

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

State of Ohio

Court of Appeals No. E-09-039

Appellee

Trial Court No. 2007-CR-762

v.

Robert Winfield, a.k.a. Anthony J. Wells

DECISION AND JUDGMENT

Appellant

Decided: October 8, 2010

* * * * *

Nancy L. Jennings, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} Appellant, Robert Winfield, a.k.a. Anthony J. Wells, appeals the April 7, 2009 judgment of the Erie County Court of Common Pleas wherein he pled guilty to: (1) one count of possession of crack cocaine in violation of R.C. 2925.11(A), a felony of the first degree; (2) one count of preparation of methylenedioxymethamphetamine (MDMA), in violation of R.C. 2925.03(A)(2), a felony of the fourth degree; (3) one count of the preparation of marijuana for sale, in violation of R.C. 2925.03(A)(2) and (C)(3)(a), a felony of the fifth degree; and (4) having a weapon while under disability in violation of R.C. 2923.13(A)(3), a felony of the fifth degree.

{¶ 2} Appellant was appointed counsel for the purposes of appeal. Appointed counsel submitted a request to withdraw pursuant to *Anders v. California* (1967), 386 U.S. 738. *Anders* and *State v. Duncan* (1978), 57 Ohio App.2d 93, set forth the procedure to be utilized by an appointed counsel who desires to withdraw based upon the lack of a meritorious, appealable issue. If counsel, after a conscientious examination of the case, determines it to be wholly frivolous, he or she "should so advise the court and request permission to withdraw." *Anders* at 744. The request must be accompanied by a brief referring to anything in the record that could arguably support an appeal. *Id.* Counsel must also furnish the client with a copy of the brief, the request to withdraw, and notify the client that he has the right to raise any matters that the client wishes to offer. Once these prerequisites are satisfied, the appellate court must conduct a full examination of proceedings from below in order to determine if the appeal is frivolous. *Id.* If it is determined that the appeal is frivolous, then the court may grant counsel's request to withdraw and dismiss the appeal without violating constitutional requirements or it may proceed to a decision based upon the merits. *Id.*

{¶ 3} In the case before us, appointed counsel for appellant satisfied the requirements set forth in *Anders*. Although notified, appellant never raised any matters for our consideration. Accordingly, we shall proceed with an examination of any arguable assignments of error set forth by counsel for appellant, and of the entire record below, in order to determine whether this appeal lacks merit and is, therefore, wholly frivolous. The potential assignments of error are:

{¶ 4} "I. The trial court erred in accepting appellant's plea.

{¶ 5} "II. The trial court abused its discretion when sentencing appellant.

{¶ 6} "III. Defendant's indictment was defective."

{¶ 7} We now turn to a consideration of appellant's proposed assignments of error. Appellant's proposed Assignment of Error No. III alleges that the indictment is insufficient because he was referred to by two different names during the course of the proceedings below. R.C. 2941.03 states:

{¶ 8} "An indictment or information is sufficient if it can be understood therefrom:

{¶ 9} "* * *

{¶ 10} "(C) That the defendant is named, or, if his name cannot be discovered, that he is described by a fictitious name, with a statement that his true name is unknown to the jury or prosecuting attorney, *but no name shall be stated in addition to one necessary to identify the accused[.]*" (Emphasis added.)

{¶ 11} Nonetheless, R.C. 2941.08(K) provides that an indictment is not invalid for "defects or imperfections which do not tend to prejudice the substantial rights of the defendant upon the merits." At his arraignment, appellant acknowledged the fact that he used several aliases, including Robert Winfield, but that his legal name is Anthony J. Wells. It was also pointed out by the prosecution that Robert Winfield and Anthony J. Wells have the same social security number. Therefore, the state declined to amend the indictment, and appellant did not object. Our review of the record of this cause reveals

that appellant was named as both Robert Winfield and Anthony J. Wells throughout the case below, including the entry of his guilty plea, which is signed by "Anthony J. Wells." Consequently, we find that appellant was not prejudiced by the use of both names in the indictment, and appellant's proposed Assignment of Error No. III lacks arguable merit.

{¶ 12} Appellant's potential Assignment of Error No. I asserts that the trial court erred by accepting his guilty plea. Crim.R. 11(C) sets forth the procedure a trial court must follow when accepting a guilty plea in felony cases. Crim.R. 11(C)(2) requires a trial judge personally to tell a defendant entering a guilty plea about his constitutional rights at trial and about certain other nonconstitutional matters. *State v. Nero* (1990), 56 Ohio St.3d 106, 107. Thus, in order to accept a guilty plea the court must first (1) determine that the defendant is making the plea voluntarily, understanding the maximum penalty involved and, if applicable, ineligibility for probation or community control sanctions; (2) inform the defendant of, and determine defendant understands, the effect of the guilty plea, including the trial court's ability on accepting the plea to proceed with sentencing; and (3) inform the defendant of, and determine defendant understands, the rights the defendant is waiving, including the right to a jury trial, the right to confront witnesses against him, the right to have compulsory process for obtaining witnesses, the right to require the state to prove the defendant's guilt beyond a reasonable doubt, and the right against self-incrimination had the case gone to trial. Crim.R. 11(C)(2)(a), (b), and (c).

{¶ 13} In the present case, the trial court carefully addressed all matters set forth in Crim.R. 11(C), completely explained those matters, and ascertained that appellant understood the constitutional and nonconstitutional rights that he was waiving. Accordingly, appellant's proposed Assignment of Error No. I is meritless.

{¶ 14} Finally, in his possible Assignment of Error No. II, appellant contends that his sentence is contrary to law. The Ohio Supreme Court's decision in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, ¶ 26, sets forth the standard of review on appeal of felony sentencing. Appellate courts "must examine the sentencing court's compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law. If this first prong is satisfied, the trial court's decision in imposing the term of imprisonment is reviewed under the abuse-of-discretion standard." *Id.*

{¶ 15} In the present case, the trial court entered an agreed upon sentence. For the violation of: (1) R.C. 2925.11(A), the judge sentenced appellant to a definite term of six years; this term included a mandatory three years; (2) R.C. 2925.03(A)(2) and (C)(1)(a), he sentenced appellant to ten months in prison; (3) R.C. 2925.03(A)(2) and (C)(3)(a), the judge sentenced appellant to six months in prison; and (4) R.C. 2923.13(A)(3), he sentenced appellant to a definite sentence of two years in prison. The court further ordered the sentences imposed to be served concurrent to each other for a total of six years plus a six month sentence for the conviction in case No. 2008-CR-404, to be served consecutive to the six year sentence in the present case. All of these sentences were

agreed upon and are within the statutory range for each sentence. See R.C. 2929.14. Under such circumstances, appellant's sentence is *not* reviewable on appeal so long as it is "authorized," that is, "comports with all mandatory sentencing provisions including the fact that they are not allied offenses of a similar import¹." *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, ¶ 33, construing R.C. 2953.08(D)(1)². Here, the trial court expressly informed appellant of the mandatory sentencing provisions, e.g., postrelease control, and none of the offenses for which appellant was sentenced are allied offenses of a similar import. Therefore, appellant's sentence is not reviewable under R.C. 2953.08(D)(1), and appellant's proposed Assignment of Error No. III is without merit.

{¶ 16} After engaging in further independent review of the record, we find that there are no other grounds for a meritorious appeal. This appeal is therefore determined to be wholly frivolous. Appointed counsel's motion to withdraw is found well-taken and is hereby granted. The judgment of the Erie County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24(A).

JUDGMENT AFFIRMED.

¹Allied offenses of a similar import are merged at sentencing. *Id.* at ¶ 26.

²R.C. 2953.08(D)(1) provides: "A sentence imposed upon a defendant is not subject to review under this section if the sentence is authorized by law, has been recommended jointly by the defendant and the prosecution in the case, and is imposed by a sentencing judge."

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, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.