

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

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| STATE OF OHIO | : | JUDGES: |
| | : | Hon. W. Scott Gwin, P.J. |
| Plaintiff-Appellee | : | Hon. William B. Hoffman, J. |
| | : | Hon. Sheila G. Farmer, J. |
| -vs- | : | |
| | : | |
| KYLE M. RHEES | : | Case No. 10COA010 |
| | : | |
| Defendant-Appellant | : | <u>O P I N I O N</u> |

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| CHARACTER OF PROCEEDING: | Appeal from the Court of Common Pleas, Case No. 09CRI060 |
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| JUDGMENT: | Affirmed |
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| DATE OF JUDGMENT ENTRY: | August 16, 2010 |
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APPEARANCES:

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|------------------------|-------------------------|
| For Plaintiff-Appellee | For Defendant-Appellant |
| PAUL T. LANGE | DOUGLAS A. MILHOAN |
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| Third Floor | Middlebranch, OH 44652 |
| Ashland, OH 44805 | |

Farmer, J.

{¶1} On August 3, 2009, the Ashland County Grand Jury indicted appellant, Kyle Rhees, on one count of possession of marijuana in violation of R.C. 2925.11(A) and one count of possession of criminal tools in violation of R.C. 2923.24(A).

{¶2} On November 20, 2009, appellant pled guilty to the marijuana count. A sentencing hearing was held on February 25, 2010. By judgment entry filed February 26, 2010, the trial court sentenced appellant to eleven months in prison.

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

I

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

I

{¶5} Appellant claims his sentence of eleven 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 has expressed remorse and with no excuses for his behavior. He has admitted a long-term substance abuse problem, which he seeks to cure." Appellant's Brief at 7. Therefore, appellant argues an eleven month sentence on a fifth degree felony imposes an unnecessary burden on state resources.

{¶10} The record indicates appellant has a lengthy criminal record. Appellant was convicted of possessing LSD and unlawful sexual conduct with a minor. February 25, 2010 T. at 6, 10. He was also convicted of felony drug trafficking and multiple charges of cultivating and possessing marijuana and possession of drug paraphernalia. Id. at 11-12. Based upon these facts, we find the least impact on local and state government resources in this case would be imprisonment.

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

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

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

By Farmer, J.

Gwin, P.J. and

Hoffman, J. concur.

s/ Sheila G. Farmer

s/ W. Scott Gwin

s/ William B. Hoffman

JUDGES

SGF/sg 809

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

STATE OF OHIO

Plaintiff-Appellee

-vs-

KYLE M. RHEES

Defendant-Appellant

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JUDGMENT ENTRY

CASE NO. 10COA010

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/ William B. Hoffman

JUDGES