

COURT OF APPEALS
GUERNSEY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. Julie A. Edwards, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 2008-CA-33
RUSSELL ROSE	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Criminal appeal from the Guernsey County Court of Common Pleas, Case No. 04Cr03

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: June 17, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Gwin, P.J.

{¶1} Defendant-appellant Russell Rose appeals a judgment of the Court of Common Pleas of Guernsey County, Ohio, which overruled his motion to correct a sentence he alleges was unconstitutionally imposed. Appellant assigns a single error to the trial court:

{¶2} “I. THE APPELLANT’S PROPERTY INTEREST INCORPORATED WITHIN R.C. 2929.14 (B) WAS VIOLATED BY THE TRIAL COURT’S NON-COMPLIANCE WITH THE STATUTORY LANGUAGE, THUS, PREJUDICING THE APPELLANT.”

{¶3} The record indicates appellant was convicted of felonious assault in violation of R.C. 2903.11, on October 28, 2004. Appellant was sentenced to an aggregate term of six years in prison.

{¶4} Appellant argues the trial court failed to comply with the statutory requirement to make findings of fact, thereby violating his property or liberty interest. Appellant argues in the absence of any fact finding, he should have been sentenced to the minimum term of incarceration. In his direct appeal from his conviction, appellant assigned error to his sentence because it exceeded the minimum term of incarceration. This court overruled the assignment of error, *State v. Rose*, Guernsey App. No. 04CA40, 2006-Ohio-397, at paragraph 117.

{¶5} Under Ohio law, judicial fact finding is no longer required prior to sentencing. See *State v. Foster*, 109 Ohio St. 3d 1, 2006-Ohio-856, 845 N.E. 2d 470; *State v. Mathis*, 109 Ohio St. 3d 54, 2006-Ohio-855, 846 N.E. 2d 1.

{¶6} We find appellant’s sentence did not violate any constitutional right, and according, the trial court did not err in overruling his motion to correct the sentence.

{¶17} The assignment of error is overruled.

{¶18} For the foregoing reasons, the judgment of the Court of Common Pleas of Guernsey County, Ohio, is affirmed.

By Gwin, P.J.,

Edwards, J., and

Delaney, J., concur

HON. W. SCOTT GWIN

HON. JULIE A. EDWARDS

HON. PATRICIA A. DELANEY

WSG:clw 0513

