

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. Sheila G. Farmer, P.J.
Plaintiff-Appellee	:	Hon. William B. Hoffman, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 08 COA 010
CHARLES Y. WALKER, JR.	:	
	:	
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Ashland County Court of
Common Pleas Case No. 08CRI001

JUDGMENT: AFFIRMED

DATE OF JUDGMENT ENTRY: February 10, 2009

APPEARANCES:

For Plaintiff-Appellee:

RAMONA ROGERS
ASHLAND COUNTY PROSECUTOR

PAUL T. LANGE
Assistant Prosecuting Attorney
307 Orange Street
Ashland, OH 44805

For Defendant-Appellant:

DOUGLAS A. MILHOAN
P.O. Box 347
Middlebranch, OH 44652

Delaney, J.

{¶1} Defendant-Appellant, Charles Y. Walker, Jr. appeals the April 29, 2008 judgment entry sentencing Appellant to twelve months in prison for violation of R.C. 2925.11(A), a felony of the fifth degree. The facts giving rise to this appeal are as follows.

{¶2} On January 2, 2008, a complaint for possession of cocaine, under R.C. 2925.11(A), a fifth degree felony, was filed against Appellant in the Ashland County Court of Common Pleas. The court held a preliminary hearing and found probable cause existed for the case to be bound over to the Ashland County Grand Jury. On February 15, 2008, Appellant was indicted on one count of possession of cocaine and one count of possession of drug paraphernalia, in violation of R.C. 2925.14(C), a fourth degree misdemeanor.

{¶3} At the arraignment, Appellant entered a plea of not guilty to both counts of the indictment. The case was set for an evidentiary hearing on March 17, 2008 based upon Appellant's motion to suppress. At the motion to suppress hearing, Appellant withdrew his motion to suppress and entered a plea of guilty to the charge of possession of cocaine in exchange for a dismissal of the charge of possession of drug paraphernalia.

{¶4} The trial court conducted a change of plea hearing. Based upon the trial court's inquiry and explanation to Appellant, the trial court accepted Appellant's plea of guilty to the charge of possession of cocaine and dismissed Count Two of the indictment. (Judgment Entry, Mar. 19, 2008). The trial court set the matter for a sentencing hearing after a pre-sentence investigation had been conducted.

{¶5} On April 22, 2008, Appellant filed a motion for leave to withdraw plea of guilty. The matter was set for hearing on April 28, 2008. At the hearing, the trial court heard arguments on the motion and denied the same. (Judgment Entry, Apr. 29, 2008). The trial court went on to conduct the sentencing hearing. At the hearing and in its judgment entry issued April 29, 2008, the trial court considered the provisions of Revised Code Chapter 2929, the circumstances of the offense, the information contained in the pre-sentence investigation and information furnished by the parties to the case. Based upon the considerations of the purposes and principles of felony sentencing, the statutory sentencing factors and weighing the above-mentioned findings, the trial court found Appellant was not amenable to community control sanctions and that a prison sentence was consistent with the principles and purposes of Ohio felony sentencing law.

{¶6} By judgment entry issued April 29, 2008, the trial court sentenced Appellant to twelve months in prison, with three years optional post release control. Appellant received credit for one hundred and twenty days of local jail time through April 28, 2008. The trial court also ordered Appellant to pay a fine of \$500.00.

{¶7} It is from this decision Appellant now appeals. Appellant raises one Assignment of Error:

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

{¶9} Appellant claims his sentence of twelve months for possession of cocaine in the fifth degree places an “unnecessary burden on state or local government resources” in contravention of R.C. 2929.13(A). He argues that under the facts of this

case, a one-year sentence imposes an unnecessary burden on state resources. We disagree.

{¶10} This Court has previously addressed a similar argument in *State v. Ferenbaugh*, Ashland App. No. 03COA038, 2004-Ohio-977. In *Ferenbaugh*, we held:

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

{¶12} “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’

{¶13} “The 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.

{¶14} “The record sub judice is devoid of any evidence to support the claim of an ‘unnecessary burden on state or local government resources.’ In fact, the record indicates appellant’s past probation violations have placed a burden on local government resources. T. at 4-5. This supports the argument in favor of a prison sentence. Having failed twice on local supervision resulting in probation violation hearings, resentencing and jail time, we find the least impact on local and state government resources in this case would be imprisonment.” Id. at ¶ 5-8. See also, *State v. Burrows*, Delaware App. No. 07CAA080039, 2008-Ohio-2861; *State v. Sweet*,

Ashland App. No. 07 COA 001, 2008-Ohio284, *State v. Douglas*, Ashland App. No. 04 CA 76, 2005-Ohio-3920.

{¶15} A review of the record in this matter supports the application of *Ferenbaugh* to the present case. Appellant has numerous previous criminal convictions. As stated by the trial court at the sentencing hearing on April 28, 2008,

{¶16} “What concerns me probably more than the seriousness of the offense, however, is the likelihood that you will reoffend. You have a fairly lengthy criminal history, prior adjudications, you have not, in my opinion, responded favorably in the past to those criminal sanctions that have been given to you by the Court.

{¶17} “You probably do have some substance abuse issues and certainly drugs have been a part of your life for a long time, but I will note that you have been given the opportunity in the past to deal with the issues, and that has not deterred you from further crime.” (Sentencing Hearing, T. 9-10).

{¶18} We find the trial court’s imposition of a twelve-month prison term was appropriate in this matter and does not impose an unnecessary burden on state or local resources. Appellant’s sole Assignment of Error is therefore overruled.

{¶19} The judgment of the Ashland County Court of Common Pleas is affirmed.

By: Delaney, J.

Farmer, P.J. and

Hoffman, J. concur.

HON. PATRICIA A. DELANEY

HON. SHEILA G. FARMER

HON. WILLIAM B. HOFFMAN

PAD:kgb

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

STATE OF OHIO	:	
	:	
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Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
CHARLES Y. WALKER, JR.	:	
	:	
	:	Case No. 08 COA 010
Defendant-Appellant	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Ashland County Court of Common Pleas is affirmed. Costs assessed to Appellant.

HON. PATRICIA A. DELANEY

HON. SHEILA G. FARMER

HON. WILLIAM B. HOFFMAN