[Cite as *State v. Dowdell*, 2010-Ohio-998.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO Plaintiff-Appellee -vs- TYRONE R. DOWDELL Defendant-Appellant	JUDGES: Hon. Julie A. Edwards, P.J. Hon. William B. Hoffman, J. Hon. John W. Wise, J. Case No. 2009CA00020 O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Licking County Common Pleas Court, Case No. 08CR499
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	March 12, 2010

APPEARANCES:

For Defendant-Appellant	For Plaintiff-Appellee
GEORGE W. LEACH, LLC 153 East Main Street, Suite 210 Columbus, Ohio 43215	KENNETH W. OSWALT Prosecuting Attorney TRACY F. VAN WINKLE Assistant Prosecutor 20 S. Second Street, Fourth Floor Newark, Ohio 43055

Hoffman, J.

{¶1} Appellant, Tyrone R. Dowdell, was indicted on three counts of trafficking in cocaine, felonies of the fifth degree, in violation of R.C. 2925.03(A)(1)(C)(4)(a), one count of trafficking in counterfeit controlled substances, a felony of the fifth degree, in violation of R.C. 2925.37(B), and one count of possession of cocaine, a felony of the first degree, in violation of R.C. 2925.11(A)(C)(4(e). Appellant entered pleas of no contest to counts 1, 3, 4 and 5. The State dismissed count 2 of the indictment. Appellant was sentenced to a prison term of nine months on counts 1, 3, and 4. The trial court imposed a sentence of five years in prison on count 5. All counts were ordered served consecutive to one another. A timely notice of appeal was filed by Appellant.

{¶2} Counsel for Appellant has filed a Motion to Withdraw and a brief pursuant to *Anders v. California* (1967), 386 U.S. 738, rehearing den. (1967), 388 U.S. 924, indicating that the within appeal was wholly frivolous and setting forth two proposed Assignments of Error. Appellant did not file a pro se brief alleging any additional assignment(s) of error. Appellee did not file a brief. Although not phrased exactly as follows, counsel for Appellant suggested this Court review (1) whether Appellant's plea was entered knowingly, intelligently, and voluntarily; and (2) whether the trial court erred in imposing the sentences it chose to impose on Appellant.

{¶3} In *Anders,* the United States Supreme Court held if, after a conscientious examination of the record, a defendant's counsel concludes the case is wholly frivolous, then he should so advise the court and request permission to withdraw. Id. at 744. Counsel must accompany his request with a brief identifying anything in the record that

could arguably support his client's appeal. Id. Counsel also must: (1) furnish his client with a copy of the brief and request to withdraw; and, (2) allow his client sufficient time to raise any matters that the client chooses. Id. Once the defendant's counsel satisfies these requirements, the appellate court must fully examine the proceedings below to determine if any arguably meritorious issues exist. If the appellate court also determines that the appeal is wholly frivolous, it may grant counsel's request to withdraw and dismiss the appeal without violating constitutional requirements, or may proceed to a decision on the merits if state law so requires. Id.

{¶4} Counsel in this matter has followed the procedure in *Anders v. California* (1967), 386 U.S. 738. We now will address the merits of Appellant's potential Assignments of Error.

{¶5} A review of the record reveals Appellant sold cocaine to a confidential informant on two occasions and also sold a counterfeit controlled substance to the same confidential informant. Based upon these sales, all of which were made from the same address, police obtained a search warrant for Appellant's residence. The search resulted in the seizure of a large amount of cocaine.

I.

{¶6} In his first potential assignment of error, Appellant suggests his plea was not entered knowingly, intelligently, and voluntarily. A review of the plea hearing demonstrates the trial court complied with the mandate of Crim. R. 11 in accepting Appellant's no contest pleas. The trial court explained to Appellant all of his rights and the effect of entering the no contest pleas.

{¶7} As we outlined in *State v. Sullivan*, 2007 WL 2410108, 2 -3 (Ohio App. 5 Dist.,2007), a determination of whether a plea is knowing, intelligent, and voluntary is based upon a review of the record. *State v. Spates* (1992), 64 Ohio St.3d 269, 272. If a criminal defendant claims that his plea was not knowingly, voluntarily, and intelligently made, the reviewing court must review the totality of the circumstances in order to determine whether or not the defendant's claim has merit. *State v. Nero* (1990), 56 Ohio St.3d 106, 108.

{¶8} To ensure that a plea is made knowingly and intelligently, a trial court must engage in oral dialogue with the defendant in accordance with Crim.R. 11(C)(2). *Engle,* 74 Ohio St.3d at 527.

{¶9} The Appellant indicated he had read the indictment, read the admission of no contest forms which contain an explanation of Appellant's constitutional rights, and discussed these items with his attorney. The trial court orally went over all of the required information to comply with Crim.R. 11. There is absolutely no evidence Appellant's plea was not entered knowingly, intelligently, and voluntarily.

{¶10} Appellant's first potential assignment of error is overruled.

II.

{¶11} In his second potential assignment of error, Appellant argues the trial court abused its discretion in imposing nine month sentences for the felonies of the fifth degree and a five year sentence for the felony of the first degree. Further, Appellant suggests the trial court abused its discretion in imposing consecutive sentences.

{¶12} This Court has held that trial courts have the full discretion to impose a prison sentence within the statutory range and judicial fact finding is no longer required

before a court imposes non-minimum, maximum or consecutive prison terms. *State v. Firouzmandi,* Licking App. No. 06-CA-41, 2006-Oho-5823; *State v. Duff,* Licking App. No. 06-CA-81, 2007-Ohio-1294, See also, *State v. Diaz,* Lorain App. No. 05CA008795, 2006-Ohio-3282 and *State v. Freeman* 2008 WL 795381, 5 (Ohio App. 5 Dist.).

{¶13} Appellant was convicted of three felonies of the fifth degree punishable by up to one year in prison pursuant to R.C. 2929.14(A)(5) and one felony of the first degree punishable by three to ten years in prison pursuant to R.C. 2929.14(A)(1). Appellant's sentences fell within the statutory range. Accordingly, the trial court did not abuse its discretion by imposing these sentences or by making them consecutive to one another.

{¶14} Appellant’s second potential assignment of error is overruled.

{¶15} For these reasons, after independently reviewing the record, we agree with counsel's conclusion no arguably meritorious claims exist upon which to base an appeal. Hence, we find the appeal to be wholly frivolous under *Anders,* grant counsel's request to withdraw, and affirm the judgment of the Licking County Court of Common Pleas.

By: Hoffman, J.

Edwards, P.J. and

Wise, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ John W. Wise
HON. JOHN W. WISE

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
TYRONE R. DOWDELL	:	
	:	
Defendant-Appellant	:	Case No. 2009CA00020

For the reasons stated in our accompanying Opinion, we find the appeal to be wholly frivolous under *Anders,* grant counsel's request to withdraw, and affirm the judgment of the Licking County Court of Common Pleas.

MOTION TO WITHDRAW GRANTED.

JUDGMENT AFFIRMED.

COSTS TO APPELLANT.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ John W. Wise
HON. JOHN W. WISE