

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon: John F. Boggins, P.J.
Plaintiff-Appellee	:	Hon: Sheila G. Farmer, J.
	:	Hon: Julie A. Edwards, J.
-vs-	:	
	:	Case No. 04-COA-037
DANIEL R. RENFROW	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Criminal appeal from the Ashland County Court of Common Pleas, Case No. 04-CRI-021

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: MARCH 3, 2005

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Boggins, J.

{¶1} Defendant–appellant Daniel R. Renfrow appeals his conviction and sentence from the Ashland County Court of Common Pleas on one count of passing bad checks, a felony of the fifth degree.

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

STATEMENT OF THE FACTS AND CASE

{¶3} On April 12, 2004, Appellant entered a plea of guilty to one count of passing bad checks, a felony of the fifth degree. A pre-sentence investigation was ordered.

{¶4} On May 17, 2004, a sentencing hearing was held wherein the trial court sentenced appellant to a term of incarceration of one year.

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

ASSIGNMENT OF ERROR

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

I.

{¶7} 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.

{¶8} After the enactment of Senate Bill 2 in 1996, an appellate court's review of an appeal from a felony sentence was modified. Pursuant to present R.C. 2953.08(G) (2): "The court hearing an appeal under division (A), (B), or (C) of this section shall review the record, including the findings underlying the sentence or modification given

by the sentencing court. The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for re-sentencing. The appellate court's standard for review is not whether the sentencing court abused its discretion.

{¶9} The appellate court may take any action authorized by this division if it clearly and convincingly finds either of the following:

{¶10} "(a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (E) (4) of section 2929.14, or division (H) of section 2929.20 of the Revised Code, whichever, if any, is relevant; "(b) That the sentence is otherwise contrary to law."

{¶11} When reviewing a sentence imposed by the trial court, the applicable record to be examined by the appellate court includes the following: (1) the pre-sentence investigation report; (2) the trial court record in the case in which the sentence was imposed; and (3) any oral or written statements made to or by the court at the sentencing hearing at which the sentence was imposed. R.C. 2953.08(F) (1) through (3). The sentence imposed, by the trial court, should be consistent with the overriding purposes of felony sentencing: "to protect the public from future crime by the offender" and "to punish the offender."

{¶12} A question arises as to whether appellant has a right to appeal his sentence upon the grounds that it is an unnecessary burden on State resources. R.C. §2953.08 does not specify this as grounds for appealing a sentence in a criminal case as a matter of right. Appellant does not argue that the trial court failed to make the required findings pursuant to R.C. 2929.12. Nor does appellant argue the trial court

erred in finding that appellant was not amenable to an available community control sanction. Appellant fails to support his argument that the imposition of a prison sanction in this case, constitutes an “unnecessary burden on State or local resources.” *State v. Barton*, 5th Dist. App. No. 03-COA-038, 2004-Ohio-977; *State v. Rostorfer*, 5th Dist. App. No. 03-COA-018, 2004-Ohio-975.

{¶13} In disposing of similar claims, most courts quote the following passage from *State v. Ober* (Oct. 10, 1997), 2nd Dist. App. No. 97CA0019:

{¶14} "Ober is correct that the 'sentence shall not impose an unnecessary burden on state or local government resources.' R.C. 2929.13(A). According to criminal law experts, this resource principle 'impacts on the application of the presumptions also contained in this section and upon the exercise of discretion.' Griffin and Katz, Ohio Felony Sentencing Law (1996-97), 62. Courts may consider whether a criminal sanction would unduly burden resources when deciding whether a second degree felony offender has overcome the presumption in favor of imprisonment because the resource principle is consistent with the overriding purposes and principles of felony sentencing set forth in R.C. 2929.11. Id.

{¶15} "Although resource burdens may be a relevant sentencing criterion, R.C. 2929.13[A] does not require trial courts to elevate resource conservation above the seriousness and recidivism factors. Imposing a community control sanction on Ober may have saved state and local government funds; however, this factor alone would not usually overcome the presumption in favor of imprisonment." Id. See, also, *State v. Wolfe*, 7th Dist. No. 03 COA 045, 2004-Ohio-3044 at ¶14-15; *State v. Stewart* (Mar. 4,

1999), 8th Dist. No. 74691; *State v. Brooks* (Aug. 18, 1998), 10th Dist. No. 97APA-11-1543.

{¶16} 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. “

{¶17} 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.

{¶18} 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 that appellant passed a total of 32 bad checks over a three week time period to purchase merchandise totaling over \$7,000.00. (T. at 4, 6-7). The trial court found that Appellant had an extensive juvenile record which included theft offenses. (T. at 5). The trial court also found that Appellant had an extensive record as an adult and that he had been sentenced to the Department of Corrections on three separate occasions. *Id.*

{¶19} Upon review, we find that Appellant's past violations have placed a burden on local government resources. This supports the argument in favor of a prison sentence. We therefore find the least impact on local and state government resources in this case would be imprisonment.

Defendant-Appellant

CASE NO.04 COA-037

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