

[Cite as *State v. Graves*, 2009-Ohio-2976.]

COURT OF APPEALS  
ASHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

RAYMOND GRAVES

Defendant-Appellant

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. W. Scott Gwin, J.

Hon. William B. Hoffman, J.

Case No. 08-COA-034

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Ashland County Court of  
Common Pleas, Case No. 08-CRI-042

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

June 22, 2009

APPEARANCES:

For Defendant-Appellant

For Plaintiff-Appellee

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

RAMONA FRANCESCONI ROGERS  
Ashland County Prosecutor

By: PAUL T. LANGE  
Assistant Prosecuting Attorney  
307 Orange Street  
Ashland, Ohio 44805

*Hoffman, J.*

{¶1} Defendant-appellant Raymond Graves appeals his conviction and sentence entered by the Ashland County Court of Common Pleas on one count of failure to register notice of change of address, following a jury trial. Plaintiff-appelle is the State of Ohio.

#### STATEMENT OF THE FACTS AND CASE

{¶2} In 1985, Appellant was convicted of four counts of rape and sentenced accordingly. Upon his release from prison in 2003, Appellant was classified a sexually oriented offender, which required him to register his address for a period of ten years with the sheriff's office in any county in which he resided. On August 16, 2006, and again on August 16, 2007, Appellant registered his address with the Ashland County Sheriff's Department.

{¶3} In October, 2007, Ashland County Sheriff's Capt. Carl Richert, who is responsible for sex offender registration in the county, learned Appellant's home at 348 Country Rd. 281, Sullivan, Ohio, was in foreclosure and scheduled to be sold at a sheriff's sale. Capt. Richert sent Appellant a certified letter in January, 2008, advising him he needed to re-register by January 30, 2008. The letter was returned unclaimed. Sometime following the return of the letter, the captain went to Appellant's residence, but found no one there and the house vacant. On January 30, 2008, after the sheriff's sale had occurred, Capt. Terry Hamilton proceeded to Appellant's home to determine whether he had vacated the residence. Outside the home, Capt. Hamilton spoke with Appellant who informed the officer he had already moved out of the residence. After

Capt. Hamilton advised Capt. Richert of Appellant's status, Capt. Richert made several visits to Appellant's home. On each occasion, Capt. Richert found no signs indicating anyone was living in the residence.

{¶4} In early 2008, Michelle Lamb and her husband purchased Appellant's home at a sheriff's sale. When the Lambs visited the home in February, 2008, they found no signs of anyone living in the house. The couple took possession of the home on March 25, 2008, and spent the next couple of weeks working on the interior of the home. Michelle Lamb never observed any signs someone was living in the home.

{¶5} Appellant never registered a change of address with the Ashland County Sheriff's Office. As a result, the Ashland County Grand Jury indicted Appellant on one count of failure to register change of address, in violation of R.C. 2950.05(F)(1), a felony of the first degree. The matter proceeded to jury trial on June 17, 2008. After hearing all the evidence and deliberations, the jury found Appellant guilty as charged. The trial court ordered a presentence report and deferred sentencing. The trial court conducted a sentencing hearing on September 8, 2008, and ordered Appellant to serve a three year term of incarceration.

{¶6} It is from this conviction and sentence Appellant appeals, raising the following assignments of error:

{¶7} "I. THE CONVICTION OF APPELLANT FOR FAILURE TO REGISTER NOTICE OF CHANGE OF ADDRESS IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

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

I

{¶9} In his first assignment of error, Appellant challenges his conviction as against the manifest weight of the evidence.

{¶10} Our standard of review on a manifest weight challenge to a criminal conviction is stated as follows: “The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered .” *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717. See, also, *State v. Thompkins* (1997), 78 Ohio St.3d 380, 678 N.E.2d 541. The granting of a new trial “should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.” *Martin* at 175, 485 N.E.2d 717.

{¶11} Appellant maintains the State failed to present evidence of where he was residing if not at his registered address. Appellant’s position places the wrong burden of proof on the State. The State’s burden is to prove beyond a reasonable doubt Appellant no longer lived in the home he last registered with the Ashland County Sheriff’s Office, to wit: 348 County Rd. 281, Sullivan, Ohio.

{¶12} R.C. 2950.05(A) mandates an offender who is “required to register pursuant to division (A)(2), (3), or (4) of section 2950.04 \* \* \* provide written notice of any change of residence address, and \* \* \* provide notice of any change of residence, school, institution of higher education, or place of employment address, to the sheriff with whom the offender \* \* \* most recently registered the address under division (A)(2), (3), or (4) of section 2950.04.” Further, pursuant to R.C. 2950.04(A)(2)(a), an “offender

shall register personally with the sheriff, or the sheriff's designee, of the county within three days of the offender's coming into a county in which the offender resides or temporarily is domiciled for more than three days." In other words, Appellant not only had to advise the Ashland County Sheriff's Department of his change of address, but also was required to personally register with the sheriff's office of the county into which he moved. Appellant did neither.

{¶13} The evidence presented established Appellant admitted to Capt. Terry Hamilton he moved out of his home in January, 2008. Capt. Richert stopped by the home on several occasions in early 2008, and found no evidence of anyone living there. In addition, Mary Lamb, who purchased the home at the sheriff's sale, testified she and her husband took possession of the home on March 25, 2008, and did not notice anything which indicated someone was living in the residence. Further, Janice Ridenour, who lives in Lodi, Ohio, testified she has observed Appellant on an almost daily basis in her neighborhood, walking a child to a bus stop. Ridenour added Appellant has family who live in the neighborhood. We find the jury's finding Appellant no longer resided at the 348 Country Rd. 281, Sullivan, Ohio address, which he had registered with the Ashland County Sheriff's Department, was not against the manifest weight of the evidence.

{¶14} Appellant's first assignment of error is overruled.

## II

{¶15} In his second assignment of error, Appellants claim the trial court's sentencing him to a period of three years incarceration imposes an unnecessary burden on State resources. We disagree.

{¶16} In *State v. Ferenbaugh*, Ashland App. No. 03COA038, 2004-Ohio-977, this Court addressed the identical argument raised by Appellant herein, and stated:

{¶17} “R.C. 2929.13 governs sentencing guidelines for various specific offenses and degrees of offenses. Subsection (A) states as follows, in pertinent part: ‘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 section 2929.14 to 2929.18 of the Revised Code. The sentence shall not impose an unnecessary burden on state or local government resources.’

{¶18} “The very language of the cited statute grants trial courts discretion to impose sentences. Nowhere within the statute is there any guidelines for what an ‘unnecessary burden’ is.” *Id.* at 5-8. See also; *State v. Dean*, Ashland App. No. 07COA23, 2008-Ohio-875; *State v. Douglas*, Ashland App. No. 04 CA 76, 2005-Ohio-3920.

{¶19} The record sub judice is devoid of any evidence to support the claim of an “unnecessary burden on the state or local government resources.” We find the trial court's imposition of a prison term was appropriate in this matter and does not impose an unnecessary burden on state or local resources.

{¶20} Appellant's second assignment of error is overruled.

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

By: Hoffman, J.

Farmer, P.J. and

Gwin, J. concur

s/ William B. Hoffman  
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer  
HON. SHEILA G. FARMER

s/ W. Scott Gwin  
HON. W. SCOTT GWIN

