

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
Plaintiff-Appellee	:	Hon. W. Scott Gwin, P.J.
	:	Hon. John W. Wise, J.
-vs-	:	Hon. Patricia A. Delaney, J.
	:	
DENNY D. MURPHY	:	Case No. 09 COA 031
	:	
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Ashland County Court of
Common Pleas Case No. 06-CRI-121

JUDGMENT: AFFIRMED

DATE OF JUDGMENT ENTRY: June 7, 2010

APPEARANCES:

For Plaintiff-Appellee:

RAMONA ROGERS
ASHLAND COUNTY PROSECUTOR

PAUL T. LANGE
110 Cottage St., 3rd Floor
Ashland, OH 44805

For Defendant-Appellant:

DOUGLAS A. MILHOAN
P.O. Box 347
Middlebranch, OH 44652

Delaney, J.

{¶1} Defendant-Appellant, Denny D. Murphy appeals the August 24, 2009 judgment entry of the Ashland County Court of Common Pleas revoking Appellant's community control and sentencing Appellant to twelve months in prison. Plaintiff-Appellee is the State of Ohio.

STATEMENT OF THE FACTS AND THE CASE

{¶2} On October 29, 2006, as a result of a traffic stop, law enforcement officers found numerous pill bottles in Appellant's possession. Appellant admitted that the pills belonged to him and he did not have prescriptions for the medication. Appellant was ultimately convicted of three counts of Aggravated Possession of Drugs, felonies of the fifth-degree. The trial court placed Appellant on community control.

{¶3} On May 26, 2009, Appellant's supervising officer filed a complaint alleging that Appellant had violated the terms of his community control by using opiates, oxycodone, and benzodiazepines. Appellant had also failed to regularly pay his financial sanctions.

{¶4} While released on bond during the community control violation proceedings, Appellant used illegal drugs.

{¶5} The trial court held a revocation hearing on July 15, 2009. Based on the evidence presented at the hearing, the trial court sentenced Appellant to twelve months in prison on each count, to be served concurrently. The trial court issued the judgment entry on August 24, 2009.

{¶6} It is from this decision Appellant now appeals.

{¶7} Appellant raises one Assignment of Error:

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

{¶9} Appellant claims his twelve-month sentence imposes an unnecessary burden on state resources in contravention of R.C. 2929.13(A). We disagree.

{¶10} R.C. 2929.13 governs sentencing guidelines for various specific offenses and degrees of offenses. *State v. Steiner*, Holmes App. No. 09CA005, 2010-Ohio-1303, ¶27. Subsection (A) states as follows in pertinent part:

{¶11} “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.”

{¶12} In *Steiner*, this Court recently reaffirmed the proposition that “[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.” *Steiner*, supra at ¶29 citing *State v. Ferenbaugh* (February 26, 2004), Ashland App. No. 03COA038, 2004-Ohio-977.

{¶13} Appellant argues that because Appellant’s crimes do not involve weapons or violence, it is not necessary to protect the general public from Appellant. Appellant continues to seek treatment for his addiction and has maintained gainful employment. Appellant’s Brief at 7. Therefore, a twelve-month sentence for a conviction on three counts of fifth-degree felonies imposes an unnecessary burden on state resources.

{¶14} The record demonstrates that Appellant has struggled with his drug addiction. Appellant was placed on community control, but while on community control and participating in a treatment program, he tested positive for drugs and was found with Percocet for which he did not have a prescription. (T. 8, 9). While on bond during his community control violation proceedings, Appellant used illegal drugs. (T. 12).

{¶15} We find that Appellant has been given multiple opportunities for assistance with his recovery and at this time, imprisonment would serve the least impact on local and state government resources.

{¶16} There is no evidence that the trial court's sentence in this case is an unnecessary burden on state resources. Appellant's Assignment of Error is overruled.

{¶17} The judgment of the Ashland County Court of Common Pleas is affirmed.

By: Delaney, J.

Gwin, P.J. and

Wise, J. concur.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. JOHN W. WISE

PAD:kgb

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

STATE OF OHIO	:	
	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
DENNY D. MURPHY	:	
	:	
	:	Case No. 09 COA 031
Defendant-Appellant	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Ashland County Court of Common Pleas is affirmed. Costs assessed to Appellant.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. JOHN W. WISE