[Cite as *State v. Parks*, 2016-Ohio-5745.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff - Appellee	:	Hon. John W. Wise, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
PAUL PARKS	:	Case No. 16-CA-4
	:	
Defendant - Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Licking County Court of Common Pleas, Case No. 15 CR 336
JUDGMENT:	Affirmed
DATE OF JUDGMENT:	August 26, 2016

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
NO APPEARANCE	STEPHEN T. WOLFE Wolfe Van Wey & Associates, LLC 1350 W. 5th Ave., Suite 124 Columbus, Ohio 43212

Baldwin, J.

{¶1} Appellant, Paul Parks, was indicted on one Count of Aggravated Trafficking in Methamphetamine, a felony of the second degree, in violation of Revised Code 2925.03(A)(1) and (C)(1)(d). Further, the indictment contained two forfeiture specifications regarding a motor vehicle and U.S. currency.

{¶2} As part of a plea agreement, the State agreed to recommend a sentence of two years in prison. Appellant plead guilty to the charge of Aggravated Trafficking and was sentenced to a term of six years in prison.

{¶3} 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. Counsel for Appellant has raised four potential assignments of error. Appellant has not filed a brief raising any additional assignments of error.

{¶4} I. “VALIDITY OF PLEA.”

{¶5} II. “VALIDITY OF SENTENCE.”

{¶6} III. “FAILURE TO FOLLOW JOINT RECOMMENDATION.”

{¶7} IV. “PROSECUTORIAL MISCONDUCT.”

{¶8} 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.*

{¶9} Counsel in this matter has followed the procedure in *Anders v. California* (1967), 386 U.S. 738.

{¶10} We now will address the merits of Appellant's potential Assignments of Error.

I.

{¶11} In his first potential Assignment of Error, Appellant suggests his plea was invalid. For a plea to be invalid, we would have to determine the plea was not knowingly, intelligently, and voluntarily made.

{¶12} A review of the plea hearing demonstrates the trial court complied with the mandate of Crim. R. 11 in accepting Appellant's guilty plea. The trial court explained to Appellant all of his rights, the potential penalties, and the effect of entering the guilty pleas.

{¶13} 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.

{¶14} 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.

{¶15} Although the trial court decided to impose a prison sentence greater than the sentence recommended by the State, Appellant was apprised of the potential prison sentence range. Further, he was apprised of the fact that the trial court was not bound to accept the recommendation of the State. The fact that the trial court deviated from the recommended sentence does not make Appellant's plea unknowing, unintelligent or involuntary.

{¶16} The trial court orally went over all of the required information to comply with Crim.R. 11. There is no evidence Appellant's plea was not entered knowingly, intelligently, and voluntarily.

{¶17} Appellant's first proposed assignment of error is overruled.

II.

{¶18} In his second proposed assignment of error, Appellant suggests his sentence was not valid.

{¶19} Appellant was convicted of a felony of the second degree. The six year sentence Appellant received is within the sentencing range provided by R.C. 2929.14.

{¶20} The trial court's failure to follow the sentence recommended by the State does not make the sentence invalid. It is well-established a trial court is not bound by a prosecutor's recommendations at sentencing. *State v. Rink,* 6th Dist. No. L-02-1307,

2003-Ohio-4097, at ¶ 5. When a trial court imposes a greater sentence than recommended in the plea agreement, and when the defendant is forewarned of the applicable maximum penalties, there is no error on behalf of the trial court if it imposes a more severe sentence than was recommended by the prosecutor. *State v. Darmour* (1987), 38 Ohio App.3d 160, 160-161, 529 N.E.2d 208.

{¶21} Appellant's second proposed assignment of error is overruled.

III.

{¶22} In his third potential assignment of error, Appellant argues the trial court should have followed the joint sentencing recommendation.

{¶23} Sentencing is within the sound discretion of the trial court. *State v. Mathews* (1982), 8 Ohio App.3d 145, 456 N.E.2d 539. The trial court is not bound by a recommendation proffered by the State. *State v. Kitzler,* Wyandot App. No. 16–02–06, 2002–Ohio–5253; *Akron v. Ragsdale* (1978), 61 Ohio App.2d 107, 109, 399 N.E.2d 119. A trial court does not err by imposing a sentence greater than a sentence recommended by the State when the trial court forewarns the defendant of the range of penalties which may be imposed upon conviction. *State v. Buchanan,* 154 Ohio App.3d 250, 2003–Ohio–4772, 796 N.E.2d 1003.

{¶24} In this case, it is clear the trial court did not participate in the plea agreement. Further, Appellant was forewarned during the plea that the trial court was not required to accept the recommended sentence. Therefore, the trial court did not err in imposing a sentence greater than that which was jointly recommended.

{¶25} Appellant's third proposed assignment of error is overruled.

IV.

{¶26} In his fourth assignment of error, Appellant suggests the prosecutor engaged in misconduct by failing to disclose the entirety of Appellant's criminal record pursuant to Appellant's request for discovery.

{¶27} The Ohio Supreme Court has held that the state's violations of Crim.R. 16 are reversible error "only when there is a showing that (1) the prosecution's failure to disclose was a willful violation of the rule, (2) foreknowledge of the information would have benefited the accused in the preparation of his defense, and (3) the accused suffered some prejudicial effect." *State v. Joseph,* 73 Ohio St.3d 450, 458, 653 N.E.2d 285 (1995), citing *State v. Parson,* 6 Ohio St.3d 442, 445, 453 N.E.2d 689 (1983).

{¶28} "Generally, prosecutorial misconduct will not provide a basis for overturning a criminal conviction, unless, on the record as a whole, the misconduct can be said to have deprived the appellant of a fair trial. *State v. Lott,* 51 Ohio St.3d 160, 166, 555 N.E.2d 293 (1990).

{¶29} In this case, the question of whether Appellant's preparation of his defense was hampered is inapplicable because he entered a guilty plea. Further, the prosecutor stated he turned over everything that was in his possession prior to the plea being entered. There is no evidence to the contrary that the prosecutor was in possession or even aware of the existence of Appellant's additional criminal history.

{¶30} Appellant's fourth proposed assignment of error is overruled.

{¶31} For these reasons, after independently reviewing the record, we agree with counsel's conclusion that 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: Baldwin, J.

Gwin, P.J. and

Wise, J. concur.