

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

STATE OF OHIO, :
Plaintiff-Appellee, : Case No. 02CA2859
vs. :
ALI N. THOMPSON, : DECISION AND JUDGMENT ENTRY
Defendant-Appellant. :

APPEARANCES:

COUNSEL FOR APPELLANT: Marcia Shedroff Skeens, P.O. Box 1602,
Portsmouth, Ohio 45662¹

COUNSEL FOR APPELLEE: Lynn Alan Grimshaw, Prosecuting
Attorney, 612 Seventh Street,
Portsmouth, Ohio 45662

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 12-22-03

ABELE, J.

¹ On July 28, 2003, this court filed an entry directing the Scioto County Clerk of Courts to serve a copy of appellant's Anders brief upon appellant. We also granted appellant forty days in which to file a supplemental pro se brief to set forth any potential assignments of error. Although service was successful, appellant did not file a supplemental pro se brief.

{¶1} This is an appeal from a Scioto County Common Pleas Court judgment of conviction and sentence. The trial court found Ali N. Thompson, defendant below and appellant herein, guilty of possession of drugs (264 grams of crack cocaine), in violation of R.C. 2925.11(A)(C)(4)(f), a first degree felony with a mandatory ten year prison term.

{¶2} On September 26, 2002, appellant appeared in the trial court with counsel and the prosecution advised the court that the parties had reached a plea agreement. The prosecution noted that appellant was charged with a first degree felony with a mandatory ten year prison term with the possibility of an additional ten year prison term, but in exchange for appellant's guilty plea and for appellant's cooperation in another case that involved another defendant, the prosecution would recommend a flat ten year prison term.

Subsequently, the trial court accepted appellant's guilty plea, found her guilty and sentenced her to a flat ten year prison term. Appellant filed a timely notice of appeal.

{¶3} Pursuant to Anders v. California (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, appellant's appointed counsel has advised this Court that after a thorough and conscientious review of the record, she can discern no

meritorious appealable issue upon which to predicate an assignment of error.²

{¶4} We begin our analysis of the instant appeal by acknowledging the responsibilities the United States Supreme Court imposed upon us in Anders, supra. Upon receiving an Anders brief, an appellate court must "conduct 'a full examination of all the proceedings(s) to decide whether the case is wholly frivolous.'" Penson, 488 U.S. at 80, 109 S.Ct. at 350, 102 L.Ed.2d 300 (quoting Anders, 386 U.S. at 744, 87 S.Ct. 1396, 18 L.Ed.2d 493). After fully examining the proceedings below, if we find only frivolous issues on appeal, we then may proceed to address the case on its merits without the assistance of counsel. Id.; see, also, State v. Kent (Mar. 4, 1998), Jackson App. No. 96 CA 794, unreported; State v. Hart (Dec. 23, 1997), Athens App. No.

² In Penson v. Ohio (1988), 488 U.S. 75, 109 S.Ct. 346, 102 L. Ed. 2d 300, the United States Supreme Court noted the following with respect to the requirements of an Anders brief:

"* * * Appointed counsel is first required to conduct 'a conscientious examination' of the case. [Anders], [386 U.S. at] 744, 87 S.Ct. 1396, 18 L.Ed.2d 493. If he or she is then of the opinion that the case is wholly frivolous, counsel may request leave to withdraw. The request 'must, however, be accompanied by a brief referring to anything in the record that might arguably support the appeal.' Ibid."

Penson, 488 U.S. at 80, 109 S.Ct. at 350, 102 L.Ed.2d 300.

97 CA 18, unreported. If we find, however, that meritorious issues for appeal exist, we must afford appellant the assistance of counsel in order that counsel may address the issues. Anders, *supra*, 386 U.S. at 744; see, also, Penson v. Ohio (1988), 488 U.S. at 80, 109 S.Ct. at 350, 102 L.Ed.2d 300. With the foregoing principles in mind, we turn our attention to the record before us.

{¶5} On July 21, 2003, appellant's appellate counsel filed an Anders brief. In her brief, counsel noted that appellant entered an "informed, voluntary plea" and that "the trial court made the necessary and appropriate findings to impose the sentence of ten years." Counsel further noted, however, that appellant maintains: (1) that the lack of meaningful contact with her attorneys along with the fact that she had no previous notice of the possibility of the additional ten years as a major drug offender prejudiced her in that she had to make the decision as to whether to plead guilty in a matter of minutes; and (2) that she "offered to cooperate with the State, but that her attorneys did not effectively communicate her offer to the prosecuting attorney in a timely manner, which resulted in a plea bargain involving more time than she would have received if her offer had been communicated effectively."

{¶6} After our review of the record in the case sub judice, we agree with appellant's counsel that appellant entered a knowing, intelligent and voluntary guilty plea. See, generally, State v. Eagle (1996), 74 Ohio St.3d 525, 660 N.E.2d 450; State v. DeArmond (1995), 108 Ohio App.3d 239, 670 N.E.2d 531. We further note that appellant's contention regarding communication with her attorney and possible additional negotiations and further cooperation with the prosecution in order to secure a shorter prison sentence is purely speculative. Once again, our review of the record reveals that appellant's guilty plea was knowing, intelligent and voluntary.

{¶7} Thus, after our independent review and examination of the record, we agree with appellant's appointed counsel's assessment no potential assignments of error having arguable merit exist and that the instant appeal is wholly frivolous.

Accordingly, based upon the foregoing reasons we hereby affirm the trial court's judgment.

Judgment affirmed.

Evans, P.J., and Harsha, J., concur in judgment and opinion.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal. Appellant's counsel's request to withdraw from further representation and involvement in the instant case is hereby granted.

It is ordered that a special mandate issue out of this Court directing the Scioto County Common Pleas Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted, it is continued for a period of sixty days upon the bail previously posted. The purpose of said stay is to allow appellant to file with the Ohio Supreme Court an application for a stay during the pendency of the proceedings in that court. The stay as herein continued will terminate at the expiration of the sixty day period.

The stay will also terminate if appellant fails to file a notice of appeal with the Ohio Supreme Court in the forty-five day period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Ohio Supreme Court. Additionally, if the Ohio Supreme Court dismisses the appeal prior to the expiration of said sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.
Exceptions.

For the Court

BY: _____
Peter B. Abele
Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.

