

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
HURON COUNTY

State of Ohio

Court of Appeals No. H-09-014

Appellee

Trial Court No. CRI-2009-0173

v.

Ron Morrison

DECISION AND JUDGMENT

Appellant

Decided: April 16, 2010

* * * * *

Nancy L. Jennings, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant appeals his conviction for robbery in the Huron County Court of Common Pleas.

{¶ 2} On December 4, 2007, a masked gunman entered a Willard, Ohio cash advance store and demanded the clerk turn over the money on hand. The man fled with approximately \$2,000. A police investigation eventually led to appellant, Ron Morrison.

On March 13, 2009, the Huron County Grand Jury indicted appellant, charging him with aggravated robbery, a first degree felony, with a firearm specification.

{¶ 3} Appellant initially entered a not guilty plea but, following negotiations, agreed to plead guilty to robbery, a second degree felony, with a firearm specification. The state also agreed to a joint sentencing recommendation of two years incarceration and the mandatory three year sentence for the firearm specification.

{¶ 4} On May 1, 2009, following a Crim.R. 11 plea colloquy, the trial court accepted appellant's plea and found him guilty. After a presentence investigation, the court sentenced appellant to a five year term of incarceration consecutive to the mandatory three year term on the firearm specification.

{¶ 5} Appellant now brings this appeal.

{¶ 6} Appellant's appointed counsel has filed a motion to withdraw, pursuant to *Anders v. California* (1967), 386 U.S. 738. Counsel states that she has thoroughly reviewed the record and is unable to identify any arguably meritorious issue for appeal. In conformity with *Anders*, counsel has filed a brief in which she discusses two areas of potential error that she has considered, yet rejected as unsupported in the record. Counsel avers that a copy of appellant's brief has been provided to appellant, along with correspondence advising him of his right to submit his own brief. Appellant has failed to file his own brief.

{¶ 7} The assignments of error that appellant's counsel states she has considered and rejected are:

{¶ 8} "I. The trial court erred when accrepting [sic] appellant's plea.

{¶ 9} "II. The trial court abused its discretion when imposing sentence on defendant."

{¶ 10} A defendant who enters a plea of guilty waives all appealable errors save those that may have precluded him or her from entering a knowing and voluntary plea. *State v. Kelley* (1991), 57 Ohio St.3d 127, 129. A plea is knowingly and voluntarily entered when the court advises the defendant of his constitutional and non-constitutional rights pursuant to Crim.R. 11 and the court is convinced that the defendant understands these rights and has chosen to waive them. *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, ¶ 27.

{¶ 11} We have carefully examined appellant's plea colloquy and concur with counsel that it was properly conducted. Appellant's first potential assignment of error is without merit.

{¶ 12} Concerning sentencing, a two-part test is imposed. The trial court must adhere to all the applicable statutes and rules in imposing sentence. On appeal, whether this has been accomplished is a purely legal question, "* * * only to determine whether it is clearly and convincingly contrary to law * * *." *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, ¶ 14. If, for example, the sentence is outside the perimeters of the permissible statutory range, the sentence cannot stand. *Id.* at ¶ 15.

{¶ 13} "Assuming the trial court has complied with the applicable rules and statutes, the exercise of its discretion in selecting a sentence within the permissible

statutory range is subject to review for abuse of discretion * * *." Id. at ¶ 17. An abuse of discretion is more than an error of law or judgment, the term connotes that the court's attitude is arbitrary, unreasonable or unconscionable. *State v. Adams* (1980), 62 Ohio St.2d 151, 157.

{¶ 14} The sentence imposed upon appellant is within the range of sentences available for a second degree felony. The firearm specification sentence is mandatory. The trial court expressly considered the factors under R.C. 2929.11 and 2929.12. Our further review of the sentencing proceedings reveals nothing that would suggest that appellant's sentence is contrary to law or that the court abused its discretion in imposing this sentence. Consequently, we concur with counsel that the second potential assignment of error is without merit.

{¶ 15} Upon this record, we concur with appellate counsel that appellant's appeal is without merit. Moreover, upon our own independent review of the record, we find no other grounds for meritorious appeal. Accordingly, this appeal is found to be without merit, and wholly frivolous. Counsel's motion to withdraw is found well-taken and is, hereby, granted.

{¶ 16} On consideration whereof, the judgment of the Huron County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.

JUDGE

Keila D. Cosme, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.