[Cite as *State v. Gebrosky*, 2014-Ohio-1141.]

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

State of Ohio — Court of Appeals No. L-13-1015

Appellee — Trial Court No. CR0201201704

v.

John Gebrosky — **DECISION AND JUDGMENT**

Appellant — Decided: March 21, 2014

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Claudia A. Ford, Assistant Prosecuting Attorney, for appellee.

Tim A. Dugan, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas that found appellant guilty of one count of possession of criminal tools in violation of R.C. 2923.24(A) and sentenced him to a prison term of nine months. For the reasons that follow, the judgment of the trial court is affirmed.

{¶ 2} Appointed counsel for appellant has submitted a request to withdraw pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). In his brief filed on appellant's behalf, appointed counsel sets forth two proposed assignments of error. In support of his request to withdraw, counsel for appellant states that, after reviewing the record of proceedings in the trial court, he was unable to identify any appealable issues.

{¶ 3} *Anders, supra*, and *State v. Duncan*, 57 Ohio App.2d 93, 385 N.E.2d 323 (1978), set forth the procedure to be followed by appointed 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, counsel should so advise the court and request permission to withdraw. *Anders* at 744. This request, however, must be accompanied by a brief identifying anything in the record that could arguably support the appeal. *Id*. Counsel must also furnish his client with a copy of the brief and request to withdraw and allow the client sufficient time to raise any matters that he chooses. *Id*. Once these requirements have been satisfied, the appellate court must then conduct a full examination of the proceedings held below to determine if the appeal is indeed frivolous. If the appellate court determines 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 if state law so requires. *Id*.

{¶ 4} In the case before us, appointed counsel has satisfied the requirements set forth in *Anders, supra*. The record reflects that counsel provided appellant with a copy of the brief and request to withdraw and notified appellant of his right to raise any matters that he might choose within 45 days. Appellant has not provided this court with a separate brief within the specified time. Accordingly, this court shall proceed with an examination of the potential assignments of error proposed by counsel for appellant and the record from below in order to determine if this appeal lacks merit and is, therefore, wholly frivolous.

{¶ 5} The record reflects that on May 7, 2012, appellant was indicted on one count each of breaking and entering, theft, possessing criminal tools and receiving stolen property. On November 13, 2012, appellant entered a guilty plea to one count of possession of criminal tools in violation of R.C. 2923.24(A), a felony of the fifth degree, and was found guilty. The state agreed to dismiss all other charges at sentencing.

{¶ 6} At sentencing on January 3, 2013, the trial court noted that appellant was on probation for a misdemeanor conviction at the time the offense herein occurred. Appellant was sentenced to a term of nine months in prison.

{¶ 7} Appointed counsel sets forth two possible arguments:

A. The Trial Court abused its discretion in sentencing Appellant to a nine month sentence.

B. Ineffective Assistance of Counsel.

{¶ 8} As to appointed counsel's first proposed argument, we note that under R.C. 2929.14(A)(5), the prison term for a felony of the fifth degree is six, seven, eight, nine, ten, eleven or twelve months. Further, if an offender pleads guilty to a felony of the fifth degree, as appellant did herein, a sentencing court shall sentence the offender to a term of community control if, among other things, the offender has not previously pleaded guilty or been convicted of a felony offense. R.C. 2929.13(B)(1)(a). If the offender has violated the terms and conditions of bond as set by the court, or if the offender was on probation or community control at the time of the offense, the sentencing court has discretion to sentence the offender to a term of imprisonment.

{¶ 9} Appellant's sentence herein is not contrary to law. Nine months is within the statutory range for a felony of the fifth degree. Further, appellant had previously been convicted of a felony offense, was found to have violated the terms of his bond, and was on community control at the time of this offense. Therefore, the trial court found that appellant was not amenable to community control and that a prison term was consistent with the purposes of R.C. 2929.11.

{¶ 10} Based on the foregoing, we find that the trial court properly sentenced appellant to a term of imprisonment. Appointed counsel's first proposed assignment of error is without merit.

{¶ 11} As to the second proposed assignment of error, we find no support in the record for a claim of ineffective assistance of counsel. It is well-established that claims of ineffective assistance of counsel are reviewed under the standard set forth in *Strickland*

v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In order to prove ineffective assistance of counsel, appellant must demonstrate both that the performance of trial counsel was defective and that, but for that defect, the outcome would have been different. *Id*. at 687. Applying *Strickland* to the instant case, we are unable to find upon our review of the record that trial counsel was ineffective in any respect. We further note that when appellant entered his guilty plea, he responded in the affirmative when the trial court inquired as to whether counsel had discussed with him the evidence against him, as well as any possible defenses. Appellant further stated he was satisfied with counsel's advice and competence. Based on the foregoing, we find that appointed counsel's second proposed assignment of error is not well-taken.

{¶ 12} Upon our own independent review of the record, we find no grounds for a meritorious appeal. Appellant's counsel's motion to withdraw is found well-taken and it granted.

{¶ 13} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Costs of this appeal are assessed to appellant pursuant to App.R. 24. The clerk is ordered to serve all parties with notice of this decision.

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, J. _____
JUDGE

James D. Jensen, J.
CONCUR. _____
JUDGE