

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107532

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

HOLLEY HENTGES

DEFENDANT-APPELLANT

JUDGMENT:
DISMISSED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-17-622587-B

BEFORE: Laster Mays, J., E.A. Gallagher, P.J., and Jones, J.

RELEASED AND JOURNALIZED: January 17, 2019

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ANITA LASTER MAYS, J.:

{¶1} The instant case arises from a plea agreement in the Cuyahoga County Court of Common Pleas to three first-degree felonies by defendant-appellant Holley Hentges resulting in a 22-year prison sentence. Counsel appointed to represent Hentges 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} Hentges pleaded guilty to involuntary manslaughter amended from aggravated murder, aggravated burglary, and kidnapping. Each charge was a first-degree felony subject to a 3 to 11-year prison term and a maximum fine of \$20,000. The plea agreement was subject to the following conditions: (1) the sentence would be in the range of 15 to 25 years, (2) a sentence would be imposed on each count that Hentges pleaded guilty to, (3) the charges would not merge, and (4) the sentences would be served consecutively. Hentges and defense counsel agreed to the conditions on the record. Hentges was sentenced to 11 years for each of the three counts. Two of the three counts were run consecutively.

{¶4} Appellant counsel offers that there are no meritorious arguments in this case because the agreed sentence is legally valid. We agree.

{¶5} “[A]n agreed-upon sentence may not be appealed if (1) both the defendant and the state agree to the sentence, (2) the trial court imposes the agreed sentence, and (3) the sentence is authorized by law.” *State v. Glaze*, 8th Dist. Cuyahoga No. 105519, 2018-Ohio-2184, ¶ 13, citing R.C. 2953.08(D(1)). “If all three conditions are met, the defendant may not appeal the sentence.”

Id., citing *State v. Heisa*, 8th Dist. Cuyahoga No. 101877, 2015-Ohio-2269, ¶ 27, citing *State v. Underwood*, 124 Ohio St.3d 365, 368, 2010-Ohio-1, 922 N.E.2d 923.

{¶6} “[A] trial court’s imposition of nonmandatory consecutive sentences within an agreed sentencing range is a jointly recommended sentence that is authorized by law and not reviewable on appeal under R.C. 2953.08(D)(1).” *Glaze* at ¶ 14, citing *State v. Grant*, 8th Dist. Cuyahoga No. 104918, 2018-Ohio-1759, ¶ 29. “If [the defendant] believed a sentence at the top end of that range was improper, [he] should not have accepted a plea deal that authorized it.” *Grant* at ¶ 31, *State v. Connors*, 2d Dist. Montgomery No. 26721, 2016-Ohio-3195, ¶ 4.

{¶7} Prior to accepting the plea, the trial court established Hentges’s age and that she could read and write, was not on parole, was a United States citizen, was not under the influence of drugs or alcohol, and that she was satisfied with her legal representation. Hentges affirmed that she understood her constitutional rights to counsel, trial, subpoena witnesses on her behalf, have the state prove her guilt beyond a reasonable doubt, and remain silent and not testify.

{¶8} The trial court next addressed Hentges understanding of the charges and potential sentence:

COURT: I’ll go through the consequences now. Each felony of the first degree has the potential for [a] term of incarceration in prison of 3, 4, 5, 6, 7, 8, 9, 10 or 11 years and fines of up to \$20,000?

* * *

There is also the potential for a community control sanction. However, as part of your plea is an agreement for a prison term, so there will be a prison term that will be imposed. The agreed prison term will be from 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 or 25 years.

(Tr. 9-10.) The trial court also explained postrelease control and the penalties for violating.

{¶9} Further to the potential prison term, the trial court advised:

COURT: Do you understand also that part of the agreement is that these counts would not be allied offenses, which means there would be a separate conviction and sentence entered on each of these counts you plead guilty to and because of the range, the 15 to 25 years, part of the sentence contemplated that you are agreeing to is they would be consecutive sentences imposed in various counts, but within the range of 15 to 25 years.

DEFENDANT: For each one of them?

COUNSEL: No, total.

COURT: I couldn't get to that range without having consecutive sentences. The maximum is 11 years on the F1, do you understand?

DEFENDANT: Yes.

(Tr. 11.)

{¶10} Hentges denied that she had been threatened or coerced into accepting the plea agreement. She also confirmed the understanding that “there is no promise of any particular sentence in this matter” and the trial court was going to “sentence you in the range of 15 up to 25 years.” (Tr. 12.)

{¶11} Hentges admitted to the commission of the elements of each charge as alleged in the indictment and entered a guilty plea to each count. Defense counsel stated on the record that the trial court fully complied with Crim.R. 11 and agreed that Hentges's plea was knowingly, intelligently, and voluntarily made.

{¶12} As required by *Anders*, this court has examined and considered the arguments identified in counsel's *Anders* brief supporting the validity of the agreed 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.

{¶13} 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

EILEEN A. GALLAGHER, P.J., and
LARRY A. JONES, SR., J., CONCUR