

2019-Ohio-1135.]

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 107879
	:	
v.	:	
	:	
JOE HILL, III	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: DISMISSED

RELEASED AND JOURNALIZED: March 28, 2019

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-18-631062-A

Appearances:

Walter H. Edwards, Jr., Joe Hill, III, pro se, *for appellant.*

Michael C. O'Malley, Prosecuting Attorney, *for appellee.*

ANITA LASTER MAYS, J.:

{¶ 1} The instant case arises from a plea agreement in the trial court to a third- and fourth-degree felony by defendant-appellant Joe Hill, III (“Hill”) resulting in a 36-month sentence. Counsel appointed to represent Hill in the instant appeal filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18

L.Ed.2d 493 (1967), and requested leave to withdraw as counsel. After our thorough and independent review of the record, we grant counsel's motion to withdraw and dismiss this appeal.

{¶ 2} *Anders* held that where, after a conscientious examination of the case, appellate counsel is unable to find any meritorious issues for review, counsel may inform the court and request permission to withdraw from the case. *Id.* at 744. In addition, the request must be

accompanied by a brief referring to anything in the record that might arguably support the appeal. A copy of counsel's brief should be furnished the indigent and time allowed him to raise any points that he chooses; the court — not counsel — then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous. If it so finds it may grant counsel's request to withdraw and dismiss the appeal.

Id. If this court determines that one or more legal points have merit, the defendant will be afforded counsel to argue the appeal. *Id.*

{¶ 3} Hill pleaded guilty to one count of gross sexual imposition, a fourth-degree felony, in violation of R.C. 2907.05(A)(1); and one count of abduction, a third-degree felony, in violation of R.C. 2905.02. The trial court sentenced Hill to 18 months of imprisonment on the gross sexual imposition count and 36 months on the abduction count. Hill was ordered to serve the sentences concurrently to each other for a total term of imprisonment of 36 months.

{¶ 4} Appellant's counsel offers that there are no meritorious arguments in this case because the agreed sentence is legally valid. We agree. However, appellant's counsel asks us to reveal the following potential assignments of error:

- I. Appellant's plea was made knowingly, intelligently, and voluntarily, as the trial court fully complied with Crim.R. 11; and
- II. The trial court did not err by sentencing appellant to 36 months of imprisonment.

I. Crim.R. 11 Compliance

{¶ 5} The record demonstrates that the trial court fully complied with Crim.R. 11 and Hill's plea was knowingly, intelligently, and voluntarily made. (Tr. 7-10.)

In determining whether the trial court has satisfied its duties under Crim.R. 11(C)(2), reviewing courts distinguish between constitutional rights and nonconstitutional rights. *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, ¶ 14-21. The trial court must strictly comply with the requirements of Crim.R. 11(C)(2)(c) relating to the waiver of constitutional rights. *Id.* at ¶ 18. In *Veney*, the Ohio Supreme Court enumerated the following five constitutional rights set forth in Crim.R. 11(C)(2)(c) as: (1) the right to a jury trial; (2) the right to confront one's accusers; (3) the privilege against compulsory self-incrimination; (4) the right to compulsory process to obtain witnesses; and (5) the right to require the state to prove guilt beyond a reasonable doubt. *Id.* at ¶ 19.

State v. Carty, 8th Dist. Cuyahoga Nos. 106218 and 106302, 2018-Ohio-2739, ¶ 14.

{¶ 6} Prior to accepting the plea, the trial court established Hill's age, his ability to read and write, that he was not on parole, was a United States citizen, was not under the influence of drugs or alcohol, and that he was satisfied with his legal representation. Hill affirmed that he understood his constitutional rights to counsel; to a bench or jury trial; to subpoena witnesses on his behalf; to have the state prove his guilt beyond a reasonable doubt; and remain silent and not testify.

{¶ 7} The record also demonstrates that the trial court fully complied with Hill's nonconstitutional rights.

As to the nonconstitutional aspects of Crim.R. 11(C)(2)(a) and (b), "substantial compliance" is sufficient. *Id.* at ¶ 14. "Substantial compliance means that under the totality of the circumstances the defendant subjectively understands the implications of his plea and the rights he is waiving." *State v. Nero*, 56 Ohio St.3d 106, 108, 564 N.E.2d 474 (1990), citing *State v. Stewart*, 51 Ohio St.2d 86, 364 N.E.2d 1163 (1977); *State v. Carter*, 60 Ohio St.2d 34, 396 N.E.2d 757 (1979). "[I]f it appears from the record that the defendant appreciated the effect of his plea and his waiver of rights in spite of the trial court's error, there is still substantial compliance." *State v. Thomas*, 8th Dist. Cuyahoga No. 94788, 2011-Ohio-214, ¶ 13, quoting *State v. Caplinger*, 105 Ohio App.3d 567, 572, 664 N.E.2d 959 (4th Dist.1995).

Carty at ¶ 16.

{¶ 8} The trial court addressed Hill's understanding of the charges and potential sentence:

Okay. Mr. Hill, on September 17th, 2018 you pled guilty in Case No. 631062 to gross sexual imposition, as charged in Count 1. This is in violation of 2907.05(A)(1), a fourth degree felony, which is punishable by up to 18 months in prison and up to a \$5,000 fine. You pled guilty to abduction as charged in Count 3, in violation of 2905.02(A)(2). This is a third degree felony, which is punishable by up to 36 months in prison and up to a \$10,000 fine. You're also required to register as a Tier I sex offender. And we'll go over your duties and responsibilities later on in this hearing. In that case Count 2 was nolle. And in Case No. 629438, you pled guilty to aggravated trespass, as amended in Count 1. This is in violation of 2911.211(A), a first degree misdemeanor, punishable by up to six months of local incarceration and up to a \$1,000 fine. You pled guilty to voyeurism, as charged in Count 2, a third degree misdemeanor, which is punishable by up to 60 days of local incarceration and up to a \$5,000 fine.

(Tr. 23-24.)

{¶ 9} Hill denied that he had been threatened or coerced into accepting the plea agreement. (Tr. 7.) He also confirmed that no one “made any promises to you in exchange for a plea of guilty.” *Id.* He acknowledged that he understood “that there is no promise of any particular sentence in this case,” and that he was satisfied with his lawyer’s representation. *Id.*

{¶ 10} Hill admitted to the commission of the elements of each charge as alleged in the indictment and entered a guilty plea to each count. The record demonstrates that the trial court fully complied with Crim.R. 11 and Hill’s plea was knowingly, intelligently, and voluntarily made. (Tr. 7-10.)

II. Sentencing

{¶ 11} We review felony sentences under the standard set forth in R.C. 2953.08(G)(2). *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 16. R.C. 2953.08(G)(2) provides that when reviewing felony sentences, a reviewing court may increase, reduce, or modify a sentence, or it may vacate and remand the matter for resentencing, only if we clearly and convincingly find that either the record does not support the sentencing court’s statutory findings or the sentence is contrary to law. A sentence is contrary to law if the sentence falls outside the statutory range for the particular degree of offense or the trial court failed to consider the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the sentencing factors in R.C. 2929.12. *State v. Hinton*, 8th Dist. Cuyahoga No. 102710, 2015-Ohio-4907, ¶ 10, citing *State v. Smith*, 8th Dist. Cuyahoga No. 100206, 2014-Ohio-1520, ¶ 13.

{¶ 12} First, the sentence of 36 months did not fall outside of the statutory range for Hill's offense. R.C. 2929.14(A)(3)(b). Second, the trial court did not fail to consider the purposes and principles of felony sentencing set forth in R.C. 2929.11 and 2929.12. (Tr. 26-28.)

{¶ 13} As required by *Anders*, this court has examined and considered the arguments identified in counsel's *Anders* brief supporting the validity of the sentence. We conclude that there are no arguable legal points on the merits of this matter. This appeal is wholly frivolous pursuant to *Anders*. Counsel's request to withdraw is granted, and we dismiss this appeal.

{¶ 14} Accordingly, the appeal is dismissed.

It is ordered that the appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANITA LASTER MAYS, JUDGE

PATRICIA ANN BLACKMON, P.J., and
RAYMOND C. HEADEN, J., CONCUR