

[Cite as *State v. Fryman*, 2004-Ohio-4639.]

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JOSEPH H. FRYMAN

Defendant-Appellant

JUDGES:

: Hon: W. Scott Gwin, P.J.
: Hon: Sheila G. Farmer, J.
: Hon: John F. Boggins, J.
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Case No. 04-COA-013

OPINION

CHARACTER OF PROCEEDING:

Criminal appeal from the Ashland County
Court of Common Pleas, Case No. 02-CRI-
083

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

AUGUST 30, 2004

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

ROBERT P. DESANTO
ASHLAND COUNTY PROSECUTOR
Suite 307, Orange Tree Square
Ashland, OH 44805

DOUGLAS MILHOAN
610 Market Avenue, North
Canton, Ohio 44702

Boggins, J.

{¶1} Defendant-appellant Joseph H. Fryman appeals his conviction and sentence from the Ashland County Court of Common Pleas on one count of complicity to trafficking in marijuana, a fourth degree felony and one count of trafficking in cocaine, a felony of the fifth degree.

{¶2} Plaintiff appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶3} On January 5, 2004, Appellant entered pleas of guilty to each of the charges: complicity to trafficking in marijuana and trafficking in cocaine.

{¶4} A pre-sentence investigation was ordered.

{¶5} On February 23, 2004, a sentencing hearing was held wherein the trial court sentenced appellant to a term of incarceration of fifteen (15) months on the complicity trafficking in marijuana charge and six (6) months on the trafficking in cocaine charge, with these two sentences to run concurrently.

{¶6} Appellant timely appealed. Appellant assigns the following error to the trial court:

ASSIGNMENT OF ERROR

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

I.

{¶8} In his sole assignment of error contends that the imposition of a prison sentence in this case is an unnecessary burden on the State resources. We disagree.

{¶9} R.C. §2929.13 (A) provides in pertinent part: “except as provided in (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 governmental resources. “

{¶10} 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.

{¶11} 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 juvenile convictions and misdemeanor convictions for possession of marijuana, disorderly conduct and DUI have placed a burden on local government resources. (T. at 5). This supports the argument in favor of a prison sentence. The court further found that being placed under community control sanctions in the past failed to deter Appellant from his present criminal conduct .

{¶12} We therefore find the least impact on local and state government resources in this case would be imprisonment.

{¶13} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas of Ashland County, Ohio, is hereby affirmed.

By Boggins, J.
Gwin, P.J., and
Farmer, J., concur.

JUDGES

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

STATE OF OHIO

Plaintiff-Appellee

-vs-

JOSEPH H. FRYMAN

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JUDGMENT ENTRY

Defendant-Appellant

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CASE NO.04 COA-013

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Ashland County, Ohio, is affirmed. Costs to appellant.

JUDGES