

[Cite as *State v. Lyons*, 2010-Ohio-5045.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO

Plaintiff-Appellee

v.

JEFFREY D. LYONS

Defendant-Appellant

Appellate Case No. 23871

Trial Court Case No. 09-CR-2431

(Criminal Appeal from
Common Pleas Court)

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OPINION

Rendered on the 15th day of October, 2010.

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MATHIAS H. HECK, JR., by CARLEY J. INGRAM, Atty. Reg. #0020084, Montgomery County Prosecutor's Office, Appellate Division, Montgomery County Courts Building, P.O. Box 972, 301 West Third Street, Dayton, Ohio 45422
Attorney for Plaintiff-Appellee

MARSHALL G. LACHMAN, Atty. Reg. #0076791, 75 North Pioneer Boulevard, Springboro, Ohio 45066
Attorney for Defendant-Appellant

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FAIN, J.

{¶ 1} Defendant-appellant Jeffrey D. Lyons appeals from his conviction and sentence, following a no-contest plea, for Sexual Battery, in violation of R.C. 2907.03(A)(5), a felony of the third degree. His assigned counsel has filed a brief under the authority of *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, reporting that he has found no potential assignments of error having arguable merit. Neither have we. Accordingly, the judgment of the trial court is Affirmed.

I

{¶ 2} On July 17, 2009, the Englewood Police Department responded to a report of a possible sex offense. Upon investigating, it was learned that Lyons, who at the time was eighteen years old, had engaged in intercourse with a fourteen-year old female. Lyons was on juvenile parole at the time of this instant offense, following a conviction for Rape involving a seven-year-old child. Lyons had been released from the Scioto Juvenile Correctional Facility on April 27, 2009.

{¶ 3} Lyons was detained at the Clayton Police Department, where an Englewood Detective interviewed him. According to the record, Lyons stated, "I know what this was about, it's about a girl I had sex with who just turned fifteen." The Detective began asking Lyons about the offense, at which time he requested to speak with his attorney. Lyons was then transported to the Montgomery County Jail.

{¶ 4} Lyons was indicted on one count of Unlawful Sexual Conduct with a Minor, in violation of R.C. 2907.04(A), a felony of the second degree. Following a plea

of not guilty, counsel was appointed to represent Lyons. Counsel filed a request for discovery. Thereafter on December 31, 2009, a bill of information was filed charging Lyons with one count of Sexual Battery, in violation of R.C. 2907.03(A)(5), a felony of the third degree. Lyons and the State entered into a plea agreement wherein the State dismissed the charge of Unlawful Sexual Conduct in exchange for a plea of no contest to the offense of Sexual Battery.

{¶ 5} An appropriate plea colloquy was held, after which the trial court accepted Lyons's plea and found him guilty of Sexual Battery. The trial court also ordered a pre-sentence investigation, which was filed prior to sentencing.

{¶ 6} Lyons appeared at sentencing with counsel, and was afforded the opportunity to address the court. The trial court sentenced Lyons to a one-year prison term and classified him as a Tier III sex offender.

{¶ 7} From his conviction and sentence, Lyons appeals.

II

{¶ 8} Lyons's appellate counsel has filed a brief under *Anders*, supra, indicating that he was unable to find any potential assignments of error having arguable merit. By decision and entry filed July 13, 2010, we gave Lyons sixty days to file his own pro se brief. Lyons has not done so.

{¶ 9} As required by *Anders*, supra, we have reviewed the entire record, including the transcripts of the plea hearing and the sentencing hearing. We have also reviewed the pre-sentence investigation report. We find no potential assignments of error having arguable merit.

{¶ 10} We found no issues that should have been raised in a motion to suppress. The plea colloquy was thorough, and nothing in the record indicates that Lyons's plea was not made knowingly, intelligently and voluntarily.

{¶ 11} At the time of this offense, Lyons was on parole for a Rape offense, and had been participating in sex offender counseling. Furthermore, while on parole, he was ordered to have no contact with individuals under the age of sixteen. Trial counsel was able to reach a plea agreement wherein the State dismissed the second-degree felony charge. Lyons was convicted of a third-degree felony offense and was sentenced to the minimum possible prison term of one year. Given Lyons's prior criminal history and the sentence imposed, we see no reasonable argument to be made that the trial court abused its discretion in imposing sentence.

III

{¶ 12} After reviewing this record, we find no potential assignments of error having arguable merit. We conclude, therefore, that this appeal is wholly frivolous. The judgment of the trial court is Affirmed.

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BROGAN and GRADY, JJ., concur.

Copies mailed to:

Mathias H. Heck
Carley J. Ingram
Marshall G. Lachman
Jeffrey D. Lyons
Hon. Michael L. Tucker

