

IN THE COURT OF COMMON PLEAS

Clinton County, Ohio

FILED - COMMON PLEAS

2024 JAN -8 AM 10:49

CLINTON COUNTY
CYNTHIA R. BAILEY, CLERK

THE STATE OF OHIO
PLAINTIFF

vs.

CASE NO: CRI 20235045

MICHAEL S. FOSTER
DEFENDANT

JUDGMENT ENTRY OF SENTENCE
Prison Term

Rudduck, J.

On January 8, 2024, a sentencing hearing was held pursuant to RC §2929.19, notice having been given to all parties and by agreement of the parties. Defendant was present in person consistent with the terms of his bond, was represented by counsel Kelly K. McKoy, was given an opportunity to speak and to present witnesses and was afforded all rights pursuant to Criminal Rule 32. Special prosecutor Lisa M. Treleven represented the state of Ohio. The victim, Peggy Hart, was present.

The court has considered the record, oral statements, the terms of the negotiated settlement, the Pre-Sentence Investigation report with attached documents, the Ohio Risk Assessment Report, the victim impact statements, the purposes and principles of sentencing under RC §2929.11, the seriousness and recidivism factors relevant to the offense and offender pursuant to RC §2929.12, and the need for deterrence, incapacitation, rehabilitation, and restitution.

The court finds that the defendant has been convicted upon his knowing, voluntary, and intelligently entered plea of guilty under the Indictment filed March 24, 2023 pursuant to terms of a negotiated settlement for:

- **THEFT FROM A PERSON IN A PROTECTED CLASS**, in violation of Revised Code §2913.02(A) (2), a felony of the third degree under Count One of the Indictment **as charged** by the State of Ohio.
- Two other Counts under the Indictment were dismissed by the state as part of the negotiated settlement.

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After considering the factors set forth in RC §2929.12, the court finds that a combination of community control sanctions would be inconsistent with the purposes and principles set forth in RC §2929.11. The Court finds that community control sanctions would not adequately punish the defendant nor protect the public from future crime by the defendant and others.

Defendant has a troubling criminal history replete with crimes of dishonesty beginning in 2013 when a felony theft offense was reduced to a misdemeanor theft offense in Warren County. The amount of alleged restitution in that case was \$4,622.

- In January 2018, a fourth-degree felony Grand Theft offense was filed in Warren County but dismissed in the County Court.
- Later in December 2018, a 5th degree felony theft offense was filed in Hamilton County, defendant was arrested, but the Grand Jury did not pursue that filing.
- In October 2023, defendant pled guilty to a misdemeanor theft offense which occurred in 2018. A diversion program was completed with the case dismissed.
- In 2021, defendant pled guilty to a 4th degree felony theft offense in Hamilton County. The court imposed a three-year term of community control sanctions. The amount of restitution ordered paid was \$12,750.
- New felony Grand Theft charges were subsequently filed in both Warren County and Clinton County (the instant case) in 2023. The Hamilton County court maintained defendant on community control.
- In the above referenced Grand Theft charge in Warren County, defendant pled guilty and was granted community control sanctions. The amount involved in the theft appears to have been \$125,000.

With respect to the criminal activity in this Clinton County case, the crime occurred while defendant was being monitored on community control sanctions for Hamilton County. One important goal in sentencing is to ensure victims are made whole. But from this record, it appears another principle of felony sentencing has been diminished in trying to make victims whole, namely, punishment. All defendant has done since being granted community control in Hamilton County is produce more victims.

While defendant did pay \$3,000 into an escrow account this morning for the victim, courts are not collection agencies. The court has considered this payment and any other payments as a mitigating factor but payment at this time is not a get-out-of jail free card given the totality of the circumstances.

Based upon this record, to punish defendant, to deter others from committing similar crimes, including defendant, against those in a protected class, and to not demean the seriousness of the misconduct, a prison term shall be imposed.

PRISON TERM

Defendant is ordered to serve a definite stated prison term of twenty-four {24} months, none of which is mandatory, upon the court finding defendant guilty of **THEFT FROM A PERSON IN A PROTECTED CLASS**, in violation of Revised Code §2913.02(A) (2), a felony of the third degree under the sole Count of the Indictment **as charged** by the State of Ohio

Credit is granted for four {4}- days in jail served as of and including this date, January 8, 2024 together with any additional days spent in custody locally awaiting transport to prison as defendant is remanded to the custody of the Clinton County Sheriff to be conveyed to the custody of the Ohio Department of Correction and Rehabilitation to serve this definite stated prison term.

Earned Credit Instruction

Defendant was instructed that most prison inmates are eligible to earn days of credit against their prison sentences for each completed month of productive participation in educational or employment programs developed by the ODRC with specific standards for performance by prisoners. Some inmates, including those confined for sex offenses and the most dangerous first and second-degree felonies and homicides are not eligible to earn days of credit.

Post Release Control Notification

As part of the sentence in this case, defendant may be supervised on post-release control by the Ohio Adult Parole Authority upon his release from prison for a *period of up to (2) years*. If defendant violates the terms and conditions of post-release control supervision, the Adult Parole Authority may impose a residential sanction that may include a prison term of up to nine (9) months but the maximum cumulative prison term for all violations shall not exceed one-half of the definite stated prison term imposed by this court in this case.

However, if defendant pleads guilty to, or is convicted of a new felony offense while on post-release control, the sentencing court may impose a prison term for the new felony offense as well as an additional consecutive prison term for the post-release control violation of twelve (12) months or the remaining time on defendant's post-release control supervision term, whichever is greater, all as part of this sentence.

FINANCIAL SANCTIONS:

No fine is imposed but Defendant shall pay all court costs of this case.

Defendant shall ensure restitution is made to Peggy Hart in the amount of \$50,500.00. A judgment is entered in favor of Peggy Hart against Michael S. Foster for this amount for which execution is now available. The court directs any payments made by defendant first go into the established escrow account for the victim be paid by the Clerk of Courts to the victim as received in a timely manner.

A judgment is entered in favor of the state of Ohio against defendant pursuant to RC §2947.23 {A} {1} for such costs. If the defendant fails to pay the judgment for costs or fails to timely make payments towards that judgment under a payment schedule approved by the court, the court may order the defendant to perform community service in an amount of not more than forty hours per month until the judgment is paid or until the court is satisfied that the defendant is following the approved payment schedule.

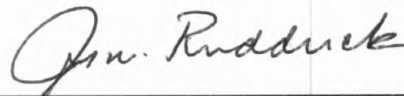
If the court orders the defendant to perform the community service, the defendant will receive credit upon the judgment at the specified hourly credit rate of \$15.00 per hour of community service performed, and each hour of community service performed will reduce the judgment by that amount.

Appellate Rights Notification

Defendant was advised of his right to appeal this order but must act within 30-days or he may lose the right to directly appeal. The court requests defense counsel to ensure this right is honored if defendant intends to appeal. Counsel may be appointed for him if indigent and upon request. All bond terms are released.

**** The court does not rule out the possibility of considering a judicial release at some point in the future but no guarantee is made. The court will require some serious, realistic proposal regarding how defendant intends to pay restitution in full.*

January 8, 2024



John W. Rudduck, Judge

A copy of this Entry was personally served upon defendant and / or defense counsel the date of his hearing by