

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. Julie A. Edwards, J.
-vs-	:	
	:	Case No. 05-COA-049
FREDERICK D. DALE	:	
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING:	Appeal from the Court of Common Pleas, Case No. 05-CRI-036
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JUDGMENT:	Reversed and Remanded
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DATE OF JUDGMENT ENTRY:	August 3, 2006
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APPEARANCES:

For Plaintiff-Appellee

DAVID C. LAI
307 Orange Street
Ashland, OH 44805

For Defendant-Appellant

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

Farmer, J.

{¶1} By judgment entry filed October 11, 2005, appellant, Frederick Dale, was sentenced to an aggregate term of ten months in prison after pleading guilty to two counts of theft in violation of R.C. 2913.02, one count of possessing criminal tools in violation of R.C. 2923.24, one count of criminal trespass in violation of R.C. 2911.21 and one count of obstructing official business in violation of R.C. 2921.31. The trial court also ordered appellant to pay the victim restitution in an amount to be determined at a later date.

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

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{¶3} "THE TRIAL COURT ERRED BY ORDERING RESTITUTION WITHOUT FIXING THE AMOUNT AT THE SENTENCING HEARING AS REQUIRED BY R.C. 2929.18(A)(1)."

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{¶4} Appellant claims the trial court erred in ordering restitution without setting a fixed amount in violation of R.C. 2929.18(A)(1). We agree.

{¶5} R.C. 2929.18(A)(1) states in pertinent part, "If the court imposes restitution, at sentencing, the court shall determine the amount of restitution to be made by the offender." In its judgment entry of October 11, 2005, the trial court ordered the following:

{¶6} "The Defendant is ORDERED to pay restitution to WalMart, Baney Road, Ashland Ohio, in a sum to be determined by further order of the Court and to be collected and distributed by the Clerk of Courts."

{¶7} In its brief at 2, the state concedes appellant's argument, and points out this court has previously ruled upon this issue in favor of the appellant. See, *State v. Schultz* (August 13, 2004), Ashland App. No. 04COA008, 2004-Ohio-4303.

{¶8} Based upon the foregoing, we find the trial court erred in its restitution order. We hereby reverse the restitution order and remand the matter to the trial court to enter proper findings and a fixed amount.

{¶9} The sole assignment of error is granted.

{¶10} The judgment of the Court of Common Pleas of Ashland County, Ohio is hereby reversed and remanded.

By Farmer, J.

Gwin, P.J. and

Edwards, J. concur.

JUDGES

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

STATE OF OHIO

Plaintiff-Appellee

-vs-

FREDERICK D. DALE

Defendant-Appellant

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JUDGMENT ENTRY

CASE NO. 05-COA-049

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Ashland County, Ohio is reversed and the matter is remanded to said court for further proceedings consistent with this opinion.

JUDGES