[Cite as *State v. Ramey*, 2015-Ohio-1399.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	Appellate Case No. 2014-CA-62
	:	
v.	:	Trial Court Case No. 2013-CR-0776
	:	
SHANE R. RAMEY	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 10th day of April, 2015.

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WELBAUM, J.

{¶ 1} Defendant-appellant, Shane R. Ramey, appeals from his conviction and sentence received in the Clark County Court of Common Pleas after pleading guilty to one count of trafficking cocaine and one count of having weapons while under disability. In proceeding with the appeal, Ramey's assigned counsel filed a brief under the authority of *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), indicating that there are no issues with arguable merit to present on appeal. After conducting a review as prescribed by *Anders*, we also find no issues with arguable merit. Accordingly, the judgment of the trial court will be affirmed.

{¶ 2} On November 12, 2013, Ramey was indicted for one count of trafficking cocaine, one count of possessing cocaine, one count of trafficking marijuana, one count of having weapons while under disability, and one count of aggravated possession of drugs. A firearm specification and forfeiture specification were attached to each count.

{¶ 3} Pursuant to a plea agreement, Ramey pled guilty to trafficking cocaine in violation of R.C. 2925.03(A)(2) and (C)(4)(d) (vicinity of a juvenile), a felony of the second degree, and having weapons while under disability in violation of R.C. 2923.13(A)(2), a felony of the third degree. Ramey also agreed to the forfeiture specification. In exchange, the State dismissed all the remaining charges, as well as the firearm specification attached to the trafficking cocaine charge.

{¶ 4} At sentencing, the trial court imposed a six year prison term for trafficking cocaine and a three year prison term for having weapons while under disability. The trial court ordered Ramey to serve these sentences consecutively for a total prison term of nine years. In addition, the trial court ordered the forfeiture of certain items in Ramey's

possession that were considered proceeds derived from the commission of his offenses.

{¶ 5} On May 9, 2014, Ramey filed a notice of appeal from his conviction and sentence. After requesting multiple extensions, on October 14, 2014, Ramey's appointed appellate counsel filed an *Anders* brief indicating that there were no issues with arguable merit to present on appeal. On November 12, 2014, we notified Ramey that his counsel found no meritorious issues and granted him 60 days to file a pro se brief assigning any errors for review. Shortly after the 60 days passed, on January 20, 2015, Ramey filed a motion for extension of time to file a pro se brief. We granted Ramey an extension as requested and ordered him to file his pro se brief by February 23, 2015. Ramey, however, failed to file a brief.

{¶ 6} Our task in this case is to conduct an independent review of the record as prescribed by *Anders*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493. In *Anders* cases, the appellate court must conduct a thorough examination of the proceedings to determine if the appeal is actually frivolous, and if it is, the court may "grant counsel's request to withdraw and then dismiss the appeal without violating any constitutional requirements, or the court can proceed to a decision on the merits if state law requires it." *State v. McDaniel*, 2d Dist. Champaign No. 2010 CA 13, 2011-Ohio-2186, ¶ 5, citing *Anders* at 744. "If we find that any issue presented or which an independent analysis reveals is not wholly frivolous, we must appoint different appellate counsel to represent the defendant." (Citation omitted.) *State v. Marbury,* 2d Dist. Montgomery No. 19226, 2003-Ohio-3242, ¶ 7.

{¶ 7} *"Anders* equated a frivolous appeal with one that presents issues lacking in arguable merit. An issue does not lack arguable merit merely because the prosecution

can be expected to present a strong argument in reply, or because it is uncertain whether a defendant will ultimately prevail on that issue on appeal." *State v. Pullen*, 2d Dist. Montgomery No. 19232, 2002-Ohio-6788, ¶ 4. Rather, "[a]n issue lacks arguable merit if, on the facts and law involved, no responsible contention can be made that it offers a basis for reversal." *Id*.

{¶ 8} In conducting our independent review, Ramey's counsel has requested that we consider, as a potential assignment of error, whether the trial court erred in imposing consecutive sentences. Under R.C. 2929.14(C)(4), a trial court may impose consecutive sentences if it determines that: (1) consecutive service is necessary to protect the public from future crime or to punish the offender; (2) consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public; and (3) one or more of the following three findings are satisfied.

> (a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.
>
> (b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.
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> (c) The offender's history of criminal conduct demonstrates that consecutive

sentences are necessary to protect the public from future crime by the offender.

R.C. 2929.14(C)(4)(a)-(c).

{¶ 9} " '[A] trial court is required to make the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and incorporate its findings into its sentencing entry, but it has no obligation to state reasons to support its findings.' " *State v. Bittner*, 2d Dist. Clark No. 2013-CA-116, 2014-Ohio-3433, ¶ 11, quoting *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 37.

{¶ 10} We note that the appellate standard of review for felony sentences, including consecutive sentences, is set forth in R.C. 2953.08(G)(2). *State v. Rodeffer*, 2013-Ohio-5759, 5 N.E.3d 1069, ¶ 29 (2d Dist.); *State v. Mooty*, 2014-Ohio-733, 9 N.E.3d 443, ¶ 68 (2d Dist.). Under this statute, an appellate court may increase, reduce, or modify a sentence, or it may vacate the sentence and remand for resentencing, only if it "clearly and convincingly finds" either: (1) that the record does not support certain specified findings, which include the consecutive-sentence findings in R.C. 2929.14(C)(4); or (2) that the sentence imposed is contrary to law. R.C. 2953.08(G)(2); *State v. Battle*, 2d Dist. Clark No. 2014 CA 5, 2014-Ohio-4502, ¶ 7. We have acknowledged that this is an "extremely deferential standard of review." *Rodeffer* at ¶ 31.

{¶ 11} After reviewing the record in this case, we find that the trial court did not err in imposing consecutive sentences. At the sentencing hearing, the trial court made all the required consecutive-sentence findings when it stated that:

The Court finds consecutive service [is] necessary to protect the public from

> future crime and to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and the danger it poses to the public. Further, [Ramey's] criminal history would demonstrate consecutive sentences are necessary for protection to the public from future crime by the Defendant.

Disposition Trans. (April 17, 2014), p. 14.

{¶ 12} The trial court also incorporated the foregoing findings into the sentencing entry and we do not clearly and convincingly find that the record does not support those findings. Specifically, the record indicates that Ramey had a substantial criminal history with prior convictions between 1991 and 2007 for criminal damaging, robbery, felonious assault, carrying a concealed weapon, and having weapons while under disability. In addition, the record indicates that Ramey served prison terms for these offenses and did not respond well to the sanctions previously imposed. Ramey also scored a moderate risk level on the Ohio Risk Assessment Survey. Finally, the record indicates that Ramey's instant offenses were serious in that they were part of organized criminal activity and were committed in the vicinity of juveniles.

{¶ 13} Our independent review has revealed no error in any other aspect of Ramey's sentences, as they were within the prescribed statutory range, and the trial court considered the statutory seriousness and recidivism factors in R.C. 2929.12 as well as the principles and purposes of sentencing in R.C. 2929.11. Accordingly, Ramey's sentence was neither contrary to law nor unsupported by the record.

{¶ 14} We reiterate that we have reviewed Ramey's sentence under the standard of review set forth in *Rodeffer*. In *Rodeffer*, we held that we would no longer use an

abuse-of-discretion standard in reviewing felony sentences, but would apply the standard of review set forth in R.C. 2953.08(G)(2). Since then, opinions from this court have expressed reservations as to whether our decision in *Rodeffer* is correct. *See, e.g., State v. Garcia*, 2d Dist. Greene No. 2013-CA-51, 2014-Ohio-1538, ¶ 9, fn.1; *State v. Johnson*, 2d Dist. Clark No. 2013-CA-85, 2014-Ohio-2308, ¶ 9, fn. 1. Regardless, in the case before us, there is no error in the sentence imposed under either standard of review.

{¶ 15} Having conducted an independent review of the record pursuant to *Anders*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, we agree with Ramey's appellate counsel that there are no issues with arguable merit to present on appeal. Accordingly, the judgment of the trial court is affirmed.

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FROELICH, P.J. and HALL, J., concur.

Copies mailed to:

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