

COURT OF APPEALS
HOLMES COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	W. Scott Gwin, P.J.
	:	William B. Hoffman, J.
Plaintiff-Appellee	:	Julie A. Edwards, J.
	:	
-vs-	:	Case No. 09-CA-004
	:	
	:	
LOVENDA BLANTON	:	<u>OPINION</u>
	:	
Defendant-Appellant	:	

CHARACTER OF PROCEEDING: Criminal Appeal from Holmes County Court of Common Pleas Case No. 08-CR-53

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: January 15, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

F. CHRISTOPHER OEHL
Holmes County Prosecutor
164 East Jackson Street
Millersburg, Ohio 44654

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

Edwards, J.

{¶1} Defendant-appellant, Lovenda Blanton, appeals her sentence from the Holmes County Court of Common Pleas. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On August 18, 2008, the Holmes County Grand Jury indicted appellant on one count of theft by deception in violation of R.C. 2913.02(A)(3), a felony of the fourth degree, and one count of forgery in violation of R.C. 2913.31(A)(2), a felony of the fifth degree. At her arraignment on August 27, 2008, appellant entered a plea of not guilty to the charges.

{¶3} As memorialized in a Judgment Entry filed on February 9, 2009, appellant withdrew her former not guilty plea and entered a plea of guilty to both counts in the indictment. The trial court ordered a pre-sentence investigation. Pursuant to a Judgment Entry filed on April 3, 2009, appellant was sentenced to 180 days in jail with credit for 11 days already served.

{¶4} Appellant now raises the following assignment of error on appeal:

{¶5} “THE IMPOSITION OF A JAIL SENTENCE IN THIS CASE IMPOSES AN UNNECESSARY BURDEN ON LOCAL RESOURCES.”

I

{¶6} Appellant, in her sole assignment of error, argues that her 180 day jail sentence imposes an unnecessary burden on local resources in contravention of R.C. 2929.13(A). We disagree.

{¶7} R.C. 2929.13 governs sentencing guidelines for various specific offenses and degrees of offenses. Subsection (A) states as follows in pertinent part:

{¶8} “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.”

{¶9} 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 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.

{¶10} Appellant, in support of her argument that her jail sentence imposes an unnecessary burden on local resources, contends that she accepted responsibility for her actions, that the victim requested that appellant serve no jail time, and that she had never been adjudicated delinquent and had no prior criminal record. Appellant further notes that the trial court, in its April 3, 2009, Judgment Entry, found that appellant was strongly provoked and that the offenses occurred under circumstances not likely to recur.

{¶11} However, the record reveals that appellant, without permission to do so, endorsed a \$6,000.00 check from the trust fund of 18 year old Juanita Sheaffer and deposited the same in her checking account. The trust fund consists of proceeds received from an action regarding the wrongful death of Juanita Sheaffer’s mother. Sheaffer was living with appellant and appellant’s boyfriend at the time and the check was sent to her at appellant’s address. Appellant used the money to purchase a vehicle and a wood-splitter, among other items, and to gamble. The pre-sentence investigation indicated that appellant, during her interview with police, stated that she would not be in trouble if she had not listened to her boyfriend and another man and indicated that it was her boyfriend’s idea to endorse and deposit the check.

{¶12} Upon review, we find no evidence to indicate that the sentence in this case is an unnecessary burden on local resources.

{¶13} Appellant’s sole assignment of error is, therefore, overruled.

{¶14} Accordingly, the judgment of the Holmes County Court of Common Pleas is affirmed.

By: Edwards, J.

Gwin, P.J. and

Hoffman, J. concur

JUDGES

