

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

State of Ohio

Court of Appeals No. L-12-1249

Appellee

Trial Court No. CR0201201476

v.

Lawrence Clement

DECISION AND JUDGMENT

Appellant

Decided: August 16, 2013

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Mark T. Herr, Assistant Prosecuting Attorney, for appellee.

Ann M. Baronas, for appellant.

* * * * *

SINGER, P.J.

{¶ 1} Appellant, Lawrence Clement, appeals a judgment of the Lucas County Court of Common Pleas, which, following his no contest plea, found him guilty of abuse of a corpse, a violation of R.C. 2927.01(B) and (C). Because we conclude that the trial court's sentence was not an abuse of its discretion, we affirm.

{¶ 2} The facts giving rise to this appeal are as follows. On March 27, 2012, appellant was charged with one count of abuse of a corpse. He entered a no contest plea on July 24, 2012. During the plea hearing, the prosecutor stated that he could prove that appellant, while employed at a funeral home, had sexual contact with a corpse. He was found guilty and sentenced to 12 months in prison. He now appeals setting forth the following assignment of error.

I. The judgment and sentence of the trial court was an abuse of discretion and disproportionate under the circumstances.

{¶ 3} In *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, the Supreme Court of Ohio set forth a two-step analysis to be employed in reviewing felony sentences on appeal. First, appellate courts are required to “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.” *Id.* at ¶ 26. Second, if the first prong is satisfied, the appellate court reviews the decision imposing sentence under an abuse of discretion standard. *Id.*

{¶ 4} Appellant was charged with a felony of the fifth degree. Pursuant to R.C. 2929.14(A)(5), the statutory range for a fifth degree felony is six to twelve months. A choice of sentence from within the permissible statutory range cannot, by definition, be contrary to law. *State v. Sattler*, 6th Dist. Erie No. E-11-085, 2013-Ohio-326, ¶ 10, citing *Kalish* at ¶ 15. Thus, the first prong under *Kalish* was satisfied.

{¶ 5} Next, we determine whether the trial court abused its discretion. An abuse of discretion implies that the trial court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 6} Appellant notes that he has no prior record and that there was no evidence of physical harm to the victim. The judge, in sentencing appellant, recognized his lack of a criminal record. She also, however, pointed out that appellant had violated a family's trust, a public's trust and degraded a silent victim. She told appellant that she found his conduct to be "heinous" and that his lack of a criminal record in no way minimized his conduct.

{¶ 7} Based on the foregoing, we cannot say that the trial court abused its discretion in imposing the maximum prison term for a felony of the fifth degree. Accordingly, appellant's sole assignment of error is found not well-taken.

{¶ 8} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs 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.

Arlene Singer, P.J.

JUDGE

Stephen A. Yarbrough, J.

JUDGE

James D. Jensen, 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>.