

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

vs.

JASON S. HOWARD

Defendant-Appellant

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JUDGES:

Hon. John F. Boggins, P.J.
Hon. Sheila G. Farmer, J.
Hon. Julie A. Edwards, J.

Case No. 04COA036

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,
Case No. 04CRI033

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

February 28, 2005

APPEARANCES:

For Plaintiff-Appellee

ROBERT P. DESANTO
CHRISTOPHER R. TUNNELL
307 Orange Street
Ashland, OH 44805

For Defendant-Appellant

DOUGLAS A. MILHOAN
601 South Main Street
North Canton, OH 44720

Farmer, J.

{¶1} On April 29, 2004, appellant, Jason Howard, pled guilty to one count of aggravated robbery in violation of R.C. 2911.01. A sentencing hearing was held on June 7, 2004. By judgment entry filed same date, the trial court sentenced appellant to nine years in prison.

{¶2} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶3} "THE IMPOSITION OF A PRISON SENTENCE IN THIS CASE IMPOSES AN UNNECESSARY BURDEN ON STATE RESOURCES."

I

{¶4} Appellant claims his sentence of nine years for aggravated robbery in the first degree imposes an unnecessary burden on state resources in contravention of R.C. 2929.13(A). We disagree.

{¶5} R.C. 2929.13 governs sentencing guidelines for various specific offenses and degrees of offenses. Subsection (A) states as follows in pertinent part:

{¶6} "Except as provided in division (E), (F), or (G) of this section and unless a specific sanction is required to be imposed or is precluded from being imposed pursuant to law, a court that imposes a sentence upon an offender for a felony may impose any sanction or combination of sanctions on the offender that are provided in sections 2929.14 to 2929.18 of the Revised Code. The sentence shall not impose an unnecessary burden on state or local government resources."

{¶7} As we noted in *State v. Ferenbaugh* (February 26, 2004), Ashland App. No. 03COA038, 2004-Ohio-977, "[t]he very language of the cited statute grants trial courts discretion to impose sentences. Nowhere within the statute is there any guideline for what an 'unnecessary burden' is."

{¶8} Appellant argues he has never been convicted of a felony, and he needs substance abuse treatment. The aggravated robbery did not cause the victims to suffer physical harm. Therefore, a sentence which is six years longer than the minimum imposes an unnecessary burden on state resources.

{¶9} The record indicates appellant has an extensive juvenile record. T. at 6. He violated the terms of his juvenile probation for breaking and entering on at least two occasions. Id. He continues to commit offenses as an adult. Id. Because appellant has "failed to respond favorably in the past to the sanctions imposed for those criminal convictions," he clearly places a burden on government resources. T. at 7. Based upon these facts, we find the least impact on local and state government resources in this case would be imprisonment.

{¶10} Upon review, we find no evidence to indicate the sentence sub judice is an unnecessary burden on state resources.

{¶11} The sole assignment of error is denied.

{¶12} The judgment of the Court of Common Pleas of Ashland County, Ohio is hereby affirmed.

By Farmer, J. and

Boggins, P.J. concur.

Edwards, J. concurs separately.

JUDGES

SGF/db 0210

EDWARDS, J., CONCURRING OPINION

{¶13} I concur with the majority as to the disposition of this case. I concur based on the analysis that the sentence ordered by the trial court does not impose an unnecessary burden on state or local government resources, not because imprisonment would have the “least impact on local and state government resources.”

Julie A. Edwards, Judge

JAE/mec

IN THE COURT OF APPEALS FOR ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

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vs.

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Defendant-Appellant

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JUDGMENT ENTRY

CASE NO. 04COA036

For the reasons stated in the Memorandum-Opinion on file, the judgment of the Court of Common Pleas of Ashland County, Ohio is affirmed.

JUDGES