

[Cite as *State v. Cotton*, 2010-Ohio-6099.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23824
vs.	:	T.C. CASE NO. 09CR3129
JAMAR COTTON	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	

.

O P I N I O N

Rendered on the 10th day of December, 2010.

.

Mathias H. Heck, Jr., Pros. Attorney; Carley J. Ingram, Asst. Pros. Attorney, Atty. Reg. No., 0020084. P.O. Box 972, Dayton, OH 45422
Attorneys for Plaintiff-Appellee

Tara C. Dancing, Atty. Reg. No., 0077277, 1158 Kauffman Avenue, Fairborn, OH 45324
Attorney for Defendant-Appellant

.

GRADY, J.:

{¶ 1} Defendant, Jamar Cotton, pled guilty to one count of possessing crack cocaine, between ten and twenty-five grams, R.C. 2925.11(A), a felony of the second degree. The trial court sentenced Defendant to a three year prison term. Defendant timely appealed to this court from his conviction and sentence. Defendant's appellate counsel filed an *Anders* brief, *Anders v.*

California (1967), 386 U.S. 738, 87 S.Ct. 1396, 19 L.Ed.2d 493, stating that she could find no meritorious issues for appellate review. We notified Defendant of his appellate counsel's representations and afforded him sixty days to file his own pro se brief. No brief was filed by Defendant within that sixty day period. Accordingly, we deem this appeal submitted for decision on the merits, and the case is now before us for our independent review of the record. *Penson v. Ohio* (1988), 488 U.S. 75, 109 S.Ct. 346, 102 L.Ed.2d 300.

{¶ 2} Defendant's appellate counsel identified three possible issues for appeal.

FIRST ASSIGNMENT OF ERROR

"WHETHER THERE WERE DEFECTS IN THE INDICTMENT."

{¶ 3} Defendant's appellate counsel raises an issue concerning whether the indictment in this case included all of the essential elements of the offense charged, including the applicable mens rea. An examination of the indictment reveals that it closely tracked the language in R.C. 2925.11(A), (C)(4)(d), and is clearly sufficient to charge an offense and provide Defendant with adequate notice of that offense, because it contains all of the essential elements of possession of crack cocaine, including the mens rea element of knowingly, the type of drug involved, and the amount. Crim.R. 7(B). In any event, Defendant's entry of a guilty plea

waived any defects in the indictment. *State v. Kerby*, Clark App. No. 09CA39, 2010-Ohio-562. This assignment of error lacks arguable merit.

SECOND ASSIGNMENT OF ERROR

"WHETHER IT IS CONSTITUTIONAL TO SENTENCE MR. COTTON FOR A SECOND DEGREE FELONY FOR POSSESSION OF A CERTAIN WEIGHT OF CRACK COCAINE WHEN HE WOULD HAVE BEEN SENTENCED FOR A FOURTH DEGREE FELONY FOR POSSESSION OF THE SAME WEIGHT OF POWDER COCAINE."

{¶ 4} Defendant's appellate counsel raises an issue concerning the disparity in the severity of and sentences imposed for crack-cocaine offenses versus powder-cocaine offenses. We have previously addressed this issue and concluded that the harsher penalties for crack-cocaine offenses do not violate equal protection or due process. *State v. Wilkerson*, Montgomery App. No. 22693, 2008-Ohio-4750, at ¶9-27. This assignment of error lacks arguable merit.

THIRD ASSIGNMENT OF ERROR

"WHETHER THERE WAS ERROR IN SENTENCING MR. COTTON."

{¶ 5} Defendant's appellate counsel raises an issue concerning whether Defendant's sentence is contrary to law or an abuse of discretion.

{¶ 6} In *State v. Jeffrey Barker*, Montgomery App. No. 22779,

2009-Ohio-3511, at ¶36-37, we wrote:

{¶7} "The trial court has full discretion to impose any sentence within the authorized statutory range, and the court is not required to make any findings or give its reasons for imposing maximum, consecutive, or more than minimum sentences. *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, at paragraph 7 of the syllabus. Nevertheless, in exercising its discretion the trial court must consider the statutory policies that apply to every felony offense, including those set out in R.C. 2929.11 and 2929.12. *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1, at ¶37.

{¶8} "When reviewing felony sentences, an appellate court must first determine whether the sentencing court complied with all applicable rules and statutes in imposing the sentence, including R.C. 2929.11 and 2929.12, in order to find whether the sentence is contrary to law. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912. If the sentence is not clearly and convincingly contrary to law, the trial court's decision in imposing the term of imprisonment must be reviewed under an abuse of discretion standard. *Id.*"

{¶9} There is nothing in this record which demonstrates that in imposing its sentence the trial court failed to consider either the purposes and principles of felony sentencing, R.C. 2929.11,

or the seriousness and recidivism factors, R.C. 2929.12. The court considered the oral statements of counsel and Defendant at sentencing. The three year sentence the court imposed on the cocaine possession charge is not the maximum sentence, and is well within the authorized range of available punishments for a felony of the second degree, which is two to eight years. R.C. 2929.14(A)(2). The court also informed Defendant about mandatory post release control requirements and the consequences for violating post release control. Defendant's sentence is not clearly and convincingly contrary to law. *Kalish*. Neither is there any demonstration that the trial court's three year sentence, which is on the low end of the available sentencing range, for possession of seventeen grams of crack cocaine constitutes an abuse of discretion. This assignment of error lacks arguable merit.

{¶ 10} In addition to reviewing the possible issues for appeal raised by Defendant's appellate counsel, we have conducted an independent review of the trial court's proceedings and have found no error having arguable merit. Accordingly, Defendant's appeal is without merit and the judgment of the trial court will be affirmed.

DONOVAN, P.J. And BROGAN, J., concur.

Copies mailed to:

Carley J. Ingram, Esq.

Tara C. Dancing, Esq.

Jamar Cotton

Hon. Michael L. Tucker