

**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

STATE OF OHIO,	:	CASE NO. CR-2020-10-2863
	:	
Plaintiff,	:	JUDGE MCCARTY
	:	
vs.	:	
	:	
JOSEPH SENK,	:	STATE OF OHIO'S SENTENCING RECOMMENDATION
	:	
Defendant.	:	

The State of Ohio, by the Ohio Attorney General and the undersigned assistant attorneys general, respectfully submits the following memorandum in support of its sentencing recommendation of a \$10,000 fine and 5 years of community control with 60 days in jail.

I. POTENTIAL PENALTIES

The Defendant, Joseph Senk, was convicted of Open Dumping Solid Wastes in violation of R.C. 3734.03 and Illegal Transportation of Scrap Tires in violation of R.C. 3734.83(A). Under R.C. 3734.99(A) and (F), Senk “shall be fined at least ten thousand dollars, but not more than twenty-five thousand dollars, or imprisoned for at least two years, but not more than four years, or both” for each offense. The Court may also impose one or more community control sanctions since the court is not required to impose a prison term. R.C. 2929.15. *See State v. Cooper*, 2016-Ohio-8048, 75 N.E.3d 805, ¶ 30-33 (8th Dist.) (the court ordered Defendant to remediate the site as a term of community control after he was found guilty of open dumping); *see also City of Cleveland v. Pentagon Realty, LLC*, 8th Dist. Cuyahoga No. 108146, 2019-Ohio-3775 (the court imposed community control sanctions against a corporation).

The Court must comply with the overriding purposes of felony sentencing outlined in R.C. 2929.11. *See State v. Jackson*, 4th Dist. Lawrence No. 97CA2, 1997 Ohio App. LEXIS 5433, *8 (Dec. 1, 1997). The Court shall be guided by a desire to protect the public from future crime by the offender and to punish the offender. R.C. 2929.11(A). In order to achieve these two purposes, the sentencing court must consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense. *Id.*

If the Court sentences Senk to a term of imprisonment, Senk may apply for judicial release under R.C. 2929.20, but he is not subject to a period of post-release control after release from prison under R.C. 2967.28. Senk is an eligible offender to request judicial release under R.C. 2929.20(A) because he would be serving nonmandatory, definite prison terms. The specific language of R.C. 2967.28(B) and (C) limits the requirement of post-release control to classified felonies and felony sex offenses, which do not apply here.

II. RECOMMENDED SENTENCE

After carefully considering the overriding purposes of felony sentencing, including protecting the public from future crimes and punishing the offender, the State recommends the Court sentence Senk to pay the minimum fine of \$10,000, five years on community control, and 60 days in jail. This recommendation is based on the fact that Senk is likely to reoffend in the future.

Senk has a significant history of violating the law. The health department and the Ohio Environmental Protection Agency have been asking Senk to comply with Ohio's scrap tire laws since 2012. Even after countless letters and conversations, Senk has refused to comply. While this case was pending, the health department continued to issue notice of violation letters to Senk

for illegal dumping or storing of scrap tires. They also observed his truck full of scrap tires at his property in Northfield Village. The State believes that Senk is likely to continue his illegal business if his sentence is too lenient.

Additionally, Senk was charged with three counts of Illegal Transportation of Scrap Tires in Cuyahoga County in 2015. He pled guilty to the amended charge of Causing Another Person to Transport Scrap Tires without a Registration Certificate, a misdemeanor of the first degree. In that case he was placed on community control, which was terminated early in September 2016. This shows that a term of community control alone is not enough to deter Senk from committing future crimes.

Therefore, the State of Ohio asks the Court to impose a \$10,000 fine and five years of community control with a term of 60 days in jail in order to deter Senk from committing future crimes. In addition to the general terms of community control, the State recommends that the Court order Senk to stop transporting more than 10 scrap tires in one load without a registration certificate and to comply with Ohio Adm.Code 3745-27-56 – Standards for Transporters of Scrap Tires. Under the rule, scrap tire transporters, whether registered or not, must deliver all scrap tires to one of the six listed locations in Ohio Adm.Code 3745-27-56(C)(1). The scrap tires cannot be delivered to a residential premise, an unlicensed warehouse, or a vehicle junk yard. The State also asks the Court to allow the health department and Ohio EPA to conduct random inspections at properties owned, occupied, or leased by Senk to ensure compliance with Ohio's solid waste laws. These community control terms will help deter Senk from violating the law in the future and protect the local community.

Respectfully Submitted,

DAVE YOST
OHIO ATTORNEY GENERAL

/s/ Sally Smetzer Montell
Sally Smetzer Montell (0091073)
Matthew E. Meyer (0075253)
Assistant Attorneys General
Ohio Attorney General's Office
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, OH 43215
Phone: (614) 466-5276
Fax: (614) 644-1926
sally.montell@ohioago.gov
matthew.meyer@ohioago.gov

CERTIFICATE OF SERVICE

I certify that a copy of the State of Ohio's Sentencing Recommendation was sent via email to the attorney for the defendant at Greven214@aol.com on June 8, 2023.

/s/ Sally Smetzer Montell
Sally Smetzer Montell (0091073)