

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
Plaintiff-Appellee	:	Hon. William B. Hoffman, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	
MERLIN KELLY	:	Case No. 08COA011
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,
Case No. 08CRI006A

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: February 20, 2009

APPEARANCES:

For Plaintiff-Appellee

PAUL T. LANGE
307 Orange Street
Ashland, OH 44805

For Defendant-Appellant

DOUGLAS A. MILHOAN
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Farmer, P.J.

{¶1} On January 11, 2008, the Ashland County Grand Jury indicted appellant, Merlin Kelly, on one count of breaking and entering in violation of R.C. 2911.13 and one count of theft in violation of R.C. 2913.02.

{¶2} On March 19, 2008, appellant pled guilty to the breaking and entering charge. The theft count was dismissed. A sentencing hearing was held on April 28, 2008. By judgment entry filed April 29, 2008, the trial court sentenced appellant to nine months, and revoked his post-release community control of six hundred and ninety-six days, to be served consecutively, for an aggregate term of approximately thirty-two 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 approximately thirty-two 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 appellant "has accepted responsibility for his actions by cooperating with law enforcement and pleading guilty to the charge. His offense was non-violent in nature, no weapons were used and no one was injured." Appellant's Brief at 7. Therefore, an approximate thirty-two month aggregate sentence on a fifth degree felony imposes an unnecessary burden on state resources.

{¶10} During the sentencing hearing, the trial court stated the following:

{¶11} "What concerns me more, quite honestly, is the likelihood that you will re-offend. You have a fairly lengthy criminal history, it includes prior felony offenses. You have not, in my opinion, ever adjusted well to supervision. You've violated on numerous occasions when you've been on supervision. I would concur with you that it's time to make a change in your life, but that's going to take some strength of character and willingness on your part, and I don't know if you've got it or not, but if you do, dig in to it and do it because otherwise this is your life, okay, and the consequences are very serious. You were on supervision with the Adult Parole Authority. You were on post-release control when you committed this offense, and there are significant

consequences for that. You have not responded favorably in the past to sanctions that the Courts have given you. It's done nothing to change your conduct." April 28, 2008 T. at 8-9.

{¶12} Appellant was properly sentenced to nine months on the breaking and entering charge. R.C. 2929.14(A)(5). The remaining sentence was due to the trial court terminating appellant's post-release control because he committed the felony offense of breaking and entering while on post-release control. Based upon these facts, we find the least impact on local and state government resources in this case would be imprisonment.

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

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

By Farmer, P.J.

Hoffman, J. and

Delaney, J. concur.

s/ Sheila G. Farmer _____

s/ William B. Hoffman _____

s/ Patricia A. Delaney _____

JUDGES

