

[Cite as *State v. Gabbard*, 2009-Ohio-2739.]

IN THE COURT OF APPEALS OF CLARK COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 07CA0133
vs.	:	T.C. CASE NO. 07CR0683
ELLIS B. GABBARD	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	

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O P I N I O N

Rendered on the 5th day of June, 2009.

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Attorneys for Plaintiff-Appellee

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GRADY, J.:

{¶1} Defendant, Ellis Gabbard, persuaded M.A., his girlfriend's niece, who is less than thirteen years of age, to play a game he called touch and feel. During that game Defendant told M.A. to close her eyes, and then Defendant put his penis in M.A.'s hand.

{¶ 2} Defendant was indicted on one count of gross sexual imposition, R.C. 2907.05(A)(4), a felony of the third degree.

Defendant pled guilty to the charged offense. The record demonstrates that the trial court complied with all of the requirements of Crim.R. 11(C)(2). The trial court sentenced Defendant to a five year prison sentence, the maximum allowable prison term. R.C.2929.14(A)(3).

{¶ 3} Defendant timely appealed to this court from his conviction and sentence.

{¶ 4} Defendant's appellate counsel filed a brief pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 19 L.Ed.2d 493, stating that he could find no meritorious issues for appellate review. We notified Defendant of his appellate counsel's representations and afforded him ample time to file a pro se brief. None has been received. This case is now before us for our independent review of the record. *Penson v. Ohio* (1988), 488 U.S.75, 109 S.Ct. 346, 102 L.Ed.2d 300.

{¶ 5} Defendant's appellate counsel has identified one possible issue for appeal: that the trial court's maximum sentence is too harsh.

{¶ 6} The trial court has full discretion to impose any sentence within the authorized statutory range, and the court

is not required to make findings or give its reasons for imposing maximum, consecutive, or more than minimum sentences.

State v. Foster, 109 Ohio St.3d 1, 2006-Ohio-856, at paragraph seven of the Syllabus. In exercising its discretion, however, the trial court must comply with all rules and statutes that apply to every felony offense, including R.C. 2929.11 and 2929.12. *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, at ¶37.

{¶7} We may not revise a sentence unless it is clearly and convincingly contrary to law or the trial court abused its discretion in imposing it. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912. Defendant does not argue that his sentence is clearly and convincingly contrary to law. Rather, Defendant suggests that the trial court abused its discretion in imposing a maximum five year sentence because he has no prior criminal record.

{¶8} The overriding purposes of felony sentencing are to protect the public from future crime by the offender and to punish the offender. R.C. 2929.11(A). Defendant sexually molested a six year old girl, which caused psychological harm to the victim. Defendant acknowledged his need for help and counseling and that he is a threat to the community. He attempted to diminish the seriousness of his conduct by

emphasizing that this was his first criminal offense, by denying that his conduct involved perversion, and by offering the excuse that he did this because someone did the same to him years earlier. Defendant told police that his conduct was of a kind about which he has always thought, but he had never acted on his thoughts before. Defendant also indicated to police that his intention in dealing with this victim was to "let whatever happens happen," and that he was hoping he would get caught.

{¶ 9} The trial court's five year prison term, while the maximum allowable for a felony of the third degree, is nevertheless within the authorized range of available punishments. R.C. 2929.14(A)(3). The trial court did not abuse its discretion in imposing a five year prison term in order to protect the public and other children from future crime by Defendant. This assignment of error lacks arguable merit.

{¶ 10} In addition to reviewing the possible issue for appeal raised by Defendant's appellate counsel, we have conducted an independent review of the trial court's proceedings and have found no error having arguable merit. Accordingly, Defendant's appeal is without merit and the judgment of the trial court will be affirmed.

DONOVAN, P.J. And BROGAN, J., concur.

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Hon. Douglas M. Rastatter