

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Julie A. Edwards, P.J.
	:	W. Scott Gwin, J.
Plaintiff-Appellee	:	John W. Wise, J.
	:	
-vs-	:	Case No. 10-COA-011
	:	
	:	
JOSEPH F. BODNAR	:	<u>OPINION</u>
	:	
Defendant-Appellant	:	

CHARACTER OF PROCEEDING: Criminal Appeal from Ashland County
Court of Common Pleas Case No.
09-CRI-097

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: January 14, 2011

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

RAMONA FRANCESCONI ROGERS
Ashland County Prosecutor
110 Cottage Street, Third Floor
Ashland, Ohio 44805

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

PAUL T. LANGE
Assistant Prosecuting Attorney
110 Cottage Street, Third Floor
Ashland, Ohio 44805

Edwards, P.J.

{¶1} Appellant, Joseph F. Bodnar, appeals a judgment of the Ashland County Common Pleas Court convicting him of rape (R.C. 2907.02(A)(1)(b)) upon a plea of guilty and sentencing him to ten years incarceration. Appellee is the State of Ohio.

STATEMENT OF FACTS AND CASE

{¶2} In September of 2009, the mother of the victim reported to police that her nine-year-old son had been sexually molested by appellant. Appellant is an older cousin of the victim and often babysat the child. Appellant wrote to the victim's mother apologizing for mistreating her son. During a controlled phone call, appellant admitted to his probation officer that he had been sexually molesting the victim since the victim was about six years old.

{¶3} Appellant was charged by bill of information with one count of rape, specifically engaging in fellatio with the victim. On January 19, 2010, he entered a plea of guilty. A pre-sentence investigation was ordered, and following a sentencing hearing on March 1, 2010, appellant was sentenced to ten years incarceration. He assigns a single error on appeal:

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

I

{¶5} Appellant, in his sole assignment of error, argues that his ten year jail sentence 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*, Ashland App. No. 03COA038, 2004-Ohio-977 at paragraph 7, “[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.” Moreover, in *State v. Shull*, Ashland App. No. 2008-COA-036, 2009-Ohio-3105, this Court reviewed a similar claim. We found that although burdens on State resources may be a relevant sentencing criteria as set forth in R.C. 2929.13, state law does not require trial courts to elevate resource conservation above seriousness and recidivism factors, *Shull*, at paragraph 22, citing *State v. Ober* (October 10, 1997), Greene App. No. 97CA0019, 1997 WL 624811.

{¶9} Appellant argues that he accepted responsibility for his actions by pleading guilty. He argues that he is a below-average functioning twenty-year-old with no prior felony convictions and no prior sex offense convictions.

{¶10} However, the record reflects that appellant was in a position of trust with the young male victim because he was a relative who also babysat the young boy. Beginning when the boy was around six and ending when the boy was around nine,

appellant engaged in fellatio with the child. Appellant was on probation for a drug offense at the time of the crime. The court was particularly concerned with appellant's likelihood to reoffend for several reasons. First, appellant had a history of substance abuse and made statements about being under the influence when he was committing the crime. Tr. 12. The court further noted that appellant stated that while engaging in sexual conduct with the boy, he was visualizing that he was having sex with an adult. Tr. 13. The court was concerned about the possibility of re-offending because the court believed appellant did not recognize the little boy as a human being, but as someone else in his imagination. Tr. 13. The court believed appellant did not have compassion for the child he was harming which created a great concern about his likelihood to re-offend. Tr. 14. The court further stated that while appellant claimed he was sorry, the court believed appellant was more sorry for his current situation and what it brought on him than he was sorry about the harm he had caused to the child. Tr. 14.

{¶11} We find no evidence to support appellant's claim that the sentence in this case constitutes an unnecessary burden on state resources. The assignment of error is overruled.

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

By: Edwards, P.J.

Gwin, J. and

Wise, J. concur

JUDGES

JAE/r1001

