

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

State of Ohio

Court of Appeals No. OT-08-014

Appellee

Trial Court No. 05-CR-027

v.

Tanya R. Blatt

DECISION AND JUDGMENT

Appellant

Decided: July 31, 2009

* * * * *

Mark E. Mulligan, Ottawa County Prosecuting Attorney, for appellee.

Thomas M. Dusza, for appellant.

* * * * *

SINGER, J.

{¶ 1} This appeal comes to us from the Ottawa County Court of Common Pleas wherein appellant, Tanya R. Blatt, was resentenced, following a remand from this court, for three violations of child endangering.

{¶ 2} Counsel appointed to pursue appellant's appeal has filed a brief and motion requesting withdrawal as appellate counsel, pursuant to the guidelines established in *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493. Counsel states that, after careful review of the record and legal research, he cannot discern any "arguable, non-frivolous issue for appeal." *Anders*, supra, at 744. Counsel further states that he has advised appellant of her right to file a brief on her own behalf, and that a copy of both the brief and motion to withdraw have been served upon appellant. Appellant has not filed a brief on her own behalf.

{¶ 3} We are required, pursuant to *Anders*, supra, to thoroughly and independently review the record to determine that counsel has made a diligent effort and that the proceedings below were free from prejudicial error and conducted without infringement of appellant's constitutional rights.

{¶ 4} Upon consideration, we conclude that counsel's brief is consistent with the requirements set forth in *Anders*, supra, and *Penon v. Ohio* (1988), 488 U.S. 75, 109 S.Ct. 346, 102 L.Ed.2d 300.

{¶ 5} The facts relevant to this appeal are as follows. On February 23, 2007, this court affirmed appellant's convictions for illegal assembly or possession of chemicals for manufacture of drugs, a third degree felony in violation of R.C. 2925.041(A); illegal manufacture of drugs within the vicinity of a juvenile, a first degree felony in violation of R.C. 2925.04(A); possession of drugs, a fifth degree felony in violation of R.C. 2925.11(A); possession of drug paraphernalia, a first degree misdemeanor in violation of

R.C. 2925.14(C)(1); and three counts of child endangering, a third degree felony in violation of R.C. 2912.22(B)(6). See *State v. McDade*, 6th Dist. Nos. OT-06-001, OT-06-004, 2007-Ohio-749.

{¶ 6} This court, however, vacated appellant's concurrent four year sentences for child endangering and remanded the matter to the trial court for resentencing on those offenses. *Id.*, ¶ 73. Specifically, this court held that the trial court erred in finding that the seriousness factor of R.C. 2929.12(B)(6) existed for the child endangering offenses under R.C. 2919.22(B)(6).

{¶ 7} Appellant was resentenced on January 7, 2008, and she once again was sentenced to three, concurrent four year prison terms for child endangering. Counsel for appellant has set forth the following potential assignment of error:

{¶ 8} "I. The trial court abused its discretion when it imposed a sentence allowable by law upon appellant."

{¶ 9} In *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, paragraph seven of the syllabus, the Supreme Court of Ohio, in striking down parts of Ohio's sentencing scheme, held that "[t]rial courts have full discretion to impose a prison sentence within the statutory range and are no longer required to make findings or give their reasons for imposing maximum, consecutive, or more than the minimum sentences." Thus, an appellate court reviews felony sentences for an abuse of discretion. *Id.* An abuse of discretion implies that the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore*

(1983), 5 Ohio St.3d 217, 219. When applying an abuse of discretion standard, an appellate court may not generally substitute its judgment for that of the trial court. See *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621.

{¶ 10} Appellant was sentenced for violating three, third degree felonies. Pursuant to R.C. 2929.14(A)(3), the prison term for a third degree felony shall be one, two, three, four, or five years. In resentencing appellant to three, four year consecutive terms, the trial judge carefully avoided any application of R.C. 2919.22(B)(6) noting that his prior use of the statute had resulted in the remand. Appellant's sentence was within applicable statutory parameters. Accordingly, appellate counsel's potential assignment of error is found without merit.

{¶ 11} Further, upon our own independent review of the record, we find no grounds for a meritorious appeal. The appeal is found to be without merit. Appellant's counsel's motion to withdraw is found well-taken and is granted.

{¶ 12} The judgment of the Ottawa County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, P.J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

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