

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

State of Ohio

Court of Appeals No. WD-10-009

Appellee

Trial Court No. 09 CR 122

v.

Stephanie Naugle

DECISION AND JUDGMENT

Appellant

Decided: April 15, 2011

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, Heather M. Baker and David E. Romaker, Jr., Assistant Prosecuting Attorneys, for appellee.

Tim A. Dugan, for appellant.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Wood County Court of Common Pleas, which sentenced appellant to a seven-year term of incarceration following her conviction on one count of attempted rape, in violation of R.C. 2923.02, a felony of the

second degree. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Stephanie Naugle, sets forth the following single assignment of error:

{¶ 3} "1) The Trial Court abused its discretion by sentencing Appellant to a prison term of seven years."

{¶ 4} The following undisputed facts are relevant to the issues raised on appeal. In the fall of 2007, appellant, a married mother of two minor children, began utilizing a 12-year-old neighbor girl to furnish babysitting services for her children. Appellant and the babysitter would sometimes socialize with one another, during which times alcohol would sometimes be consumed and conversations of an expressly sexual nature would transpire between the woman and the girl.

{¶ 5} Shortly thereafter, appellant reveals that a consensual sexual relationship commenced between appellant and her babysitter. Appellant engaged in various sexual activities with the victim on approximately a dozen occasions. Initially, appellant's husband was not aware of, and did not participate in, the sexual relations transpiring between his wife and their 12-year-old babysitter.

{¶ 6} Ultimately, appellant and the girl videotaped one of their sexual encounters. Appellant furnished the videotape to her husband who utilized same during subsequent acts of self-gratification. Subsequently, on at least one occasion, appellant's husband likewise engaged in sexual activity with the babysitter.

{¶ 7} Appellant and her husband were later indicted on multiple felony counts in connection to the above described activities. On August 10, 2009, appellant's husband pled guilty to one count of unlawful sexual conduct with a minor, in violation of R.C. 2907.04, a felony of the third degree. He was sentenced to a four-year term of incarceration. On December 7, 2009, appellant pled guilty to one count of attempted rape, in violation of R.C. 2907.02, a felony of the second degree. Appellant was sentenced to a seven-year term of incarceration. Timely notice of appeal was filed.

{¶ 8} In the single assignment of error, appellant contends that the trial court abused its discretion in her sentence. In support, although appellant concedes that the sentence was not the maximum, was within the statutory range, and simultaneously concedes the applicability of *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, to the case, appellant summarily concludes that an abuse of discretion occurred nevertheless based upon the variance in duration between the sentence of appellant and that imposed on her husband.

{¶ 9} It is well-settled that the terms of sentencing lie well within the sound discretion of the trial court. No abuse of discretion occurs in a sentence that does not breach the prescribed statutory limits for the offense and in the absence of adequate indicia that the trial court failed to engage in proper consideration prior to imposing sentence. *State v. Mays* (1995), 104 Ohio App.3d 241, 249.

{¶ 10} As applied to the instant case, appellant concedes that the sentence imposed was less than the maximum and was within the statutory limits. Accordingly, we narrow

our focus to the trial court's consideration of factors prior to sentencing, particularly in comparison to the sentence of the co-defendant.

{¶ 11} The sentencing transcript clearly reflects that the trial court engaged in an exhaustive and precise consideration of relevant statutory factors and principles, as well as an equally comprehensive comparison of appellant's actions to that of the co-defendant, prior to crafting appellant's sentence. The trial court stated in pertinent part, "In considering the sentence, the Court has reviewed the record in this case to date, as well as the presentence investigation * * * The Court notes that the overriding purposes and principles of felony sentencing are to protect the public from future crime by Miss Naugle and others, as well as to punish her. And in achieving these purposes, the Court notes the need to incapacitate Miss Naugle, to deter her and others from future crime. The Court will consider the applicable seriousness and recidivism factors. The Court notes that the victim of the offense suffered serious psychological harm as a result of the offense, the offender's relationship with the victim facilitated the offense, and that the mental injury suffered by the victim of the offense due to the conduct of the offender was exacerbated by the age of the victim."

{¶ 12} In conjunction with this, as pertains to the co-defendant, the trial court clearly considered and conveyed at sentencing, "I would indicate the co-defendant did receive a four-year prison sentence from this court; however, I think this case is distinguishable from him. The defendant in this case is more culpable than the co-defendant * * * the defendant indicated that she had sexual contact or conduct with the

victim in this matter prior to her husband, who is the co-defendant, knowing anything about it. That sexual conduct started when the victim was only 12 years old * * * the reason she shall be able to move past this incident is because she has shown absolutely no remorse for what she's done during the time she's been in the Wood County Jail, and that's shown through her inconsistent statements and the fact her story constantly changes."

{¶ 13} The record clearly reflects the appellant commenced the illicit relationship with the victim prior to her husband's knowledge or participation, engaged in illicit acts with the victim on far more numerous occasions, and was convicted of a second-degree felony, in comparison to the husband's conviction of a third-degree felony.

{¶ 14} Given these facts and circumstances, we find that the record is devoid of any persuasive or compelling evidence demonstrative of an abuse of discretion by the trial court in sentencing appellant. On the contrary, the record clearly reflects careful and thorough consideration of all statutory factors and co-defendant considerations prior to imposing a less than maximum sentence within the statutory range.

{¶ 15} Wherefore, we find appellant's assignment of error not well-taken. The judgment of the Wood County Court of Common Pleas is affirmed. Appellant is ordered to pay the cost 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

Arlene Singer, 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:
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