[Cite as *State v. Salmon*, 2011-Ohio-1289.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 24305
v.	:	T.C. NO. 10CR1833
ROBERT V. SALMON	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 18th day of March, 2011.

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Defendant-Appellant

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FROELICH, J.

{¶ 1} On September 28, 2010, Appellant pled guilty to one count of felonious

assault in violation of R.C. 2903.11(A)(1).

{¶ 2} Appointed counsel for Salmon filed a brief pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, stating that he was "unable to find any meritorious issues for appeal...." Salmon was advised of his counsel's *Anders* brief's representations and that he could file a pro se brief assigning any errors for review by this court. Salmon was further advised that absent such a filing, the appeal will be deemed submitted on its merits. No pro se brief has been received. 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} Salmon's appellate counsel has identified one possible "*Anders* Argument" for appeal: "Appellant's Conviction And Sentencing Is Against The Manifest Weight Of The Evidence."

{¶ 4} Salmon's guilty plea serves as a complete admission of factual guilt and, accordingly, his factual guilt is removed from further consideration. *Menna v. New York* (1975), 423 U.S. 61, 62 n. 2, 96 S.Ct. 241, 46 L.Ed.2d 195; *State v. Lane*, Greene App. No. 2010 CA 21, 2010-Ohio-5639, at ¶ 4; Crim.R. 11(B)(1). "Therefore, '[a]s 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.'" *Lane* at ¶ 4. The Appellant's brief cites to *State v. Mattson* (1985), 23 Ohio App.3d 10, which was a guilty finding after a jury trial and which, even so, has been criticized. See, e.g., *State v. Harris* (April 10, 1998), Trumbull App. No. 96-T-5512. We note that we have in several previous decisions addressed - and rejected - the exact same

assignment (that a conviction after a plea of guilty is against the manifest weight of the evidence) made in *Anders*' briefs by the same counsel. This assignment of error lacks arguable merit.

{¶ 5} The plea transcript reflects the prosecutor's reading of the indictment (which tracks the statute) and the Appellant's acknowledgment of his understanding of the charge. Prior to pleading guilty for the felonious assault, the court conducted a thorough Crim.R. 11 dialogue with the Appellant and Salmon's plea was entered voluntarily, intelligently and knowingly.

{¶ 6} The Appellant's brief states the crime involved an assault on another inmate at the Montgomery Education and Pre-Release Center and that it resulted in partial blindness and multiple stitches for the victim. Perhaps because of the court's knowledge of the allegations (the case was set for a jury trial that day), the court inquired whether the appellant had a prior felony-1 or felony-2 conviction, which would make him ineligible for consideration for community control. The Appellant said he did not have such a conviction and the court went so far as to remind him this offense was a felony of the second degree and that a subsequent "felony-1 or felony-2,. . .would be mandatory incarceration."

{¶ 7} At sentencing, after a pre-sentence investigation, the court imposed a sentence of three years, considerably less than the eight year maximum available for a felony of the second degree. He was ordered to pay restitution of $342.00 to the victim and court costs and was given credit for all time served. There were no objections by Appellant or counsel to any of the proceedings.

{¶ 8} Having conducted an independent review of the record in addition to

Salmon's single assignment of error, we find this appeal to be wholly frivolous. There are no meritorious issues for appeal. Therefore, the judgment of the trial court is affirmed.

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

Copies mailed to:

Carley J. Ingram
Byron K. Shaw
Robert V. Salmon
Hon. Barbara P. Gorman, Administrative Judge
(trial judge - Hon. Michael T. Hall)