

[Cite as *State v. Cheatham*, 2009-Ohio-5980.]

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

EAFROM CHEATHAM

Defendant-Appellant

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. W. Scott Gwin, J.

Hon. Julie A. Edwards, J.

Case No. 09COA013

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,
Case No. 08CRI123

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

November 10, 2009

APPEARANCES:

For Plaintiff-Appellee

PAUL T. LANGE
307 Orange Street
Ashland, OH 44805

For Defendant-Appellant

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

Farmer, P.J.

{¶1} On October 31, 2008, the Ashland County Grand Jury indicted appellant, Eafrom Cheatham, on four counts of theft in violation of R.C. 2913.02 and one count of receiving stolen property in violation of R.C. 2913.51.

{¶2} On February 3, 2009, appellant pled guilty to one of the theft counts, a felony of the fifth degree, and to attempting to receive stolen property. A sentencing hearing was held on March 16, 2009. By judgment entry filed March 20, 2009, the trial court sentenced appellant to an aggregate term of twelve months in prison.

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

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

I

{¶5} Appellant claims his sentence of twelve months imposes an unnecessary burden on state resources in contravention of R.C. 2929.13(A). We disagree.

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

{¶7} "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."

{¶8} 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."

{¶9} Appellant argues he "accepted responsibility for his actions by pleading guilty. The crime did not involve weapons, violence or threats. The Appellant and (sic) expressed remorse and offered restitution to the victims." Appellant's Brief at 7. Therefore, appellant argues a twelve month sentence on a fifth degree felony imposes an unnecessary burden on state resources.

{¶10} The record indicates appellant has a lengthy criminal record, including a juvenile history. T. at 12. In fact, 13 pages of the 27 page presentence investigation report are devoted to appellant's juvenile and adult record. Id. Appellant's criminal record included the following:

{¶11} "[N]umerous offenses of a similar kind," including "petty theft, delinquency by committing petty theft, and there is just theft, receiving, burglary, forgery, receiving, all kinds of theft offenses, and inter-sprinkled in there are other offenses like tampering with evidence, some drug offenses, there are some other things in there, but theft is a recurring theme in your entire history." T. at 12-13.

{¶12} The trial court noted appellant has been on supervision before and has "violated supervision numerous times, been given prison sanctions." T. at 13. Based

upon these facts, we find the least impact on local and state government resources in this case would be imprisonment.

{¶13} Upon review, we find no evidence to indicate the sentence in this case is an unnecessary burden on state resources.

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

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

By Farmer, P.J.

Gwin, J. and

Edwards, J. concur.

s/ Sheila G. Farmer

s/ W. Scott Gwin

s/ Julie A. Edwards

JUDGES

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

STATE OF OHIO

Plaintiff-Appellee

-vs-

EAFROM CHEATHAM

Defendant-Appellee

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JUDGMENT ENTRY

CASE NO. 09COA013

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.

s/ Sheila G. Farmer

s/ W. Scott Gwin

s/ Julie A. Edwards

JUDGES