

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

State of Ohio

Court of Appeals No. S-08-033

Appellee

Trial Court No. 07CR93

v.

Dennis A. Scriver

DECISION AND JUDGMENT

Appellant

Decided: February 12, 2010

* * * * *

Thomas L. Stierwalt, Sandusky County Prosecuting Attorney,
and Norman P. Solze, Assistant Prosecuting Attorney, for appellee.

Chad D. Huber, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a sentence of the Sandusky County Common Pleas Court. Pursuant to a plea agreement, appellant was found guilty of attempted rape, a felony of the second degree, and domestic violence, a felony of the fourth degree. The trial court sentenced appellant to four years in prison for the attempted rape conviction

and six months in prison for the domestic violence conviction, to be served consecutively, for an aggregate term of incarceration of four and one-half years.

{¶ 2} Counsel for appellant has submitted a request to withdraw pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396. In support of his request to withdraw, counsel for appellant states that, after reviewing the record of proceedings in the trial court, he is unable to find any appealable issues. In his brief filed on appellant's behalf, counsel sets forth two proposed assignments of error:

{¶ 3} "Appellant's sentence was improper as it was extreme, unfair, and contrary to the spirit of the plea agreement.

{¶ 4} "Appellant's sentence was improper as the court did not make the required findings under the Ohio Revised Code to impose consecutive sentences."

{¶ 5} *Anders*, supra, and *State v. Duncan* (1978), 57 Ohio App.2d 93, set forth the procedure to be followed by counsel who desires to withdraw for want of a meritorious, appealable issue. In *Anders*, the United States Supreme Court held that if counsel, after a conscientious examination of the case, determines it to be wholly frivolous, he should so advise the court and request permission to withdraw. *Id.* at 744.

{¶ 6} The request to withdraw must be accompanied by a brief identifying anything in the record that could arguably support an appeal. *Id.* Additionally, counsel must furnish his client with a copy of the brief and withdrawal request while allowing the client sufficient time to raise any other matters. *Id.* Once these requirements have been met, the appellate court conducts a full examination of the proceedings held below to

determine if the appeal is frivolous. If the appellate court finds that the appeal is frivolous, it may grant counsel's request to withdraw and dismiss the appeal without violating constitutional requirements or may proceed to a decision on the merits. *Id.*

{¶ 7} In the case before us, counsel for appellant has satisfied the requirements set forth in *Anders*. Accordingly, we shall proceed with an examination of the potential assignments of error offered by appellant's counsel and the record below to determine if this appeal lacks merit.

{¶ 8} The following undisputed facts are relevant to the issues raised on appeal. On January 15, 2007, appellant forcefully imposed upon his then wife non-consensual sex. Appellant's wife did not attempt to contact the police following that incident. However, on January 16, 2007, appellant again physically and sexually assaulted his wife. During this second incident, appellant's wife obtained a pair of scissors and stabbed him.

{¶ 9} Appellant voluntarily negotiated a plea agreement with appellee. Pursuant to the plea agreement, the trial court found appellant guilty of attempted rape, a felony of the second degree, and domestic violence, a felony of the fourth degree. The court sentenced appellant to consecutive sentences of four years for the attempted rape and six months for the domestic violence offense.

{¶ 10} In the first assignment of error by counsel for appellant, it is suggested that the trial court's sentence against appellant was "extreme, unfair, and contrary to the spirit of the plea agreement."

{¶ 11} As conceded by counsel, the sentence imposed by the trial court is identical to that agreed upon in appellant's plea agreement, consistent with the state's recommendation. Per the trial record, appellant was advised of the potential prison sentences for each offense, and acknowledged that he understood these terms.

{¶ 12} Further, it is well-settled Ohio law that trial courts are vested with full discretion to impose any duration of prison sentence that falls within the statutory range. *State v. Foster* (2006), 109 Ohio St.3d 1. Appellant's sentence was within the statutorily established range. We find the first assignment of error not well-taken.

{¶ 13} In the second assignment of error, appellant claims that the sentence was improper because the trial court did not make the required findings under the Ohio Revised Code to impose consecutive sentences.

{¶ 14} Under post-*Foster* law, it is well-settled that trial courts are no longer required to make specific findings or give their reason for imposing maximum, consecutive, or more than minimum sentencing. Appellant's counsel points out that the trial court made no findings prior to sentencing and that appellant agreed to the consecutive sentences in the plea agreement.

{¶ 15} As stated earlier, *Foster* allows trial courts to use their discretion to impose any sentence within the statutory guidelines. Pursuant to R.C. Chapter 2929, the relevant maximum sentences permissible under Ohio sentencing statutes are eight years and eighteen months, for felonies of the second and fourth degree, respectively. The agreed

upon sentences were well within the statutory range for such felonies. Accordingly, appellant's second assignment of error is found not well-taken.

{¶ 16} This court has independently reviewed the record and appellant's assignments of error and has determined that this appeal is without merit, and therefore, is wholly frivolous. Appellant's counsel's request to withdraw is found well-taken and is hereby granted.

{¶ 17} The judgment of the Sandusky County Common Pleas Court is affirmed. Appellant is ordered to pay 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.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, P.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>.