

[Cite as *State v. Frost*, 2009-Ohio-2904.]

COURT OF APPEALS  
ASHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

MICHAEL F. FROST, JR.

Defendant-Appellant

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. W. Scott Gwin, J.

Hon. Patricia A. Delaney, J.

Case No. 08COA037

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,  
Case No. 08CRI038

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

June 17, 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 March 31, 2008, the Ashland County Grand Jury indicted appellant, Michael F. Frost, Jr., on two counts of operating a motor vehicle while under the influence of alcohol and/or drugs in violation of R.C. 4511.19.

{¶2} On August 12, 2008, appellant pled guilty to one count of attempt to operate a motor vehicle while under the influence of alcohol and/or drugs in violation of R.C. 2923.02 and R.C. 4511.19. A sentencing hearing was held on October 10, 2008. By judgment entry filed October 14, 2008, the trial court sentenced appellant to nine 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 nine 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 by pleading guilty, has shown remorse and has accepted responsibility for his actions. The crime did not involve weapons, violence or threats. Appellant does acknowledge his substance abuse issues and wishes to be enrolled in a drug treatment program." Appellant's Brief at 7. Therefore, appellant argues a nine months 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 7. Appellant's criminal record includes the offenses of theft, petty theft, burglary, vandalism, attempted robbery, and other alcohol related offenses. Id. Appellant has served prison time, has been on post-release control, and has had probation violations. T. at 7, 10. Appellant received treatment while in jail, but then upon his release, failed to show up for appointments. T. at 10-11. 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, P.J.

Gwin, J. and

Delaney, J. concur.

s/SHEILA G. FARMER

s/W. SCOTT GWIN

s/PATRICIA A. DELANEY

JUDGES

SGF/db 0610

