

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

STATE OF OHIO,	:	OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2014-G-3194
THOMAS M. YOUNG,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Geauga County Court of Common Pleas, Case No. 13 C 000162.

Judgment: Affirmed.

James R. Flaiz, Geauga County Prosecutor, Courthouse Annex, 231 Main Street, Suite 3A, Chardon, OH 44024 (For Plaintiff-Appellee).

Wesley C. Buchanan, Buchanan Law, Inc., 12 East Exchange Street, 5th Floor, Akron, OH 44308 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Thomas M. Young, appeals from the judgment of the Geauga County Court of Common Pleas, convicting him of rape, after entering a plea of guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970). For the reasons discussed in this opinion, the judgment of the trial court is affirmed.

{¶2} Appellant was indicted on one count of rape, in violation of R.C. 2907.02(A)(1)(c), a felony of the first degree, and two counts of sexual battery, in

violation of R.C. 2907.03(A)(5), felonies of the third degree. Appellant ultimately entered a plea of guilty to the rape count, pursuant to *Alford, supra*. The remaining counts were dismissed and the trial court accepted the parties' jointly-recommended sentence of six years imprisonment. Appellant was also classified as a Tier III sex offender.

{¶3} Appellant was ultimately appointed counsel for purposes of appeal. Counsel subsequently filed an appellate brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). After reviewing the trial record, counsel asserted he could find no prejudicial errors committed by the trial court. Counsel proposed five potential errors, however, for this court's review.

{¶4} In *Anders*, the United States Supreme Court held that if appellate counsel, after a conscientious examination of the record, finds an appeal to be wholly frivolous, he or she should advise the court and request permission to withdraw. *Id.* at 744. This request to withdraw must be accompanied by a brief citing anything in the record that could arguably support an appeal. *Id.* Further, counsel must furnish his or her client with a copy of the brief and request to withdraw and give the client an opportunity to raise any additional items. *Id.* Once these requirements have been met, the appellate court must review the entire record to determine whether the appeal is wholly frivolous. *Id.* If the court finds the appeal is wholly frivolous, the court may grant counsel's motion to withdraw and proceed to a decision on the merits. *Id.* If, however, the court concludes the appeal is not frivolous, it must appoint new counsel for the client. *Id.*; see also *Penson v. Ohio*, 488 U.S. 75, 83 (1988).

{¶5} Pursuant to *Anders*, counsel sought to withdraw on the ground that the appeal is frivolous. Counsel’s brief was properly served on appellant. This court subsequently granted appellant leave to raise any additional arguments in support of the underlying appeal. Appellant, however, did not file a pro se brief in support of this appeal. We shall commence our analysis by addressing appellate counsel’s first two potential assigned errors. They provide:

{¶6} “[1.] The trial court failed to conform to the Crim.R. 11 requirements.

{¶7} “[2.] Thomas’s plea was not knowingly, intelligently, and voluntarily entered into.”

{¶8} A defendant entering a guilty plea in a criminal case must do so knowingly, intelligently, and voluntarily. Failure to do so renders enforcement of the plea unconstitutional. *State v. Engle*, 74 Ohio St.3d 525, 527 (1996).

{¶9} Crim.R. 11(C)(2) provides that the court shall not accept a guilty plea without first addressing the defendant personally and: (1) determining he is making the plea voluntarily, with an understanding of the nature of the charges and of the maximum penalty involved; (2) informing him of and determining he understands the effect of the guilty plea, i.e., that upon acceptance of the plea, the court may proceed with judgment and sentence; (3) informing him and determining he understands that, by entering the plea, he is waiving the rights to jury trial, to confront witnesses against him, to have compulsory process for obtaining witnesses, and to require the state to prove his guilt beyond a reasonable doubt at a trial at which he cannot be compelled to testify against himself.

{¶10} A review of the plea hearing reveals that the trial court scrupulously advised appellant of each of the rights he would be waiving and appellant stated he understood that his plea functioned to waive each right. The court further explained the charges to which appellant pleaded guilty as well as the maximum penalty to which appellant acknowledged his understanding. Furthermore, the court advised appellant he would be designated a Tier III offender and explained the registration requirements that attend to this designation. Although appellant had certain questions about his registration requirements, the court clarified appellant's obligations and appellant, in turn, stated he understood the implications of the designation. After determining appellant was entering the plea knowingly, intelligently, and voluntarily, the court advised appellant it would be proceeding to sentencing on the parties' jointly-recommended sentence. Given the record, it is clear the court met its obligations and appellant fully understood the implications of his plea. Thus, we discern no error.

{¶11} The first and second potential assignments of error lack merit.

{¶12} Counsel's third potential assignment of error provides:

{¶13} "The trial court erred by not informing appellant of mandatory post-release control during the sentencing hearing pursuant to R.C. 2967.28(B)(1)."

{¶14} R.C. 2967.28(B)(1) provides, in relevant part: "[e]ach sentence for a felony of the first degree [or] for a felony sex offense * * * shall include a requirement that the offender be subject to a period of post-release control imposed by the parole board after the offender's release from imprisonment * * * [f]or a felony of the first degree or for a felony sex offense, five years."

{¶15} In this case, the trial court informed appellant that he was required to serve a mandatory period of five years post-release control. The court also fully explained the implications of post-release control to which appellant acknowledged his understanding.

{¶16} The third potential assignment of error lacks merit.

{¶17} Counsel's fourth potential assigned error provides:

{¶18} "The trial court erred by not informing appellant of the ramifications of being labeled a Tier III Sexual Offender, pursuant to R.C. [Section] 2950."

{¶19} R.C. Chapter 2950. governs the registration requirements for sexual offenders in Ohio. R.C. 2950.03(A) provides, in relevant part:

{¶20} (A) Each person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense or a child-victim oriented offense and who has a duty to register pursuant to section 2950.04 or 2950.041 of the Revised Code * * * shall be provided notice in accordance with this section of the offender's * * * duties imposed under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code and of the offender's duties to similarly register, provide notice of a change, and verify addresses in another state if the offender resides, is temporarily domiciled, attends a school or institution of higher education, or is employed in a state other than this state. The following official shall provide the notice required under this division to the specified person at the following time:

{¶21} * * *

{¶22} (2) Regardless of when the person committed the sexually oriented offense or child-victim oriented offense, if the person is an offender who is sentenced on or after January 1, 2008 for any offense, and if division (A)(1) of this section does not apply, the judge shall provide the notice to the offender at the time of sentencing.

{¶23} A Tier III offender is required to register, in person, every 90 days for life. *State v. Raber*, 134 Ohio St.3d 350, 2012-Ohio-5636, ¶15.

{¶24} Here, the trial court notified appellant of his status as a Tier III offender. It further notified appellant he is required to register in person with the Sheriff of the county in which he establishes: (1) residency or temporary domicile within three days of entering that county; (2) a place of education in this state or another state; and (3) a place of employment in this state or another state for more than three days or for an aggregate of 14 days in a calendar year. The court further detailed appellant's obligations to periodically verify his residence address, place of employment and/or place of education; as well as his obligation to provide written notice within three days of any change in vehicle information, e-mail addresses, internet identifiers, or telephone numbers to the sheriff with whom he had most recently registered. The court also emphasized appellant's designation requires him to comply with the requirements every 90 days for the remainder of his life. Finally, after advising appellant of the foregoing, appellant, in open court, signed and dated a writing specifically acknowledging that the court explained the requirements of his designation. Appellant additionally stated verbally, on record, he understood all the conditions of the designation. We therefore

hold the trial court adequately informed appellant of his obligations pursuant to his Tier III classification.

{¶25} The fourth potential assignment of error lacks merit.

{¶26} Counsel's fifth potential assignment of error provides:

{¶27} "The trial court erred by accepting an *Alford* plea."

{¶28} A plea entered pursuant to *Alford* is a plea that permits a defendant to plead legal guilt, yet maintain his factual innocence. *State v. Anderson*, 11th Dist. Lake No. 2005-L-178, 2006-Ohio-5167, ¶8. Before accepting an *Alford* plea, a trial judge must ascertain that, despite a defendant's claims of innocence, he has made a rational calculation that, under the circumstances, it is in his best interest to accept the plea offered by the prosecutor. *State v. Kennedy*, 11th Dist. Ashtabula No. 2013-A-0002, 2013-Ohio-4553, ¶9, citing *State v. Padgett*, 67 Ohio App.3d 332, 338 (2d Dist.1990).

{¶29} In the context of an *Alford* plea, the Ohio Supreme Court has held:

{¶30} Where the record affirmatively discloses that: (1) defendant's guilty plea was not the result of coercion, deception or intimidation; (2) counsel was present at the time of the plea; (3) counsel's advice was competent in light of the circumstances surrounding the indictment; (4) the plea was made with the understanding of the nature of the charges; and, (5) defendant was motivated either by a desire to seek a lesser penalty or a fear of the consequences of a jury trial, or both, the guilty plea has been voluntarily and intelligently made. *State v. Piacella*, 27 Ohio St.2d 92 (1971), syllabus.

{¶31} Here, the record demonstrates the plea was entered knowingly, intelligently, and voluntarily, with no indication of coercion, deception, or intimidation. Counsel was present at the time of the plea and appellant acknowledged counsel answered all his questions relating to the plea. Given the charges and the potential for a much more severe punishment, it is reasonable to conclude that counsel's advice to proceed with the *Alford* plea was competent. As discussed above, the court ensured appellant understood the charge to which he was pleading. And, finally, during the plea colloquy, appellant acknowledged he was entering the plea to avoid "more serious consequences" and therefore desired to give up his constitutional right to a trial. We therefore hold the trial court did not err in accepting appellant's *Alford* plea.

{¶32} Counsel's fifth potential assignment of error lacks merit.

{¶33} After a thorough and independent review of the record, we discern no errors in the trial court's acceptance of appellant's *Alford* plea and no errors in the manner in which it imposed or the substance of its sentence. Thus, there are no arguable legal points on the merits of this matter. Appellant's appeal is without merit and is wholly frivolous.

{¶34} Because there are no arguable issues in this appeal, the request to withdraw filed by appellate counsel is well-taken and is hereby granted. The judgment of the Geauga County Court of Common Pleas is affirmed.

THOMAS R. WRIGHT, J., concurs,

COLLEEN MARY O'TOOLE, J., dissents with a Dissenting Opinion.

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{¶35} I respectfully dissent with the majority's position that appellant's appeal is frivolous based on my dissenting opinions in similar matters involving *Anders*. *State v. Christian*, 11th Dist. Trumbull No. 2013-T-0055, 2014-Ohio-4882, ¶21-34; *State v. Spears*, 11th Dist. Ashtabula No. 2013-A-0027, 2014-Ohio-2695, ¶14-19; *State v. Burnett*, 11th Dist. Lake No. 2013-L-053, 2014-Ohio-1358, ¶29-34; *State v. Gibbs*, 11th Dist. Geauga No. 2012-G-3123, 2014-Ohio-1341, ¶37-42.