

[Cite as *State v. Swiger*, 2004-Ohio-6259.]

COURT OF APPEALS  
ASHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

SAMUEL SWIGER

Defendant-Appellant

JUDGES:

: Hon. W. Scott Gwin, P.J.  
: Hon. William B. Hoffman, J.  
: Hon. John F. Boggins, J.  
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: Case No. 04-COA-023  
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: OPINION

CHARACTER OF PROCEEDING:

Civil appeal from the Ashland County Court  
of Common Pleas, Case No. 03-CRI-022

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT ENTRY:

NOVEMBER 19, 2004

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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*Boggins, J.*

{¶1} Appellant appeals his sentence entered in the Ashland County Court of Common Pleas on one count of Non-Support of Dependents.

### **STATEMENT OF THE CASE**

{¶2} On February 26, 2003, the Ashland County Grand Jury indicted appellant Samuel Swiger on one count of Non-Support of Dependents, a felony of the fifth degree in violation of R.C. 2919.21(A)(2).

{¶3} Appellant pled guilty to the charge and the trial court deferred sentencing and ordered a pre-sentence investigation report.

{¶4} The court conducted the sentencing hearing on April 1, 2004. The trial court sentenced appellant to nine months in prison.

{¶5} Appellant filed an appeal and this matter is now before this court for consideration. Appellant's assignments of error are as follows;

### **ASSIGNMENTS OF ERROR**

{¶6} "I. THE IMPOSITION OF A PRISON SENTENCE GREATER THAN THE MINIMUM TERM IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND CONTRARY TO LAW."

{¶7} "II. THE COURT ERRED IN RELYING UPON REVISED CODE SECTION 2929.13(B)(2)(b) AS THE BASIS FOR IMPOSING A PRISON TERM INSTEAD OF A COMMUNITY CONTROL SANCTION."

I.

{¶8} Appellant challenges the trial court's imposition of a prison sentence greater than the minimum term as being against the manifest weight of the evidence and contrary to law.

{¶9} In its brief at 6, appellee concedes the sentence imposed in the case sub judice does not meet the mandates of *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165, in that the trial court failed pursuant to R.C. 2929.14(B), to make its statutorily enumerated findings and give reasons supporting those findings at the sentencing hearing.

{¶10} Appellant's first assignment of error is sustained.

## II.

{¶11} In his second assignment of error, Appellant claims that the trial court erred in ordering a prison term instead of community control sanctions.

{¶12} Based on our ruling as to Assignment of Error I, we find Assignment of Error II to be moot.

{¶13} The matter is reversed and remanded to the trial court for re-sentencing pursuant to *Comer*, supra.

{¶14} The judgment of the Court of Common Pleas of Ashland County, Ohio is hereby reversed and remanded.

By Boggins, J.

Gwin, P.J., and

Hoffman, J., concur

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JUDGES

