

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PIKE COUNTY

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case No. 09CA792
	:	
vs.	:	
	:	
WAYNE L. WARREN, JR.,	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
Defendant-Appellant.	:	
	:	File-stamped: 10-26-09

APPEARANCES:

Lori J. Rankin, Chillicothe, Ohio, for Appellant.

C. Robert Junk, Jr., Pike County Prosecutor, Waverly, Ohio, for Appellee.

Kline, P.J.:

{¶1} Wayne L. Warren, Jr., appeals the trial court’s judgment revoking his previously-imposed community control sanctions and sentencing him to seven months in prison. Warren’s appointed appellate counsel has advised this court that she has reviewed the record and cannot find a meritorious claim for appeal. As a result, pursuant to *Anders v. California* (1967), 386 U.S. 738, she has moved this court to withdraw as counsel. Because, after independently reviewing the record, we also cannot find a meritorious claim to support an appeal, we agree with Warren’s counsel. Accordingly, we grant counsel’s request to withdraw, find this appeal wholly frivolous as defined by *Anders*, and affirm the trial court’s judgment.

I.

{¶2} On November 9, 2005, Warren pled guilty to one count of fifth-degree felony nonsupport. Under a negotiated plea agreement, the court sentenced Warren to three years community control sanctions.

{¶3} On January 24, 2008, the state filed a motion to revoke community control due to Warren's failure to make regular monthly payments towards his court-ordered child support obligation. At a later hearing, the state and Warren agreed that the state would recommend that the court extend Warren's period of community control to five years. The court sentenced Warren in accordance with this agreement.

{¶4} On May 13, 2008, the state filed a second motion to revoke community control due to Warren's failure to make monthly payments. Warren subsequently admitted the allegations upon the agreement that the court would not hold the dispositional hearing for six months in order to allow Warren to comply with his current support order. If Warren complied with the order, the agreement would be to continue community control.

{¶5} On February 11, 2009, the court held the dispositional hearing. Warren testified as to his alleged disability and his attempt to obtain income to meet his support obligations. However, the court noted that Warren had failed to pay. As a result, the court sentenced him to seven months in prison.

{¶6} Warren filed this timely appeal. Pursuant to *Anders*, Warren's appellate counsel filed a motion to withdraw as counsel, notifying this

court that she could not find a meritorious issue for appeal. Counsel also filed a brief outlining one potential assignment of error.

{¶17} In *Anders*, the United States Supreme Court held that if, after a conscientious examination of the record, a defendant's counsel concludes that the case is wholly frivolous, she should so advise the court and request permission to withdraw. *Id.* at 744. Counsel must accompany her request with a brief identifying anything in the record that could arguably support the client's appeal. *Id.* Counsel also must: (1) furnish the client with a copy of the brief and request to withdraw; and (2) allow the client sufficient time to raise any matters that the client chooses. *Id.*

{¶18} Upon receiving an *Anders* brief, we must "conduct 'a full examination of all the proceeding[s] to decide whether the case is wholly frivolous.'" *Penson v. Ohio* (1988), 488 U.S. 75, 80, quoting *Anders* at 744. After fully examining the proceedings below, if we find only frivolous issues on appeal, we then may proceed to address the case on its merits without affording appellant the assistance of counsel. *Penson* at 80. However, if we conclude that there are nonfrivolous issues for appeal, we must afford appellant the assistance of counsel to address those issues. *Anders* at 744; *Penson* at 80; see, e.g., *State v. Alexander* (Aug. 10, 1999), Lawrence App. No. 98CA29.

{¶19} Here, Warren's counsel satisfied the requirements in *Anders*. Warren did not file a pro se brief. Accordingly, we will examine counsel's potential assignment of error, and the entire record below to determine if this appeal lacks

merit. Counsel raises the following potential assignment of error: “I. The trial court’s sentence of a prison term of seven months for a second community control was an abuse of discretion and therefore violated Mr. Warren’s right to due process under the Federal and State Constitutions.”

II.

{¶10} In her one potential assignment of error, counsel suggests that the trial court abused its discretion by imposing a seven-month prison term upon Warren for violating community control.

{¶11} Our review of a trial court’s felony sentence involves two steps. See *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912; see, also, *State v. Moman*, Adams App. No. 08CA876, at ¶6 (involving a community control violation). First, we “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.” *Kalish* at ¶4. If this first prong is satisfied, we then review the trial court’s decision under an abuse-of-discretion standard. *Id.*

{¶12} Trial courts “are no longer required to make findings or give their reasons for imposing maximum, consecutive, or more than the minimum sentences.”

State v. Foster, 109 Ohio St.3d 1, 2006-Ohio-856, at paragraph seven of the syllabus. However, trial courts must still consider R.C. 2929.11 and R.C. 2929.12 before imposing a sentence. See *Kalish* at ¶13.

{¶13} “The term ‘abuse of discretion’ connotes more than an error of law or of judgment; it implies that the court’s attitude is unreasonable, arbitrary or unconscionable.” *State v. Adams* (1980), 62 Ohio St.2d 151, 157. As we

explained in *State v. Davis*, Highland App. No. 06CA21, 2007-Ohio-3944: “An ‘abuse of discretion’ has also been found where a sentence is greatly excessive under traditional concepts of justice or is manifestly disproportionate to the crime or the defendant. *Woosley v. United States* (C.A.8, 1973), 478 F.2d 139, 147. * * * Where the severity of the sentence shocks the judicial conscience or greatly exceeds penalties usually exacted for similar offenses or defendants, and the record fails to justify and the trial court fails to explain the imposition of the sentence, the appellate court’s [sic] can reverse the sentence. [Id.] This by no means is an exhaustive or exclusive list of the circumstances under which an appellate court may find that the trial court abused its discretion in the imposition of [a] sentence in a particular case.” *Davis* at ¶42, quoting *State v. Elswick*, Lake App. No. 2006-L-075, 2006-Ohio-7011, at ¶49, in turn quoting *State v. Firouzmandi*, Licking App. No.2006-CA-41, 2006-Ohio-5823, at ¶56; see, also, *State v. Taylor*, Athens App. No. 08CA23, 2009-Ohio-3119, at ¶15.

{¶14} Here, we find that Warren’s seven-month prison sentence is not clearly and convincingly contrary to law. The sentencing entry reflects that the trial court complied with the governing statutes. The court specifically cited the applicable sentencing statutes and stated that it had considered them in determining whether to impose a prison sentence upon Warren. As we noted above, the court was not required to make specific findings concerning the various factors in these statutes. See *State v. Woodruff*, Ross App. No. 07CA2972, 2008-Ohio-967, at ¶16, citing *State v. Arnett*, 88 Ohio St.3d 208, 215, 2000-Ohio-302. Additionally, the court’s seven-month sentence is within the range allowed for a

fifth-degree felony. See R.C. 2929.14(A)(5) (stating that the sentencing range for a fifth-degree felony is six, seven, eight, nine, ten, eleven, or twelve months). See, also, *State v. Voycik*, Washington App. Nos. 08CA33 & 08CA34, 2009 - Ohio- 3669, at ¶9-11. Thus, under the first step of our analysis, the court's sentence is not contrary to law.

{¶15} Under the second step of our analysis, we find that the court did not abuse its discretion by imposing a seven-month prison term. The court heard evidence regarding Warren's inability to find steady work, his problems with the legal system, and his alleged health problems. Nevertheless, the trial court determined that Warren's repeated failures to pay his child support obligation weighed in favor of a prison sentence. We are unable to state that the trial court acted unreasonably, arbitrarily, or unconscionably by sentencing Warren to a seven-month prison term. Consequently, we find no merit to counsel's potential assignment of error.

{¶16} Finally, after fully examining the proceedings below, we have found no other potential issues for appeal.

{¶17} Accordingly, based upon the foregoing reasons, we agree with counsel's assessment that this appeal is wholly frivolous and grant her motion to withdraw. We affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED, and Appellant shall pay the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Pike County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Harsha, J. and Abele, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Roger L. Kline, Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.