

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

State of Ohio

Court of Appeals No. OT-13-014

Appellee

Trial Court No. 12 CR 063

v.

Raymond Minton

DECISION AND JUDGMENT

Appellant

Decided: January 31, 2014

* * * * *

Mark E. Mulligan, Ottawa County Prosecuting Attorney, and
Andrew M. Bigler, Assistant Prosecuting Attorney, for appellee.

Erik Longton, for appellant.

* * * * *

JENSEN, J.

{¶ 1} Raymond Minton appeals the May 2, 2013 judgment of the Ottawa County Court of Common Pleas wherein the trial court sentenced appellant to 30 months incarceration in the Ohio Bureau of Rehabilitation and Corrections. Appointed appellate counsel has filed a “no merit” brief and requested leave to withdraw from the case

pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).

For the reasons set forth herein, we affirm the judgment below and grant counsel's motion to withdraw.

{¶ 2} On May 16, 2012, appellant was indicted on one count of aggravated burglary in violation of R.C. 2911.11, a felony of the first degree; and one count of assault in violation of R.C. 2903.13, a misdemeanor of the first degree. Both counts stemmed from the same incident.

{¶ 3} The case proceeded through the Ottawa County Court of Common Pleas. Appellant initially pled not guilty to both counts contained in the indictment. On November 11, 2012, after undergoing a psychological evaluation and found competent to stand trial, however, appellant pled guilty to an amended Count 1 of burglary in violation of R.C. 2911.12(A)(3), a felony of the third degree. In exchange for appellant's guilty plea, the state agreed to dismiss Count 2 of the indictment.

{¶ 4} At the plea change hearing on November 19, 2012, the trial court, pursuant to Crim.R. 11, inquired with appellant as to his understanding of the plea agreement with the state and advised appellant of the effect of his guilty plea. Relevant excerpts of the exchange follow.

Q: * * * Has anybody threatened you or coerced you or offered you anything of value to cause you to enter your plea today?

A: No, sir.

Q: Has anybody promised you that you would receive a specific sentence?

A: No, sir.

* * *

Q: What is it that you will be pleading to today?

A: I will be pleading guilty today to an F-3.

Q: Do you understand that to be burglary?

A: Burglary.

Q: All right. Do you understand what burglary is?

A: Breaking into someone else's house.

* * *

Q: All right. Do you understand, Raymond, that you can go to prison for 36 months for the burglary?

A: Yes, sir.

Q: Do you understand that there is a maximum possible fine of \$10,000 for an F-3 offense?

A: Yes, sir.

* * *

Q: * * * Let's talk about your Constitutional rights. You are charged with serious felonies. You have the right to a jury trial. You have a right to make the State prove their case beyond a reasonable doubt. They

would need to prove the elements of the offense that you are charged with, and those elements are the specifics, what you did, where you did it, the date. All that would need to be proven to a jury beyond a reasonable doubt. All twelve jurors would need to believe that the State had proved their case beyond a reasonable doubt in order to convict you.

Do you understand that that is how a jury trial works?

A: Yes, sir.

Q: Do you understand that if you plead guilty today, you are never going to have a jury trial?

A: Yes, sir.

Q: Do you give up your right to a jury trial?

A: Yes, sir.

Q: * * * During the course of that jury trial, you and your attorney would have the right to cross-examine witnesses that are called to testify against you. You and your attorney could subpoena people to come in and testify on your side, on your behalf, and you could remain silent. If you chose not to take the witness stand, the fact that you are not testifying can't be used against you for any purpose whatsoever. Do you understand that?

A: Yes, sir.

* * *

Q: Do you understand that if you plead guilty today, you are giving up those rights as well as the right to a jury trial?

A: Yes, sir.

Q: Do you give up all those rights?

A: Yes, sir.

* * *

Q: Now according to your plea agreement, you are giving up all rights of appeal in this matter except as to the Court's final sentence. Do you understand that?

A: Yes, sir.

Q: That is the only thing you can appeal. You can't appeal anything that is happening today or before right now, do you understand that?

A: Yes, sir.

Q: Do you give up those rights of appeal?

A: Yes, sir.

{¶ 5} The trial court explained that it had three sentencing options: "One is prison time. One is local jail time. And the last is probation, otherwise known as Community Control." The trial court further explained:

If you are sent to prison, it can be the recommendation of this Court that you serve a risk reduction sentence. That means when you go to

prison, they can do an evaluation of you to determine what it is that they can best do to make sure that you never come back to prison.

They might put you in some kind of treatment or classes or programming. And if you do whatever you are asked to do, and if you are well behaved while you are in prison, your prison sentence can be reduced by up to 20 percent.

* * *

Now if you are not in that program, but you are just well behaved, you can still have your sentence reduced by eight percent, that is called earning good time.

{¶ 6} The trial court explained that appellant might be eligible for judicial release and explained that if he was released, he could be subject to probation for up to five years. The trial court informed appellant of the consequences for violating probation.

{¶ 7} The trial court informed appellant that if he was sent to prison, he could be subject to up to three years of postrelease control. The trial court informed appellant of the consequences for violating the conditions of postrelease control.

{¶ 8} At the conclusion of the hearing, the trial court accepted appellant's guilty plea as a "knowing, intelligent, and voluntary decision" and found appellant guilty of burglary. The trial court sentenced appellant to 30 months of incarceration and imposed a term of postrelease control.

{¶ 9} On July 19, 2013, appellant's appointed counsel filed a motion to withdraw as counsel for lack of a meritorious, appealable issue under *Anders*; see also *State v. Duncan*, 57 Ohio App.2d 93, 385 N.E.2d 323 (8th Dist.1978). 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. *Anders*, 386 U.S. at 744, 87 S.Ct. 1396, 18 L.Ed.2d 493. This request, however, must be accompanied by a brief identifying anything in the record that could arguably support the appeal. *Id.* Furthermore, counsel must also furnish his client with a copy of the brief, request to withdraw from representation, and allow the client sufficient time to raise any matters that he chooses. *Id.*

{¶ 10} Once these requirements are 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 it may proceed to a decision on the merits if state law so requires. *Id.*

{¶ 11} In the instant case, appellant's counsel has satisfied the *Anders* requirements. Appellate counsel filed a motion to withdraw from the case and a brief setting forth potential grounds for appeal. Counsel further provided appellant with both filings and advised appellant of his right to file his own appellate brief. Appellant has not filed an additional brief or otherwise responded.

{¶ 12} Appellant’s potential assignments of error are as follows:

- I. The trial court erred in accepting appellant’s plea.
- II. The trial court erred in imposing its sentence upon the appellant.

Law and Analysis

I. Appellant’s Guilty Plea was Intelligently, Knowingly, and Voluntarily Given.

{¶ 13} In his first potential assignment of error, appellant’s counsel suggests error in the trial court’s acceptance of appellant’s guilty plea because it was not given intelligently, knowingly, and voluntarily.

{¶ 14} Crim.R. 11(C) delineates the requirements for a proper, voluntary plea. *State v. Gonzalez*, 193 Ohio App.3d 385, 2011-Ohio-1542, 952 N.E.2d 502, ¶ 40 (6th Dist.). Crim.R. 11(C)(2)(a) states, in relevant part, that a trial court shall not accept a plea without first “[d]etermining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved.”

{¶ 15} Upon our review of the record, we find that the trial court explained each of appellant’s Crim.R. 11 rights during the plea hearing. As the excerpted portions of the plea hearing reveal, appellant affirmatively indicated that he understood the significance of the burglary charge he was pleading to, what that charge entailed, and the maximum sentence appellant faced in accepting the plea agreement. The trial court further informed appellant of the constitutional rights he was giving up in accepting the plea agreement, and appellant specifically stated his desire to give up those rights. Finally, the

trial court inquired whether anyone had coerced appellant or promised him a specific sentence in accepting the plea agreement, to which appellant twice responded, “No, Sir.” Thus, the record shows that Crim.R. 11(C) was properly followed in this case, and appellant made an intelligent, knowing, and voluntary acceptance of the plea agreement.

{¶ 16} Appellant’s first potential assignment of error is not well-taken.

II. The Trial Court’s Sentence is Not Contrary to Law.

{¶ 17} In appellant’s second potential assignment of error, counsel suggests as error that the trial court abused its discretion in sentencing appellant to thirty months in prison contrary to applicable law.

{¶ 18} The Ohio Supreme Court’s decision in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, sets forth a two-step analysis for a court to employ when reviewing felony sentences on appeal. First, appellate courts must “examine the sentencing court’s compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law.” *Id.* at ¶ 26. Second, if the first prong is satisfied, the appellate court reviews the decision imposing sentence under an abuse of discretion standard. *Id.* An abuse of discretion is “more than an error of law or judgment; it implies that the court’s attitude is unreasonable, arbitrary or unconscionable.” *Id.* at ¶ 19, quoting *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 19} Here, appellant’s counsel acknowledges that the 30-month sentence falls within the range allowed by statute and is thus not contrary to law. A felony of the third

degree is punishable by a prison term of 12, 18, 24, 30, or 36 months under R.C. 2929.14(A)(3)(b). In imposing its sentence, the trial court expressly considered the purposes of sentencing under R.C. 2929.11 and balanced the seriousness and recidivism factors under R.C. 2929.12. Accordingly, we find no abuse of discretion in the trial court's decision. While the trial court acknowledged that appellant's crime did not require a mandatory prison term, there were sufficient facts contained in the record to support the court's finding as to the seriousness of appellant's conduct and the danger appellant posed to the public.

{¶ 20} Appellant's second potential assignment of error is not well-taken.

Conclusion

{¶ 21} After independently examining the record as required by *Anders*, we have found no error prejudicial to appellant's rights in the proceedings before the trial court. We conclude that this appeal is wholly frivolous and we grant appellate counsel's motion to withdraw. We affirm the May 2, 2013 judgment of the Ottawa County Court of Common Pleas. The costs of this appeal are assessed to appellant under 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

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>.