

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2011-A-0012
KEVIN HUGHLEY,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Conneaut Municipal Court, Case No. 2010 CRB 364.

Judgment: Affirmed.

David A. Schroeder, Conneaut Law Director, City Hall Building, 294 Main Street, Conneaut, OH 44030 (For Plaintiff-Appellee).

Kevin Hughley, pro se, 16410 Scottsdale, Shaker Heights, OH 44120 (Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Kevin Hughley, appeals from the judgment entered by the Conneaut Municipal Court. For the reasons that follow, we affirm.

{¶2} On December 13, 2010, appellant entered a plea of no contest to the charges of Obstructing Official Business, a second-degree misdemeanor in violation of R.C. 2921.31(A); Resisting Arrest, a second-degree misdemeanor in violation of R.C. 2921.33(A); and Improper Use of 9-1-1 System, a fourth-degree misdemeanor in violation of R.C. 4931.49(D). The court sentenced appellant to an aggregate jail term of

210 days. The court suspended the sentence, contingent on certain terms, including appellant staying out of Ashtabula County for a five-year period and paying court costs, as was agreed prior to the plea entry.

{¶3} On December 4, 2011, appellant's counsel filed a motion to withdraw as counsel along with an "Anders" brief, asserting there was no non-frivolous issue for appellate review. In *Anders v. California* (1967), 386 U.S. 738, the United States Supreme Court outlined the proper steps to be followed in this situation: (1) counsel should act in the role of an active advocate for his client; (2) counsel should support his client to the best of his ability; (3) if counsel finds his client's case to be wholly frivolous, counsel should advise the court and request permission to withdraw; (4) the request to withdraw must be accompanied by a brief referring to anything in the record that might arguably support the appeal; (5) counsel should furnish the indigent client with a copy of counsel's brief, and time must be allowed for the client to raise any points he chooses; (6) the court, not counsel, proceeds and decides whether the case is frivolous after a full examination of all the proceedings. *Anders*, supra, at 744.

{¶4} Appellant's counsel served a copy of the brief to appellant, who did not file a pro se brief raising any assignments of error. In her brief, counsel determined that the record does not reflect any obvious and prejudicial errors concerning appellant's plea. A criminal defendant who enters a plea of guilty or no contest waives certain constitutional rights, thus the waiver must be made knowingly, intelligently, and voluntarily. *State v. Stewart* (1997), 51 Ohio St.2d 86, 92-93. Crim.R. 11(D) sets forth the procedure a trial judge must follow when accepting a plea in serious misdemeanor cases:

{¶5} “In misdemeanor cases involving serious offenses the court may refuse to accept a plea of guilty or no contest, and shall not accept such plea without first addressing the defendant personally and informing the defendant of the effect of the pleas of guilty, no contest, and not guilty and determining that the defendant is making the plea voluntarily. Where the defendant is unrepresented by counsel the court shall not accept a plea of guilty or no contest unless the defendant, after being readvised that he or she has the right to be represented by retained counsel, or pursuant to Crim.R. 44 by appointed counsel, waives this right.”

{¶6} When reviewing a plea under Crim.R. 11, an appellate court uses a substantial compliance standard, meaning that “under the totality of the circumstances the defendant subjectively understands the implications of his plea and the rights he is waiving.” *State v. Nero*, 56 Ohio St.3d 106, 108. (Citations omitted.)

{¶7} On July 1, 2010, the trial court held a hearing where appellant appeared with his trial counsel. After a review of the trial court’s colloquy with appellant, we determine that he knowingly and voluntarily entered a plea to the charges brought against him. At the hearing, the trial court discussed the rights appellant was waiving, cited the charges against him, and the penalties of each charge. Appellant indicated he had no questions about the rights he was waiving. Appellant also indicated he understood he was agreeing to stay outside the county in exchange for a suspended sentence. Appellant affirmed this agreement was fair and reasonable. Thus, appellant’s guilty plea was entered into knowingly, voluntarily, and intelligently.

{¶8} Counsel notes, however, that there may be an issue with appellant’s pretrial motions, which were apparently not ruled on before he elected to enter his plea. Appellant, acting pro se, filed a post-sentence motion, requesting appellate counsel

while also requesting the trial court place on the docket several pretrial motions, including a motion to suppress, motion in limine, and motion to compel for appeal purposes. The court held a hearing on the motion on December 27, 2010. Appellant did not appear at the hearing. Appellant's trial counsel indicated she was not aware of his pro se motion and did not understand why it was filed, because all pretrial motions were withdrawn as part of the negotiated plea agreement. Appellant affirmed there was no reason why the negotiated sentence should not be imposed during the plea hearing. There is no arguable legal issue on this point.

{¶9} Finally, as to sentencing, the record indicates that appellant and the state negotiated the sentence prior to the plea hearing. If the sentence is one authorized by law, we do not otherwise review sentences that are jointly agreed upon by the state and the defendant. *State v. Kimble*, 11th Dist. No. 2005-T-0085, 2006-Ohio-6096, at ¶27. "Once a defendant stipulates that a particular sentence is justified, the sentencing judge need not independently justify the sentence." *State v. Porterfield*, 106 Ohio St.3d 5, 2005-Ohio-3095, paragraph three of the syllabus.

{¶10} After a thorough and independent review of the record, including the transcripts of the proceedings, we find no error in this case. Counsel's motion to withdraw previously held in abeyance is hereby granted, and the judgment of the Conneaut Municipal Court is affirmed.

DIANE V. GRENDALL, J.,

THOMAS R. WRIGHT, J.

concur.