

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-081001
Plaintiff-Appellee,	:	TRIAL NO. B-0805590A
vs.	:	<i>JUDGMENT ENTRY.</i>
JERRY BEACH,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Plaintiff-appellant Jerry Beach was found guilty by a jury of robbery and sentenced to five year's incarceration. The victim testified at trial that Beach and his girlfriend knocked the victim to the ground, beat him, and robbed him of a bag of store items and money. Photographs of the victim's injuries were admitted into evidence.

Beach's first, second, and third assignments of error allege that his conviction was based upon insufficient evidence, that his conviction was against the manifest weight of the evidence, and that the trial court erred in denying his Crim.R. 29 motion for an acquittal. We hold that the evidence was such that reasonable minds could have reached different conclusions as to whether each material element of robbery had been

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

proved beyond a reasonable doubt.² Further, after viewing the evidence in the light most favorable to the prosecution, we hold that a rational trier of fact could have found that all the material elements of the crime had been proved beyond a reasonable doubt.³ We also determine that the trier of fact, in resolving conflicts in the evidence, did not clearly lose its way and create such a manifest miscarriage of justice that Beach's conviction must be reversed and a new trial ordered.⁴ The first, second, and third assignments of error are overruled.

Beach's fourth assignment of error alleges that his sentence was contrary to law because it was excessive. Under *State v. Foster*,⁵ the trial court had the discretion to impose any sentence that was within the statutory range.⁶ Beach's sentence fell within the applicable statutory range of prison terms, and the trial court had the authority to impose it. Therefore, it was not contrary to law. In imposing the sentence, the trial court noted that Beach had a long criminal history, including nine misdemeanor convictions in 2008 alone, four convictions for failing to register as a sex offender, and a conviction for gross sexual imposition. Beach also had convictions in Indiana and Kentucky for driving under the influence of alcohol and theft. The fourth assignment of error is overruled.

Therefore, the judgment of the trial court is affirmed.

² See *State v. Bridgeman* (1978), 55 Ohio St.2d 261, 381 N.E.2d 184, syllabus.

³ See *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus; *State v. Roberts*, 1st Dist. No. C-040547, 2005-Ohio-6391.

⁴ See *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541; *State v. Martin* (1983), 20 Ohio App.3d 172, 485 N.E.2d 717.

⁵ 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.

⁶ See *State v. Hart*, 1st Dist. No. C-060686, 2007-Ohio-5740, at ¶65; *State v. Jones*, 1st Dist. No. C-060512, 2007-Ohio-5458, at ¶50.

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Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., DINKELACKER and WINKLER, JJ.

RALPH WINKLER, retired, from the First Appellate District, sitting by assignment.

To the Clerk:

Enter upon the Journal of the Court on July 8, 2009
per order of the Court _____.
Presiding Judge