

[Cite as *State v. Maloy*, 2015-Ohio-2178.]

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

STATE OF OHIO	:	
	:	Appellate Case No. 26278
Plaintiff-Appellee	:	
	:	Trial Court Case No. 2012-CR-2977
v.	:	
	:	(Criminal Appeal from
DARREN MALOY	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 5th day of June, 2015.

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FAIN, J.

{¶ 1} Defendant-appellant Darren Maloy appeals from his conviction, following a

guilty plea, and agreed prison sentence for Abduction, in violation of R.C. 2905.02(A)(1), with a finding, pursuant to R.C. 2967.28, that he caused, or threatened to cause, physical harm to a person during the commission of the offense. Maloy's appellate counsel has filed a brief under the authority of *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), reflecting that he could find no potential assignments of error having arguable merit. Neither can we. Accordingly, the judgment of the trial court is Affirmed.

I. The Course of Proceedings

{¶ 2} In December, 2012, Maloy was charged by indictment with Abduction, on or about September 28, 2012, in violation of R.C. 2905.02(A)(1), with an additional finding, pursuant to R.C. 2967.28, that he caused, or threatened to cause, physical harm to a person during the commission of the offense. The record reflects that Maloy was extradited from Kentucky, where he was serving a prison sentence.

{¶ 3} On May 21, 2014, Maloy pled guilty to the charge, with the additional finding. Maloy and the State agreed to an 18-month prison sentence for the offense. During the plea colloquy, the trial court indicated that it would abide by the sentencing agreement.

{¶ 4} After his guilty plea was accepted, Maloy agreed to the trial court immediately proceeding to the imposition of sentence, and waived a pre-sentence investigation. The trial court imposed the agreed upon sentence of 18 months in prison. At the conclusion of the sentencing hearing, the following colloquy occurred:

THE CLERK: Is there jail-time credit?

THE COURT: Thank you for telling me that. There wouldn't be, because he's been under the Kentucky sentence since –

THE CLERK: Okay.

THE COURT: -- this began. Is that right Mr. Scott?

MR. SCOTT [representing Maloy]: We had discussed this in chambers. Do you want a sidebar? Okay.

THE COURT: Just go ahead and tell me.

MR. SCOTT: Well, I mean we were going to -- anticipating jail time credit for him sitting here.

THE COURT: Did you come up with days?

MS. SHIA [representing the State]: No, Your Honor. I was with the understanding that there wasn't jail time credit, because of his incarceration in Kentucky. I --

THE COURT: Mr. Maloy, did you do any time here in -- that you weren't under a sentence in Kentucky? In other words, was there any day that you spent on this charge that you weren't already under a sentence in the state of Kentucky?

THE DEFENDANT: No, sir, but I was told that I would be credited from March 18th, I believe, when I got here, that I would be credited the days from that date until now.

THE COURT: Not if you're under a Kentucky sentence.

THE DEFENDANT: Okay. Well, I was not informed that. I was told that I was going to be credited. That actually changes a lot in my plea. I got screwed -- excuse my language -- even if the state of Kentucky [sic].

THE COURT: Well, before you say anything -- I don't want you to

say anything that's going to come back [sic].

Let's verify that, Mr. Schmidt, if you would. Send that.

I'll verify it, but I think I'm correct, Mr. Maloy. And then we can talk.

Why don't you have a seat over there, and I'll recall you in just a second.

(Proceedings concluded at 3:26 p.m.)

{¶ 5} There is nothing in the record in this appeal to reflect that any further proceedings were had at the sentencing hearing after the above-quoted colloquy.

{¶ 6} Maloy was sentenced to a prison term of 18 months, concurrent with the Kentucky prison sentence.¹ The trial court imposed post-release control for three years, ordered court costs to be paid in amount to be determined by the Clerk of Courts, and ordered Maloy to pay extradition costs in the amount of \$100. From his conviction and sentence, Maloy appeals.

{¶ 7} Maloy's assigned appellate counsel has filed an *Anders* brief, reflecting his inability to find any potential assignments of error having arguable merit. By entry of February 24, 2015, we allowed Maloy 60 days within which to file his own, pro se brief. He has not done so.

II. There Are No Potential Assignments of Error Having Arguable Merit

{¶ 8} Maloy's appellate counsel considered, as a potential assignment of error, the trial court's failure to award jail-time credit, but concluded that it had no arguable merit, citing *State v. Ways*, 2d Dist. Montgomery No. 25214, 2013-Ohio-293. We agree. Jail-time credit "does not include time that the prisoner was incarcerated by reason of a

¹ The record does not reflect the duration of the Kentucky prison term.

sentence previously imposed for a different offense, even if that prior sentence is one with which the present sentence is ordered to be served concurrently. *Bobo v. Dept. of Rehab & Corr.*, [10th Dist. Franklin No. 11 AP-118, 2011-Ohio-4984].” *Id.*, ¶ 20.

{¶ 9} When Maloy was extradited from Kentucky, he remained subject to his Kentucky prison sentence and could not, therefore, be released on bond. Therefore, his incarceration in the Montgomery County Jail was by reason of a sentence previously imposed for a different offense, and he was not entitled to jail-time credit.

{¶ 10} There is some indication, in the transcript of the sentencing hearing, that Maloy had mistakenly believed that he would receive jail-time credit, and that this was a factor in his decision to plead guilty. Although the sentencing hearing immediately followed the plea hearing, Maloy had already pled guilty, and had his plea accepted by the trial court, before the sentencing hearing. Therefore, the trial court did not err when it accepted Maloy’s plea – at that time there was no basis in the record for refusing to accept his plea. If, in fact, Maloy relied upon his mistaken belief that he could get jail-time credit, that could be a basis for a post-conviction motion to withdraw his plea, or possibly a petition for post-conviction relief based upon alleged ineffective assistance of trial counsel, but it would not be cognizable in this direct appeal from his conviction and sentence.

{¶ 11} Pursuant to our duty under *Anders v. California*, *supra*, we have conducted an independent review of the record. We find no potential assignments of error having arguable merit. The plea colloquy complied with Crim.R. 11, and the sentence imposed was the sentence agreed to by Maloy and the State.

III. Conclusion

{¶ 12} Because we find no potential assignments of error having arguable merit, the judgment of the trial court is Affirmed.

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HALL and WELBAUM, JJ., concur.

Copies mailed to:

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