

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

STATE OF OHIO,	:	APPEAL NO. C-0900124
Plaintiff-Appellee,	:	TRIAL NO. B-0805940
vs.	:	<i>JUDGMENT ENTRY.</i>
BEN HAWKINS,	:	
Defendant-Appellant	:	
	:	

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

Following the entry of a guilty plea, defendant-appellant Ben Hawkins (“Hawkins”) was convicted of five counts of importuning in violation of R.C. 2907.07(C)(1); four counts of importuning in violation of R.C. 2907.07(D)(1); and three counts of gross sexual imposition in violation of R.C. 2907.05(A)(4). The trial court sentenced Hawkins to five years’ incarceration for each of the R.C. 2907.07(C)(1) importuning convictions; one year’s incarceration for each of the R.C. 2907.07(D)(1) importuning convictions; and five years’ incarceration for each of the gross-sexual-imposition convictions. The sentences were consecutive for a total of 44 years’ confinement. Hawkins has appealed, asserting one assignment of error: that the trial court erred by sentencing him to maximum, consecutive terms of incarceration.

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

When reviewing a felony sentence post-*Foster*,² an appellate court must follow a two-step process. First, the court must examine the trial 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."³ If the sentence is not contrary to law, the sentence is then examined under the abuse-of-discretion standard.⁴

Hawkins argues that his sentences were both clearly and convincingly contrary to law and an abuse of discretion. Hawkins states that at the sentencing hearing he provided uncontroverted testimony from Dr. Stuart Bassman that identified Hawkins as a sex addict in need of treatment. Dr. Bassman also testified that he believed Hawkins was treatable under strict supervision. In spite of this testimony, the trial court stated that it did not believe that Hawkins was treatable and imposed the maximum sentences. Hawkins asserts that by doing so the court ignored R.C. 2929.11(A), which identifies certain considerations relevant to sentencing, most notably rehabilitation of the offender.

After a thorough review of the record, we hold that Hawkins's sentences are not clearly and convincingly contrary to law. The sentences imposed were within the applicable statutory ranges.⁵ Further, we hold that the sentences were not an abuse of discretion by the sentencing court. At the sentencing hearing, Dr. Bassman testified that he believed Hawkins could be successfully treated for his sex addiction. However, he also testified that (1) Hawkins had previously stopped attending therapy sessions; (2) he only resumed treatment because he had been arrested; (3) Hawkins would not voluntarily seek out treatment; and (4) successful treatment would only

² *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.

³ *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, at ¶26.

⁴ *Id.*

⁵ R.C. 2929.14(A)(3) and 2929.14(A)(5).

OHIO FIRST DISTRICT COURT OF APPEALS

“lessen the likelihood” of Hawkins reoffending. Additionally, the sentencing court specifically mentioned that the sentences were imposed primarily to protect society, which is one of the “overriding purposes of felony sentencing.”⁶

Accordingly, we overrule Hawkins’s lone assignment of error and affirm the trial court’s judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., SUNDERMANN and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on December 16, 2009

per order of the Court _____.
Presiding Judge

⁶ R.C. 2929.11(A).