

[Cite as *State v. Rutherford*, 2004-Ohio-5335.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

CLERMONT COUNTY

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, : CASE NO. CA2003-12-103  
 :  
 -vs- : O P I N I O N  
 : 10/4/2004  
 :  
 JERRY W. RUTHERFORD, :  
 :  
 Defendant-Appellant. :

CRIMINAL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS  
Case No. 99-CR-00135

Donald W. White, Clermont County Prosecuting Attorney, David H. Hoffmann, 123 N. Third Street, Batavia, OH 45103-3033, for plaintiff-appellee

R. Daniel Hannon, Clermont County Public Defender, Robert F. Benintendi, 10 S. Third Street, Batavia, OH 45103, for defendant-appellant

**POWELL, J.**

{¶1} Defendant-appellant, Jerry Rutherford, appeals the decision of the Clermont County Court of Common Pleas sentencing him to one year in prison for violating his community control conditions. We reverse the common pleas court's decision and remand the case for resentencing.

{¶2} In June 2000, appellant pled guilty to one count of nonsupport of dependents in violation of R.C. 2919.21(B), a

fifth-degree felony. The common pleas court subsequently sentenced appellant to five years of community control.

{¶3} At a community control violation hearing in November 2003, appellant admitted to the common pleas court that he violated his community control conditions by failing to pay support. The court found a violation and sentenced appellant to one year in prison. Appellant now appeals that decision, assigning one error as follows:

{¶4} "THE TRIAL COURT ERRED IN SENTENCING APPELLANT TO THE MAXIMUM PRISON TERM FOR VIOLATING HIS COMMUNITY CONTROL SANCTIONS."

{¶5} In his sole assignment of error, appellant argues that the common pleas court failed to make the findings required by R.C. 2929.14(C) before imposing the maximum sentence for a fifth-degree felony.

{¶6} The state concedes that the common pleas court erred by not making the findings and not stating the reasons for those findings on the record at the sentencing hearing. We agree and sustain appellant's sole assignment of error. One year is the maximum sentence allowable by law for a fifth-degree felony. R.C. 2929.14(A)(5). Pursuant to R.C. 2929.14(C), the common pleas court could only impose the maximum sentence if it found that appellant committed the "worst form of the offense," if appellant posed the "greatest likelihood of committing future crimes," if appellant was a "major drug offender," or if appellant was a "repeat violent

offender." Because the common pleas court failed to make the required findings and give the reasons for those findings on the record at the sentencing hearing, we reverse the common pleas court's decision and remand this case for resentencing. See State v. Comer, 99 Ohio St.3d 463, 2003-Ohio-4165, at ¶27; State v. Newman, 100 Ohio St.3d 24, 2003-Ohio-4754, at ¶1.

YOUNG, P.J., and WALSH, J., concur.