

OHIO COURT OF APPEALS, ELEVENTH APPELLATE DISTRICT

State v. Cipolla

2022-Ohio-4794 (Ohio Ct. App. 2022) · No. 2022-A-0012 · Decided December 30, 2022

SUMMARY

The Eleventh District Court of Appeals of Ohio affirmed Phillip J. Cipolla’s conviction and 60-month sentence for gross sexual imposition. The court rejected his claims that trial counsel provided ineffective assistance, including challenges to opening and closing statements, witness examinations, advice concerning his right to testify, and evidentiary handling.

CASE DETAILS

COURT	Ohio Court of Appeals, Eleventh Appellate District
WRITING FOR THE COURT	Thomas R. Wright; John J. Eklund; Mary Jane Trapp
JURISDICTION	Ohio
DECIDED	December 30, 2022
DOCKET	2022-A-0012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Cipolla appealed his conviction and maximum sentence for gross sexual imposition following a jury trial in the Ashtabula County Court of Common Pleas.
STANDARD OF REVIEW	Ineffective assistance claims are reviewed under the two-prong Strickland framework, requiring deficient performance and a reasonable probability of a different result. Counsel's strategic decisions are reviewed deferentially. On felony sentencing, the appellate court may not independently reweigh the evidence and substitute its judgment for that of the trial court regarding the sentence that best complies with R.C. 2929.11 and R.C. 2929.12.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion; precedential under applicable Ohio law.
PARTIES	Phillip J. Cipolla v. State of Ohio

TOPICS

- ineffective assistance
- sentencing
- criminal procedure
- appellate procedure
- standard of review

PRACTICE AREAS

criminal procedure

ineffective assistance of counsel

sentencing

criminal law

QUESTIONS PRESENTED

1. Whether Cipolla received ineffective assistance of counsel based on defense counsel's opening statement, cross-examinations, advice regarding his right to testify, and closing argument.
2. Whether the trial court imposed a maximum felony sentence contrary to law by allegedly misinterpreting Cipolla's statement that he did not want to testify because he might incriminate himself and by failing to give sufficient weight to mitigating considerations.

HOLDINGS

1. Cipolla failed to establish ineffective assistance of counsel because the challenged trial decisions did not demonstrate deficient performance, and, in any event, the record did not show a reasonable probability that the outcome would have been different.
2. Cipolla failed to establish that the trial court's imposition of the maximum 60-month sentence was contrary to law.

KEY QUOTATIONS

“To prevail on a claim of ineffective assistance of counsel, an appellant must demonstrate “(1) his counsel was deficient in some aspect of his representation, and (2) there is a reasonable probability, were it not for counsel’s errors, the result of the proceedings would have been different.”” (¶ 6)

“With respect to our review of a felony sentence, this court is not permitted to “independently weigh the evidence in the record and substitute its judgment for that of the trial court concerning the sentence that best reflects compliance with R.C. 2929.11 and 2929.12.”” (¶ 48)

FACTUAL BACKGROUND

The prosecution alleged that Cipolla engaged in sexual contact with an eleven-year-old child in 2014 while they were watching television in his bedroom. The child testified that Cipolla placed his hand inside her clothing and rubbed her vagina. The child disclosed the incident to her mother, who initially did not believe or report it, but the allegation was reported several years later. The jury found Cipolla guilty, and the trial court imposed a 60-month prison sentence.

PROCEDURAL HISTORY

Cipolla was charged with one count of third-degree-felony gross sexual imposition, pleaded not guilty, and proceeded to a jury trial. The jury found him guilty, and the trial court imposed the maximum sentence of 60 months' imprisonment. He appealed, asserting ineffective assistance of counsel and that the maximum sentence was contrary to law. The appellate court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Hope, 2019-Ohio-2174, 137 N.E.3d 549, ¶ 88 (11th Dist.)
- Strickland v. Washington, 466 U.S. 668, 669, 689, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)
- State v. Carter, 72 Ohio St.3d 545, 558, 651 N.E.2d 965 (1995)
- State v. Weathersbee, 11th Dist. Trumbull No. 2018-T-0099, 2019-Ohio-5307, ¶ 29
- State v. Moore, 11th Dist. Geauga No. 2011-G-3027, 2012-Ohio-3885, ¶ 69
- State v. Bradley, 42 Ohio St.3d 136, 142, 538 N.E.2d 373 (1989)
- State v. Foster, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, ¶ 37
- State v. Watson, 11th Dist. Ashtabula No. 2020-A-0038, 2021-Ohio-2549, ¶ 25
- State v. Jones, 163 Ohio St.3d 242, 2020-Ohio-6729, 169 N.E.3d 649, ¶ 42