentencing statutes or in any way abuse its discretion when it sentenced appellant to the maximum sentence. Appellant confessed to having sexually assaulted his 13-year-old daughter, an assault described by the victim as rape by her own father. As a result of appellant's severe criminal conduct, substantial physical and psychological harm was suffered by the victim. The serious nature of this crime, in conjunction with appellant's extensive criminal record, supports the sentence of the trial court. Appellant's second assignment of error is not well-taken.

{¶ 22} Wherefore, we find substantial justice has been done. The judgment of the Huron County Court of Common Pleas is affirmed. Pursuant to App.R. 24, costs of this appeal are assessed to appellant.

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

Thomas J. Osowik, P.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:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.