[Cite as *State v. Williams*, 2017-Ohio-4422.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO CITY OF STRUTHERS PLAINTIFF-APPELLEE VS. JALEESA M. WILLIAMS DEFENDANT-APPELLANT	)))))))))	CASE NO. 15 MA 0171 OPINION

CHARACTER OF PROCEEDINGS: Criminal Appeal from the Struthers Municipal Court of Mahoning County, Ohio
Case No. 15 CRB 358

JUDGMENT: Affirmed.

APPEARANCES:

For Plaintiff-Appellee: Atty. Dominic Leone, III
Prosecuting Attorney/Law Director
Struthers Municipal Court
6 Elm Street
Struthers, Ohio 44471
No Brief Filed

For Defendant-Appellant: Atty. Donna J. McCollum
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JUDGES:

Hon. Cheryl L. Waite
Hon. Mary DeGenaro
Hon. Carol Ann Robb

Dated: June 15, 2017

[Cite as *State v. Williams*, 2017-Ohio-4422.]
WAITE, J.

{¶1} Appellant Jaleesa M. Williams appeals her conviction and sentencing on August 21, 2015 in the Struthers Municipal Court. Appellant's counsel filed a no merit brief requesting leave to withdraw. A complete review of the case reveals no appealable issues. Accordingly, appointed counsel's motion to withdraw is granted and Appellant's conviction and sentence are affirmed.

Factual and Procedural History

{¶2} As the result of a June 16, 2015 traffic stop, Appellant was charged with disorderly conduct, a misdemeanor of the fourth degree in violation of R.C. 2917.11. Appellant failed to appear at a pretrial conference and a bench warrant was issued. Shortly thereafter, Appellant turned herself in and appeared for bench trial. On August 21, 2015, Appellant pleaded guilty to the charges. The trial court imposed a thirty-day suspended jail sentence and one year of probation. Additionally, the court imposed a $250 fine and costs. Appellant timely appeals.

No-Merit Brief

{¶3} Based on a review of this matter, appellate counsel seeks to withdraw after finding no potentially meritorious arguments for appeal. This filing is known as a no merit brief or an *Anders* brief. See *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.E.2d 493 (1967). In our district, it is referred to as a *Toney* brief. See *State v. Toney*, 23 Ohio App.2d 203, 262 N.E.2d 419 (7th Dist.1970).

{¶4} In *Toney*, this Court established the procedure to be used when appellate counsel wishes to withdraw from a case deemed a frivolous appeal:

3. Where a court-appointed counsel, with long and extensive experience in criminal practice, concludes that the indigent's appeal is frivolous and that there is no assignment of error which could be arguably supported on appeal, he should so advise the appointing court by brief and request that he be permitted to withdraw as counsel of record.

4. Court-appointed counsel's conclusions and motion to withdraw as counsel of record should be transmitted forthwith to the indigent, and the indigent should be granted time to raise any points that he chooses, *pro se*.

5. It is the duty of the Court of Appeals to fully examine the proceedings in the trial court, the brief of appointed counsel, the arguments *pro se* of the indigent, and then determine whether or not the appeal is wholly frivolous.

* * *

7. Where the Court of Appeals determines that an indigent's appeal is wholly frivolous, the motion of court-appointed counsel to withdraw as counsel of record should be allowed, and the judgment of the trial court should be affirmed.

Id. at syllabus.

{¶5} On March 24, 2016, appellate counsel filed a no merit brief in this matter. On April 25, 2016, we entered a judgment entry informing Appellant that her counsel had filed a no merit brief and gave her thirty days to file her own brief. Appellant failed to file a brief in this matter. Accordingly, we must independently examine the record to determine whether there are any potentially meritorious issues in this matter.

Guilty Plea

{¶6} **"**Crim.R. 11 governs the advisements that must be made at plea hearing prior to accepting a no contest, guilty or not guilty plea." *State v. Durkin,* 7th Dist. No. 13 MA 36, 2014-Ohio-2247, ¶ 10. Crim.R. 11(D) governs misdemeanor cases that involve "serious offenses" whereas Crim.R. 11(E) governs misdemeanor cases that involve "petty offenses." Any misdemeanor with a penalty that includes confinement for more than six months constitutes a "serious offense." Crim.R. 2(C). A "petty offense" is any misdemeanor that is not a serious offense. Crim.R. 2(D).

{¶7} Appellant pleaded guilty to disorderly conduct, a misdemeanor of the fourth degree. The maximum penalty for a misdemeanor of the fourth degree is thirty days in jail. As the maximum penalty is less than six months, it is a petty offense and the plea is governed by Crim.R. 11(E). Crim.R. 11(E) provides that a trial court "shall not accept such pleas without first informing the defendant of the effect of the plea of guilty, no contest, and not guilty."

{¶8} A trial court must comply with Crim.R. 11(B) when informing a defendant of the effect of a guilty plea. Crim.R. 11(B) provides that:

> (1) The plea of guilty is a complete admission of the defendant's guilt.
>
> (2) The plea of no contest is not an admission of defendant's guilt, but is an admission of the truth of the facts alleged in the indictment, information, or complaint, and the plea or admission shall not be used against the defendant in any subsequent civil or criminal proceeding.
>
> (3) When a plea of guilty or no contest is accepted pursuant to this rule, the court, except as provided in divisions (C)(3) and (4) of this rule, shall proceed with sentencing under Crim.R. 32.

{¶9} In other words, before the trial court may accept a guilty plea to a misdemeanor for a petty offense, the court must inform the defendant that a guilty plea is a complete admission of guilt. *State v. Giovanni,* 7th Dist. No. 07 MA 60, 2008-Ohio-2924, ¶ 45, citing *State v. Jones,* 116 Ohio St.3d 211, 2007-Ohio-6093, 877 N.E.2d 677, ¶ 25. A trial court must substantially comply with this requirement. *State v. Ramey,* 7th Dist. No. 13 MA 64, 2014-Ohio-2345, ¶ 12, citing *State v. Griggs*, 103 Ohio St.3d 85, 2004-Ohio-4415, 814 N.E.2d 51, ¶ 12.

{¶10} The trial court here stated: "[y]ou have the right to plead guilt [sic]. It's a complete admission of guilt. No contest, which is not an admission of guilt, but admits the facts alleged in the complaint. A plea of no contest cannot be used against you in a court of law (inaudible) guilty, not guilty by reason of insanity." (8/21/15 Hrg. Tr., p. 2.) Based on this record, it is clear that the trial court substantially complied with Crim.R. 11(B)(1), (E). Accordingly, there are no appealable issues concerning Appellant's plea.

Sentencing

{¶11} A misdemeanor sentence is reviewed for an abuse of discretion. *State v. Reynolds,* 7th Dist. No. 08-JE-9, 2009-Ohio-935, ¶ 9, citing R.C. 2929.22; *State v. Frazier*, 158 Ohio App.3d 407, 2004-Ohio-4506, 815 N.E.2d 1155, ¶ 15. "An abuse of discretion is more than an error of judgment; it requires a finding that the trial court's decision was unreasonable, arbitrary, or unconscionable." *State v. Nuby*, 7th Dist. No. 16 MA 0036, 2016-Ohio-8157, ¶ 10, citing *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980). "[A]n appellate court is guided by the presumption that the trial court's findings were correct." *Reynolds* at ¶ 9*,* citing *In re Slusser*, 140 Ohio App.3d 480, 487, 748 N.E.2d 105 (2000).

{¶12} Before a trial court can impose a misdemeanor sentence, it must consider the criteria of R.C. 2929.22 and the principles of R.C. 2929.21. *State v. Crable*, 7th Dist. No. 04 BE 17, 2004-Ohio-6812, ¶ 24. R.C. 2929.22(A) affords the trial court discretion in determining the most effective way to achieve the purposes and principles of sentencing. R.C. 2929.22(B) provides specific factors for the trial court to consider before imposing a sentence, including the nature and circumstances of the offense, the offender's history of criminal conduct, the victim's circumstances, and the likelihood that the offender will commit future crimes.

{¶13} "When a misdemeanor sentence is within the statutory range, 'a reviewing court will presume that the trial judge followed the standards in R.C. 2929.22, absent a showing to the contrary.'" *State v. McColor,* 7th Dist. No. 11 MA 64, 2013-Ohio-1279, ¶ 16, quoting *Reynolds* at ¶ 21. "A silent record gives rise to

the presumption that the trial court considered the proper sentencing factors and that its findings were correct." *McColor* at ¶ 16, citing *State v. Best*, 7th Dist. No. 08 MA 260, 2009-Ohio-6806, ¶ 14; *State v. Downie*, 183 Ohio App.3d 665, 2009-Ohio-4643, 918 N.E.2d 218, ¶ 48 (7th Dist.).

{¶14} Pursuant to R.C. 2929.24(A)(4), the maximum penalty for a misdemeanor of the fourth degree is no more than thirty days in jail. A trial court may also impose a fine up to $250. R.C. 2929.28(A)(2)(a)(iv). Here, the trial court imposed a thirty day suspended sentence and placed Appellant on one year of probation. The court also imposed a $250 fine and costs. Hence, Appellant's sentence is within the permissible statutory range. Although the trial court did not expressly state that it considered the criteria of R.C. 2929.22 and the principles of R.C. 2929.21, we must presume that the court considered these statutes. The record is devoid of any evidence to suggest that the court did not. Accordingly, there are no appealable issues concerning Appellant's sentence.

Conclusion

{¶15} For the reasons provided, there are no potentially meritorious issues in this appeal. Accordingly, counsel's motion to withdraw is granted and Appellant's conviction and sentence are affirmed.

DeGenaro, J., concurs.

Robb, P.J., concurs.