

[Cite as *State v. Skaggs*, 2010-Ohio-5390.]

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

STATE OF OHIO	:	
	:	Appellate Case No. 10-CA-26
Plaintiff-Appellee	:	
	:	Trial Court Case No. 07-CR-818
v.	:	
	:	
JASON SKAGGS	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	

.....

O P I N I O N

Rendered on the 5th day of November, 2010.

.....

AMY M. SMITH, Atty. Reg. #0081712, 50 East Columbia Street, 4th Floor, Post Office Box 1608, Springfield, Ohio 45501
Attorney for Plaintiff-Appellee

WILLIAM O. CASS, JR., Atty. Reg. #0035417, 3946 Kettering Boulevard, Suite 202, Kettering, Ohio 45439
Attorney for Defendant-Appellant

.....

BROGAN, J.

{¶ 1} Jason Skaggs appeals from his re-sentencing by the trial court following his conviction on three counts of aggravated vehicular homicide and two counts of vehicular assault. Each count included a specification of prior convictions for aggravated vehicular homicide and vehicular homicide.

{¶ 2} The record reflects that in 2008 the trial court sentenced Skaggs to an aggregate term of thirty-four years in prison. He filed a direct appeal from his convictions, and we affirmed in *State v. Skaggs*, 185 Ohio App.3d 752, 2010-Ohio-302. Shortly after our ruling, the State filed a motion for re-sentencing, asserting that the trial court had not properly notified Skaggs of his post-release control obligation. The State relied on *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, to argue that re-sentencing was required in accordance with R.C. 2929.191.¹

{¶ 3} The trial court sustained the State's motion and held a new sentencing hearing on February 25, 2010. At the conclusion of the hearing, the trial court orally imposed the same thirty-four-year sentence and advised Skaggs of his post-release control obligation. The trial court filed a new termination entry on March 1, 2010. This appeal followed.

{¶ 4} On July 19, 2010, Skaggs' appointed counsel filed a brief pursuant to *Anders v. California* (1967), 386 U.S. 738, asserting the absence of any non-frivolous issues for our review. Counsel also moved for permission to withdraw. The *Anders* brief addresses two potential issues, both of which counsel concludes are frivolous. The first issue concerns whether the trial court's imposition of maximum, consecutive sentences

¹“Effective July 11, 2006, R.C. 2929.191 establishes a procedure to remedy a sentence that fails to properly impose a term of postrelease control. It applies to offenders who have not yet been released from prison and who fall into at least one of three categories: those who did not receive notice at the sentencing hearing that they would be subject to postrelease control, those who did not receive notice that the parole board could impose a prison term for a violation of postrelease control, or those who did not have both of these statutorily mandated notices incorporated into their sentencing entries. R.C. 2929.191(A) and (B).” *Singleton*, supra, at ¶23.

was excessive. After examining that issue, counsel concludes that the aggregate thirty-four-year sentence was neither contrary to law nor an abuse of discretion. The second issue concerns whether the aggravated vehicular homicide and vehicular assault convictions were allied offenses of similar import. Again, counsel concludes that no arguably meritorious issue exists because there were five separate victims and, properly, five separate convictions. Despite being given an opportunity to do so, Skaggs has filed no appellate brief of his own.

{¶ 5} Upon review, we agree with appointed counsel that the two issues he raises lack even arguable merit. As set forth in counsel's *Anders* brief, the trial court appears to have complied with all applicable rules and statutes when sentencing Skaggs. We note too that each separate sentence the trial court imposed was within the authorized statutory range. We also agree with counsel that the trial court did not abuse its discretion in imposing a maximum sentence on each count and ordering the sentences to be served consecutively.

{¶ 6} Skaggs killed three people and seriously injured two others while driving a car in excess of ninety miles per hour on Urbana Road in Clark County. He previously had killed two other people and served prison time for aggravated vehicular homicide and vehicular homicide. In addition, the trial court noted during the first sentencing hearing that Skaggs had "a number of [prior] violations including excessive speed." The trial court also found that he appeared to lack any genuine remorse. The trial court acted within its discretion in sentencing Skaggs as it did.

{¶ 7} With regard to the allied-offense issue, we agree with counsel that five separate convictions and sentences were permitted because Skaggs' driving killed

three people and seriously injured two others. See, e.g., *State v. Jones* (1985), 18 Ohio St.3d 116, 117; *State v. Buitrago*, Cuyahoga App. No. 93380, 2010-Ohio-1984, ¶5.

{¶ 8} Finally, because Skaggs originally was sentenced after the effective date of R.C. 2929.191, we question whether the trial court was required to hold a full new sentencing hearing and impose his prison sentence a second time. As set forth above, the trial court re-sentenced him pursuant to R.C. 2929.191 to correct a post-release control problem. "The hearing contemplated by R.C. 2929.191(C) and the correction contemplated by R.C. 2929.191(A) and (B) pertain only to the flawed imposition of postrelease control. R.C. 2929.191 does not address the remainder of an offender's sentence. Thus, the General Assembly appears to have intended to leave undisturbed the sanctions imposed upon the offender that are unaffected by the court's failure to properly impose postrelease control at the original sentencing." *Singleton*, supra, at ¶24. In any event, we do not see how Skaggs could have been prejudiced by the trial court imposing the same prison sentence a second time.

{¶ 9} Pursuant to our responsibilities under *Anders*, we independently have reviewed the record in this case. Having done so, we agree with the assessment of appointed appellate counsel that there are no non-frivolous issues for our review. Counsel's request to withdraw from further representation is granted, and the judgment of the Clark County Common Pleas Court is affirmed.

.....

FAIN and FROELICH, JJ., concur.

Copies mailed to:

Amy M. Smith

William O. Cass, Jr.
Jason Skaggs
Hon. Richard J. O'Neill