

[Cite as *State v. Gibson*, 2015-Ohio-1938.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO

Plaintiff-Appellee

V.

GREGORY L. GIBSON

Defendant-Appellant

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Appellate Case No. 26491

Trial Court No. 2014-CR-2852/22

(Criminal Appeal from
Common Pleas Court)

OPINION

Rendered on the 15th day of May, 2015.

MATHIAS H. HECK, JR., by KIRSTEN A. BRANDT, Atty. Reg. No. 0070162,
Montgomery County Prosecutor's Office, Appellate Division, Montgomery County Courts
Building, P.O. Box 972, 301 West Third Street, Dayton, Ohio 45402
Attorney for Plaintiff-Appellee

JOHN S. PINARD, Atty. Reg. No. 0085567, 120 West Second Street, Suite 603, Dayton,
Ohio 45402
Attorney for Defendant-Appellant

HALL, J.

{¶ 1} Gregory L. Gibson appeals from his conviction for theft having a value over \$1,000 but less than \$7,500, a fifth-degree felony. The offense resulted from Gibson

cashing a check from the City of Dayton claims division in the amount of \$2,500 when the purported claim was fictitiously generated by a city employee. Gibson had two previous felony convictions, and he served a prison sentence for each. On the current charge, he was sentenced to nine months in prison and ordered to make restitution in the amount of \$2,500.

{¶ 2} Gibson=s assigned counsel has filed a brief under *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), indicating that “after a diligent review of the record and applicable case law, [he] was unable to find any meritorious issues for appeal.” (Brief of Appellant at 1).

{¶ 3} By order filed February 25, 2015, we informed Gibson of the filing of the *Anders* brief and advised him of his right to file his own brief and the time limit for doing so. Gibson has not filed anything, and the time for filing now has expired.

Potential Assignments of Error

{¶ 4} In his brief, assigned counsel identifies two potential assignments of error for our consideration, although he concludes they lack arguable merit. He notes that one could question whether the trial court conducted a proper Crim.R.11 plea and whether the appellant should have been sentenced to community control or the sentence of nine months in prison.

{¶ 5} We have reviewed in detail the transcript of the plea hearing. The trial court scrupulously adhered to the requirements of Crim.R. 11. Gibson acknowledged that he was making his plea voluntarily (T.11) and that no promises were made to him about whether he would receive community control instead of a prison sentence. (T. 7). It is apparent that any argument that the trial court failed to follow Crim.R. 11 or to insure that

the plea was voluntary lacks arguable merit and would be frivolous.

{¶ 6} With regard to the prison sentence Gibson received, we note that R.C. 2929.13(B)(1)(a) provides that an offender convicted of a non-violent fourth or fifth-degree felony shall be sentenced to community control. However, under R.C. 2929.13(B)(1)(a)(i) mandatory community control only applies if “[t]he offender previously has not been convicted of or pleaded guilty to a felony offense.” Gibson unquestionably has two previous felony convictions for which he was sent to prison. Additionally, the sentence of nine months in prison is within the range provided for a fifth-degree felony. R.C. 2929.14(A)(5). Accordingly, any argument that the sentence was improper or that the trial court was required to sentence him to community control lacks arguable merit and would be frivolous.

Anders Review

{¶ 7} We also have performed our duty under *Anders* to conduct an independent review of the record. We thoroughly have reviewed the docket, the various filings, the written transcript of the plea colloquy, the presentence investigation, and the sentencing disposition. We have found no non-frivolous issues for review. Accordingly, the judgment of the Montgomery County Common Pleas Court is affirmed.

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FROELICH, P.J., and FAIN, J., concur.

Copies mailed to:

Mathias H. Heck
Kirsten A. Brandt
John S. Pinard

Hon. Mary K. Huffman