

**IN THE COURT OF APPEALS
THIRD APPELLATE DISTRICT
LOGAN COUNTY**

STATE OF OHIO

PLAINTIFF-APPELLEE

CASE NO. 8-04-41

v.

CHAD S. SOUTH

OPINION

DEFENDANT-APPELLANT

**CHARACTER OF PROCEEDINGS: Criminal Appeal from Common Pleas
Court**

JUDGMENT: Judgment Reversed and Cause Remanded

DATE OF JUDGMENT ENTRY: September 6, 2005

ATTORNEYS:

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For Appellee

BRYANT, J.

{¶1} Defendant-Appellant Chad S. South (“South”) brings this appeal from the judgment of the Logan County Common Pleas Court, sentencing South to 15 months of incarceration and the payment of \$2,919.00 in restitution to the crime victims.

{¶2} On July 13, 2004, the Logan County Grand Jury indicted South on one count of burglary, a violation of R.C. § 2911.12(A)(3), a felony of the third degree. South was found to be indigent, and counsel was appointed to represent him. On October 18, 2004, South withdrew his previously tendered plea of not guilty and entered a plea of guilty to an amended charge of burglary, a violation of R.C. § 2911.12(A)(4), a felony of the fourth degree.

{¶3} The record indicates that South and a co-defendant entered a residence on or about March 17, 2004. Neighbors noticed suspicious activity in the residence and called the police. The reporting officers arrived at the residence and arrested South and the co-defendant. After both defendants were placed in police cruisers, the officers re-entered the home, where they discovered ransacked

closets, cabinets, and dressers and items piled in a hallway leading to an exterior door. The officers found a broken screen door leading into the sunroom at the front of the home, a broken door between the sunroom and the garage, and another broken door leading from the sunroom into the residence.

{¶4} At the sentencing hearing, the State of Ohio (“State”) presented a Victim Impact Statement, claiming the following items as damages: \$100.00 for damage to doors and locks; \$319.00 for lost wages due to time spent in court; and \$2,500.00 for an outboard motor minus \$500.00 for insurance proceeds paid to the victims. The trial court sentenced South to 15 months in prison and ordered restitution in the amount of \$2,919.00. South appeals from the trial court’s sentencing entry and raises the following assignment of error:

The trial court abused its’ [sic] discretion and committed plain error when it ordered an amount of restitution which did not correspond with the economic loss to the victim reflected in the bill of information.

{¶5} The State has failed to file a brief. In determining an appeal, Rule 18(C) of the Ohio Rules of Appellate Procedure provides in pertinent part, “[i]f an appellee fails to file the appellee’s brief within the time provided by this rule, . . . the court may accept the appellant’s statement of the facts and issues as correct and reverse the judgment if appellant’s belief reasonably appears to sustain such action.”

{¶6} In this case, South points to the State's bill of particulars filed on August 4, 2004, which contains no claims that South and his co-defendant stole or damaged an outboard motor. South contends the only facts reported in the bill of particulars pertained to damage to several doors and locks, the ransacking of closets, cabinets, and dressers, and the pile of items found in the hallway. The record contains no evidence pertaining to an outboard motor.

{¶7} Because the State has failed to file its brief, South's statement of the facts and issues is accepted as correct. South's brief reasonably appears to sustain a judgment of reversal. Accordingly, the assignment of error is sustained pursuant to App.R. 18(C).

{¶8} The judgment of the Logan County Court of Common Pleas is reversed and the cause is remanded for further proceedings.

***Judgment Reversed and
Cause Remanded.***

ROGERS and SHAW, J.J., concur.

/jlr