

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

STATE OF OHIO,	:	APPEAL NO. C-170053
Plaintiff-Appellee,	:	TRIAL NO. 16CRB-27892
vs.	:	
	:	<i>JUDGMENT ENTRY.</i>
SAMUEL HARRIS,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant, Samuel Harris, appeals his conviction for sexual imposition, following a guilty plea. We affirm his conviction.

In his first assignment of error, Harris claims that the trial court erred by denying him the right to allocution. When a trial court imposes sentence without first asking the defendant whether he wishes to make a statement in his behalf, the judgment of sentence shall be reversed and the cause shall be remanded for resentencing, unless the error is invited or harmless. *State v. Campbell*, 90 Ohio St.3d 320, 325-326, 738 N.E.2d 1178 (2000). The state concedes the error, but argues that it was harmless because Harris had already served his entire sentence prior to the sentencing hearing, and therefore, the opportunity for allocution could not have had a positive effect on the sentence. We agree, and overrule the first assignment of error.

In his second assignment of error, Harris argues that the trial court erred in denying his motion to withdraw the plea. Crim.R. 32.1 provides that a trial court may permit a post-conviction plea withdrawal “to correct manifest injustice.” A manifest

injustice is “a clear or openly unjust act, evidenced by an extraordinary and fundamental flaw in the plea proceeding.” Harris argued that his plea should be withdrawn because he did not know the victim was younger than 16, and that his intention was to hug her.

However, the sexual imposition statute does not require that an offender know the age of the victim. Rather, the statute imposes strict liability with respect to the age of the victim. *See State v. Golden*, 5th Dist. Stark No. 2008CA00182, 2009-Ohio-1624, ¶ 49-50. Harris’ knowledge of the victim’s age was not an element of the offense or a defense. Moreover, he pled guilty to the facts as alleged by the state that he brushed his face against her breast. The fact that the contact occurred while he was hugging her is not a defense to the offense, and does not call into question the validity of the guilty plea. Because Harris failed to demonstrate a manifest injustice, we overrule his second assignment of error.

Finally, Harris argues that the trial court erred by not journalizing an entry indicating Harris was competent to stand trial. However, the court journalized an entry in the judge’s sheet memorializing that Harris was found competent and that the parties stipulated to the report. At the plea hearing, counsel confirmed that Harris was found competent. Accordingly, the third assignment of error is overruled, and we affirm the judgment of the trial court.

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

MOCK, P.J., ZAYAS and MILLER, JJ.

To the clerk:

Enter upon the journal of the court on February 16, 2018
per order of the court _____.

Presiding Judge