[Cite as *State v. York*, 2009-Ohio-6263.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CHAMPAIGN COUNTY

STATE OF OHIO	:	
	:	Appellate Case No. 2009-CA-03
Plaintiff-Appellee	:	
	:	Trial Court Case No. 2008-CR-207
v.	:	
	:	(Criminal Appeal from
DANIELLE MAE YORK	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 25th day of November, 2009.

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FAIN, J.

{¶ 1} Defendant-appellant Danielle Mae York appeals from her conviction and sentence, following a guilty plea, upon one count of Possession of Cocaine, a fifth degree felony, and one count of Aggravated Vehicular Assault, in violation of R.C. 2903.08(A)(1)(a)(B), a felony of the third degree. In exchange for York's guilty

plea, the State agreed to dismiss one count of Vehicular Assault and three counts of Operating a Vehicle Under the Influence of Alcohol or a Drug of Abuse.

{¶ 2} York was sentenced to imprisonment for one year for Possession of Cocaine, and five years for Aggravated Vehicular Assault, the maximum terms of imprisonment for these offenses. The sentences imposed were ordered to be served concurrently.

{¶ 3} York's 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, indicating that he has not been able to find any potential assignment of error having arguable merit. After having independently reviewed the record, as required by *Anders*, neither have we. Accordingly, the judgment of the trial court is Affirmed. We note that the State did not elect to file a brief.

I

{¶ 4} In August 2008, Danielle York was indicted on one count of Aggravated Vehicular Assault, one count of Vehicular Assault, and three counts of Operating a Vehicle Under the Influence of Alcohol or a Drug of Abuse. These charges arose from an automobile accident that occurred in January 2008, when York operated a motor vehicle while under the influence of cocaine, and caused serious physical harm to Denny Howell.

{¶ 5} At the time of the accident, Mr. Howell and his daughter, Julie, were en route to the airport. Mr. Howell was a former superintendent of schools and an active member of his community. Mr. Howell suffered a severe brain injury as a

result of the accident, and at the time of the sentencing hearing, could no longer walk on his own or perform routine tasks such as feeding or dressing himself. The accident caused devastating consequences to Mr. Howell and his family, resulted in medical expenses of nearly a million dollars, and cost Mr. Howell approximately $380,000 in projected income. Julie Howell also suffered significant emotional distress at having to witness the accident and her father's severe injuries.

{¶ 6} The indictment involving the accident was filed as Champaign County Common Pleas Court Case No. 2008 CR 207, and the case was subsequently consolidated with another charge filed against York in Champaign County Common Pleas Court Case No. 2008 CR 142, for Possession of Cocaine. After being fully advised of her rights, York pled guilty to one count of Possession of Cocaine in Case No. 2008 CR 142, and one count of Aggravated Vehicular Assault in Case No. 2008 CR 207. The remaining charges were then dismissed. York was sentenced to one year in prison for Possession of Cocaine, and five years in prison for Aggravated Vehicular Assault. She was also ordered to pay restitution in the amount of $380,000. York now appeals from her conviction and sentence.

II

{¶ 7} York's appellate counsel has filed a brief pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, indicating that he has not been able to find any potential assignment of error having arguable merit. By entry of this court, York was advised of this fact, and was given sixty days within which to file her own, *pro se* appellate brief. She has not done so.

{¶ 8} In his brief, York's counsel has referred to three potential assignments of error. The first assignment of error raises the issue of whether York's guilty plea was voluntary. We agree with York's appellate counsel that, upon considering this potential assignment of error specifically, it has no arguable merit.

{¶ 9} York's attorney suggests that the trial court's colloquy with York fell below standards required by Crim. R. 11(C), because the court never told York that it could proceed to judgment and sentence upon accepting her plea. We disagree; this is not an accurate recitation of the evidence. During the plea hearing, the trial court specifically informed York about the possibility of proceeding immediately to judgment and sentence. See Transcript of November 17, 2008 Plea Hearing, p. 8. Moreover, the trial court did *not* immediately proceed to judgment and sentence. The court instead ordered a pre-sentence investigation to be conducted prior to sentencing. Id. at p. 15. The second potential assignment of error raises the issue of whether York's sentence is commensurate with sentences of similar offenders and a lesser sentence would not demean the seriousness of the offense and the impact on the victim. York's counsel contends, in this regard, that the sentence is "strikingly inconsistent" with the statutory factors as they apply to York's case. We disagree, and find that upon considering this potential assignment of error specifically, it has no arguable merit.

{¶ 10} R.C. 2929.11(B) provides that:

{¶ 11} "A sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing set forth in division (A) of this section, commensurate with and not demeaning to the seriousness of the

offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders."

{¶ 12} We have previously noted that:

{¶ 13} " 'R.C. 2929.11(B) imposes a duty upon the trial court to insure consistency among the sentences it imposes. * * * [It is] also recognized, however, that trial courts are limited in their ability to address the consistency mandate, and appellate courts are hampered in their review of this issue, by the lack of a reliable body of data upon which they can rely. * * * "[A]lthough a defendant cannot be expected to produce his or her own database to demonstrate the alleged inconsistency, the issue must at least be raised in the trial court and some evidence, however minimal, must be presented to the trial court to provide a starting point for analysis and to preserve the issue for appeal." Having failed to raise this issue at sentencing, [the defendant] cannot now argue that the sentence imposed by the trial court was inconsistent with those imposed on similar offenders.' " *State v. Bell*, Greene App. No. 2004-CA-5, 2005-Ohio-655, at ¶140, quoting from *State v. Roberts*, Cuyahoga App. No. 84070, 2005-Ohio-28, at ¶60, internal citations omitted. Accord *State v. Cantrell*, Champaign App. No. 2006 CA 35, 2007-Ohio-6585, at ¶14.

{¶ 14} York failed to raise this issue at sentencing, and she did not present any evidence to the trial court about similar offenders and their sentences. The argument, is therefore, waived.

{¶ 15} Furthermore, even if York had raised this issue in the trial court, it would have no arguable merit. The trial court sentenced York to the maximum sentences on each count, but elected not to impose the sentences consecutively.

Given the severity of the harm inflicted on the Howell family, the trial court acted within its discretion.

{¶ 16} The final issue is whether trial counsel acted ineffectively by failing to object to York's sentence. York's counsel suggests that the failure to object adversely affected York's right to due process. Counsel does not indicate how York's rights may have been impacted. We find that upon considering this potential assignment of error specifically, it has no arguable merit.

{¶ 17} "In order to prevail on a claim of ineffective assistance of counsel, a defendant must show that counsel's representation fell below an objective standard of reasonableness and that, but for counsel's errors, the result of the proceeding would have been different." *State v. Stevens*, Montgomery App. No. 19572, 2003-Ohio-6249, at ¶33, citing *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674; *State v. Bradley* (1989), 42 Ohio St.3d 136, 142.

{¶ 18} "Entry of a voluntary guilty plea waives ineffective assistance of counsel claims except to the extent that counsel's performance causes the waiver of Defendant's trial rights and the entry of his plea to be less than knowing and voluntary." *State v. Kidd*, Clark App. No., 2004-Ohio-6784, at ¶16 (citation omitted).

{¶ 19} We have already concluded that York's argument about the voluntariness of her plea has no arguable merit. All other claims of ineffective assistance of counsel have been waived. Id. Furthermore, even if the sentencing argument had not been waived, it would have no arguable merit. As we noted, the sentence was within the trial court's discretion, given the serious harm caused to the Howell family.

{¶ 20} Pursuant to *Anders v. California, supra*, we have performed our duty to review the record independently, to see if there are any potential assignments of error having sufficient merit to make the appeal not wholly frivolous. We have discovered no potential assignments of error having arguable merit.

III

{¶ 21} This court agreeing with assigned appellate counsel that there are no potential assignments of error having arguable merit, and that this appeal is wholly frivolous, the judgment of the trial court is Affirmed.

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BROGAN and GRADY, JJ., concur.

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