[Cite as *State v. Martin*, 2010-Ohio-976.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23379
v.	:	T.C. NO. 2007 CR 2741/2
BARRY MARTIN	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 12th day of March, 2010.

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Defendant-Appellant

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FROELICH, J.

{¶ 1} Appellant, Barry Martin, was arrested and indicted for one count of possession of crack cocaine, less than a gram, a felony of the fifth degree in violation of R.C.

2925.11(A). Appellant filed a motion for intervention in lieu of conviction (ILC), and on September 26, 2007, changed his plea from not guilty to guilty and intervention in lieu of conviction was granted.

{¶ 2} On March 19, 2009, appellant's ILC privileges were revoked, and he was sentenced to eight months in prison with credit for time served.

{¶ 3} A timely notice of appeal was filed and counsel was appointed. Counsel has filed a brief pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, advising the court that he believes the appeal to be without merit and furnishing the court with a brief elaborating his reasoning. The State filed a responsive brief requesting an opportunity to respond, should the court determine that an appealable issue may exist. The appellant was advised that he was granted time in which to file a pro se brief assigning any errors for review by this court and that, absent such a brief, the appeal will be submitted for decision on the merits. No such brief has been filed.

{¶ 4} 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.

{¶ 5} In his brief, counsel states that "appellant's conviction and sentencing is against the manifest weight of the evidence." He also suggests that "appellant believes his prison sentence of eight months was too harsh for a first-time felon and [he] should have received probation with drug treatment."

{¶ 6} Defendant's plea of guilty constitutes a complete admission of factual guilt that removes that issue, factual guilt, from the case. *Menna v. New York* (1975), 423 U.S. 61, 96 S.Ct. 241, 46 L.Ed.2d 195; *State v. Buhrman* (Sept. 12, 1997), Greene App. No. 96

CA 45; Crim.R. 11(B)(1). As a consequence of entering a plea of guilty in this case, defendant is precluded from arguing on appeal that his conviction is not supported by legally sufficient evidence or is against the manifest weight of the evidence. *State v. Steele*, Montgomery App. No. 23402, 2009-Ohio-6019.

{¶ 7} Regarding the eight-month sentence, it is well within the twelve-month maximum allowed for a felony of the fifth degree. In the plea transcript from September 26, 2007, the trial court told the defendant that if he successfully completed drug treatment and the other conditions, he would not have a conviction. The court then went on to say, "Since you are already on supervision [the ILC], if you are revoked from ILC, I'll send you to prison. Do you understand that?" The defendant answered affirmatively.

{¶ 8} Further, the transcript of the revocation and sentencing hearing of March 19, 2009, reflects that both counsel and the defendant had the opportunity to speak. The court noted that the defendant had been under intervention in lieu of conviction supervision for approximately a year and a half, including participation in STOP and the Volunteers of America (VOA). During this time the defendant participated in the drug court program which involves frequent contacts with the court and the probation department. In imposing the sentence, the court considered "the purposes and principles of sentencing [and] the seriousness and recidivism factors," and after reviewing the record, we see no abuse of discretion on the part of the trial court in imposing an eight-month prison term for this fifth degree felony. *State v. Barker*, Montgomery App. No. 22779, 2009-Ohio-3511, at ¶ 36-38.

{¶ 9} Accordingly, we find that the appeal is without merit and the judgment of the trial court will be affirmed.

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

Copies mailed to:

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Hon. Barbara P. Gorman