[Cite as *State v. Chandler*, 2010-Ohio-6339.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23931
v.	:	T.C. NO. 10CR128
JESSE J. CHANDLER	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 23rd day of December, 2010.

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FROELICH, J.

{¶ 1} On February 16, 2010, Appellant Chandler pled guilty to one count of unlawful sexual conduct with a minor in violation of R.C. 2907.04(A). At the same time, Chandler admitted to violating the terms of his community-control sanctions by committing the unlawful sexual conduct. The terms of Chandler's community-control sanctions were

pursuant to an earlier conviction for a third degree felony drug trafficking charge. The trial court revoked Chandler's community control sanctions and ordered Chandler's incarceration for eighteen months, which was the maximum penalty for the unlawful sexual conduct conviction. The eighteen months incarceration was ordered to run concurrently with an eighteen month sentence for the revocation of the community-control sanctions from the earlier drug trafficking conviction. Chandler's admission, guilty plea, and sentences were pursuant to a negotiated plea agreement with the State.

{¶ 2} Appointed counsel for Chandler filed a brief pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, stating that he was "unable to find any meritorious issues for appeal...." Chandler was advised of his counsel's *Anders* brief's representations and that he could file a pro se brief assigning any errors for review by this court. Chandler was further advised that absent such a filing, the appeal will be deemed submitted on its merits. No pro se brief has been received. 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.

{¶ 3} Chandler's appellate counsel has identified one possible "*Anders* Argument" for appeal: "Appellant's Conviction And Sentencing Is Against The Manifest Weight Of The Evidence."

{¶ 4} Chandler's guilty plea in the present case, which is also an admission of the violation of the community-control sanctions imposed after his conviction for the earlier drug trafficking charge, serves as a complete admission of factual guilt and, accordingly, his factual guilt is removed from further consideration. *Menna v. New York* (1975), 423 U.S.

61, 62 n. 2, 96 S.Ct. 241, 46 L.Ed.2d 195; *State v. Lane*, Greene App. No. 2010 CA 21, 2010-Ohio-5639, at ¶ 4; Crim.R. 11(B)(1). "Therefore, '[a]s a consequence of entering a plea of guilty in this case, defendant is precluded from arguing on appeal that his conviction is not supported by legally sufficient evidence or is against the manifest weight of the evidence.'" *Lane* at ¶ 4. This assignment of error lacks arguable merit.

{¶ 5} Appellant's counsel also states that Chandler "believes that law enforcement should not have been able to retrieve his DNA sample without a warrant even though he was on probation for drug trafficking and subject to providing said sample on request as a condition of [that] probation."

{¶ 6} Prior to pleading guilty for the unlawful sexual conduct with a minor, Chandler's counsel filed a motion to suppress the DNA sample taken from Chandler "on or about September 11, 2009" on the grounds that its taking was "in violation of his constitutional rights." As noted above, the DNA sample was a condition of his community control pursuant to the earlier drug trafficking charge. The record does not reflect whether the trial court ever ruled upon Chandler's motion to suppress the DNA sample prior to his guilty plea.

{¶ 7} "A guilty plea *** renders irrelevant those constitutional violations not logically inconsistent with the valid establishment of factual guilt and which do not stand in the way of conviction if factual guilt is validly established." *Menna,* 423 U.S. at 62 n.2; *State v. Fitzpatrick,* 102 Ohio St.3d 321, 2004-Ohio-3167, at ¶ 78. "Therefore, a defendant who *** voluntarily, knowingly, and intelligently enters a guilty plea with the assistance of counsel 'may not thereafter raise independent claims relating to the deprivation of

constitutional rights that occurred prior to the entry of the guilty plea.'" *Fitzpatrick* at ¶ 78 (quoting *Tollett v. Henderson* (1973), 411 U.S. 258, 267, 93 S.Ct. 1602, 36 L.Ed.2d 235); *see also State v. Perez-Diaz*, Clark App. No. 06CA0130, 2008-Ohio-2722, at ¶ 4.

{¶ 8} Chandler's argument that his DNA was obtained in violation of his constitutional rights is not well taken because his guilty plea waived any non-jurisdictional constitutional claims arising prior to the plea. *Fitzpatrick* at ¶ 78. Any objections to the use of the DNA sample had to be raised—and preserved—before his guilty plea. At his February 16, 2010, plea hearing, Chandler was specifically asked by the trial court whether he understood that by pleading guilty he was giving up his right to appeal any pre-trial rulings; Chandler stated that he understood. This assignment of error is without arguable merit.

{¶ 9} Upon further independent review of the record, we find no other issues of arguable merit. Chandler's February 16, 2010, hearing, where he admitted to the community-control violation and pled guilty to the unlawful sexual conduct, fully complied with Crim.R. 11.

{¶ 10} Having conducted an independent review of the record in addition to Chandler's single assignment of error, we find this appeal to be wholly frivolous. There are no meritorious issues for appeal. Therefore, the judgment of the trial court is affirmed.

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DONOVAN, P.J. and GRADY, J., concur.

Copies mailed to:

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Hon. Timothy N. O'Connell