[Cite as *State v. Bowling*, 2009-Ohio-5735.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 22909
v.	:	T.C. NO. 2006 CR 4934 A/C/D
DENNIS BOWLING	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	
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O P I N I O N

Rendered on the 30th day of October, 2009.

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FROELICH, J.

{¶ 1} Defendant-appellant Dennis Bowling appeals from his conviction and sentence, following pleas of guilty to numerous sexually oriented offenses. His assigned

counsel has filed a brief pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, stating that after a thorough review he "has been unable to locate any viable issues on appeal."

{¶ 2} On July 29, 2009, we notified the appellant that his counsel had filed such a brief and granted appellant sixty days in which to file a pro se brief assigning any errors for review by this court. We also stated that "should appellant not file a brief within the time provided by this order, we will deem the appeal submitted for a decision on the merits." No such brief has been filed. The case is now before us for our independent review of the record. *Penson v. Ohio* (1988), 488 U.S. 75, 109 S.Ct. 346, 102, L.Ed.2d 300.

{¶ 3} In four separate indictments, the defendant was charged on seventy-nine counts, including sixty-five counts of sexual battery by a clergy member, two counts of sexual battery by a coach or scout leader, two counts of sexual battery by a teacher, two counts of sexual battery by a parent, one count of gross sexual imposition by force, one count of gross sexual imposition of a minor under the age of thirteen, one count of sexual imposition, two counts of rape of a minor under the age of thirteen, and three counts of unlawful sexual conduct with a minor.

{¶ 4} On June 5, 2008, pursuant to a plea and sentencing agreement, the defendant-appellant pled guilty to two counts of sexual battery (felonies of the third degree), one count of rape of a minor under the age of thirteen (a felony of the first degree), one count of gross sexual imposition with a minor under the age of thirteen (a felony of the third degree), three counts of unlawful sexual conduct with a minor (felonies of the third degree), four counts of sexual battery (felonies of the third degree), one count of rape of a

minor under the age of thirteen (a felony of the first degree), two counts of sexual battery (felonies of the third degree), and one count of gross sexual imposition (a felony of the third degree). All the other counts were dismissed, netting pleas of guilty to thirteen felonies of the third degree and to two felonies of the first degree.

{¶ 5} The sentencing agreement provided that the defendant was to receive a sentence of not less than ten years or more than twenty years. Further, the defendant was to be designated a tier three sexual offender. A presentence investigation was ordered, and the defendant was sentenced on July 25, 2008, to twenty years at the Corrections Reception Center.

{¶ 6} The plea colloquy with the defendant was thorough and extensive. The defendant had all of his rights explained to him, and he knowingly, voluntarily, and intelligently waived them. Further, the court explained the requirement of mandatory five years post release control, and this was acknowledged by the defendant, as well as any ramifications for violation of the post release control. The defendant was advised that he would be designated a tier three offender. Counsel did make an objection to the classification.

{¶ 7} Lastly, the defendant was informed that although the court had previously denied a motion to dismiss, the defendant could not assign this as an error since, by pleading guilty, he waived any objection to any pre-plea decisions of the court; the defendant acknowledged his understanding.

{¶ 8} At sentencing, after review of the presentence investigation and statements by victims or victims' representatives, the defendant and his attorney both exercised their

opportunity to make statements. Although the defendant was sentenced to the maximum, this was less than the total which could have been imposed on all the charges to which he pled and was within the agreed range. The objection to the tier three classification is not well taken. *State v. Barker*, Montgomery App. No. 22963, 2009-Ohio-2774.

{¶ 9} In the performance of our duty under *Anders* and *Penson*, we have found no potential assignments of error having arguable merit. We conclude that this appeal is frivolous and the judgment of the trial court is affirmed.

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DONOVAN, P.J. and GRADY, J., concur.

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