

[Cite as *State v. Maxie*, 2015-Ohio-2179.]

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

STATE OF OHIO

Plaintiff-Appellee

v.

JAMES MAXIE

Defendant-Appellant

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C.A. CASE NO. 2014-CA-50

T.C. NO. 2013-CR-757

(Criminal appeal from
Common Pleas Court)

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OPINION

Rendered on the 5th day of June, 2015.

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Attorneys for Plaintiff-Appellee

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FROELICH, P.J.

{¶ 1} James Maxie pled guilty to one count of felonious assault, a felony of the second degree, for which he received a maximum sentence of eight years in prison. Maxie appeals from his conviction.

{¶ 2} Maxie=s appellate counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), stating that after thoroughly examining the record and the law, he found no potentially meritorious issues for appeal. By entry, we informed Maxie that his attorney had filed an *Anders* brief on his behalf and granted him 60 days from that date to file a pro se brief. No pro se brief has been filed.

{¶ 3} We have conducted our independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 109 S.Ct. 346, 102 L.Ed.2d 300 (1988), and we agree with appellate counsel that there are no potentially meritorious issues for review.

{¶ 4} On October 20, 2013, Maxie attended Bridge Community Church in North Hampton, Ohio, with his girlfriend. After the service, Maxie attacked the pastor, beating him repeatedly about the face and head with his fists. The pastor sustained a broken nose and lacerations that required suturing. Maxie was 28 years old at the time of the offense.

{¶ 5} On October 28, 2013, Maxie was indicted for felonious assault, with a repeat violent offender specification. (Maxie was previously convicted of felonious assault in 2006 in Logan County, and he served two years in prison for that offense.) Maxie entered pleas of not guilty and not guilty by reason of insanity, and his counsel requested a competency evaluation. After a competency evaluation and a hearing, at which the parties appeared and stipulated to the competency report, the trial court found Maxie to be competent to stand trial.

{¶ 6} On March 11, 2014, Maxie requested new counsel, on the ground that his counsel allegedly was not being honest with him and was responding to his inquiries sarcastically. The motion was not addressed by the trial court.

{¶ 7} Two days later, on March 13, Maxie pled guilty to felonious assault. In exchange for the plea, the State dismissed the repeat violent offender specification.

{¶ 8} At the plea hearing, the trial court inquired of Maxie whether he was under the influence of drugs, alcohol or medication, whether he understood the plea form, and whether any threats or promises had been made to him to induce his plea. Maxie expressed that he understood and was entering his plea voluntarily. The court informed Maxie of the nature of the offense, the underlying facts, and the maximum penalties, including the penalties should he violate post-release control. The court further reviewed Maxie's constitutional rights, and Maxie indicated that he understood that he was giving up those rights by pleading guilty. The trial court found that Maxie entered his plea knowingly, intelligently, and voluntarily, and found him guilty. The court ordered a presentence investigation.

{¶ 9} According to the presentence investigation report, Maxie had a juvenile adjudication for disorderly conduct, which occurred when he was 17 years old. As an adult, he had misdemeanor convictions for cruelty to animals (May 2004) and drug possession (October 2006). In November 2006, he was convicted of felonious assault in Logan County, and was sentenced to two years in prison. In March 2007, he was convicted of unlawful sexual conduct with a minor and sentenced to six months in prison, to be served concurrently with the Logan County sentence; Maxie was also required to register as a sex offender. In June 2012, Maxie was convicted of failing to register.

{¶ 10} Maxie reported to the investigator that he was sexually abused by a babysitter when he was approximately five or six years old. Maxie stated that he began drinking alcohol when he was 12 years old and that he has been a heavy drinker most of

his life, drinking from 12 to 24 beers per day. Maxie stated that he has tried to quit several times. Maxie reported that he has used marijuana for the majority of his life, but its use was sporadic. Maxie stated that he was drunk when he committed his first felonious assault and may have been “slightly intoxicated” when he committed the instant offense.

{¶ 11} Maxie reported that he has been diagnosed with bipolar disorder, major depression with psychotic features, and schizoaffective disorder. He has seen several mental health professionals over the years and has taken various medications. He reported his most recent involvement was with Mercy Mental Health over the last five years, on and off. The presentence investigation report included medical records related to Maxie’s mental health, including a 16-page discharge summary from Cumberland Hall Hospital, a psychological assessment by Mental Health Services for Clark County, and various progress notes.

{¶ 12} The presentence investigation report also included letters on Maxie’s behalf. Two chaplains, one that Maxie met during his first incarceration and the other from the Clark County Jail, wrote letters to the trial court expressing that Maxie regretted his actions and their belief that Maxie would work to better himself. Also included was a copy of the letter of apology that Maxie wrote to the pastor of Bridge Community Church and a letter from Maxie’s girlfriend on his behalf.

{¶ 13} At sentencing, defense counsel asked the court for leniency, emphasizing his client’s remorse and acceptance of responsibility for his actions. Maxie, speaking on his own behalf, expressed his remorse at his actions toward the pastor and in letting down his family. Maxie concluded, saying:

* * * I don't know how to fix this. All I can do is say I am sorry. I understand that I am looking at a prison sentence. I plan on making the best of the experience. I plan on going to school, doing programs. I plan to learn to be a productive member of society. I'm gonna try to make the absolute best of my situation, to grow beyond the situation and move forward to a beautiful tomorrow. I am in shock of my actions. In four seconds I have changed the course of many lives. I sincerely – I sincerely regret my actions [and] the negative impacts that I have caused. I am sorry, [Pastor].

In response, the State emphasized that Maxie was disruptive during the church service prior to the assault, that Maxie badly beat the pastor in church when he did not like what the pastor had to say to him, and that the event was traumatic, both physically and emotionally, for the pastor. The prosecutor further emphasized that Maxie had “already been extended a level of mercy” by the dismissal of the specification. The prosecutor noted Maxie’s criminal record and argued that the maximum sentence was necessary to adequately punish Maxie and protect the public.

{¶ 14} The trial court noted that Maxie had “a prior conviction for felonious assault, and unlawful sexual conduct with a minor. He served prison terms for both of those offenses.” The court ordered Maxie to serve eight years in prison, the maximum prison term, and to pay court costs.

{¶ 15} On appeal, Maxie’s appellate counsel states that the trial court conducted a proper Crim.R. 11 plea hearing, and counsel found no non-frivolous issues related to the plea. He further states that, although Maxie received the maximum prison sentence,

the sentence was not contrary to law and there is no longer a requirement that the trial court make statutory findings before imposing a maximum sentence. Counsel states that Maxie was informed at the sentencing hearing that court costs would be imposed and that he was properly notified of his post-release control obligation and the possible sanctions if he violated post-release control. Counsel concluded that there were no non-frivolous issues related to Maxie's sentence.

{¶ 16} Upon review of the entire record, we agree with counsel's assessment that no potentially meritorious issues for appeal exist. We find no potential claims based on the plea hearing and, although Maxie received the maximum sentence, we find no non-frivolous claim related to the sentence, based on the record in this case.

{¶ 17} The trial court's judgment will be affirmed.

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DONOVAN, J. and WELBAUM, J., concur.

Copies mailed to:

Ryan A. Saunders
Lucas W. Wilder
James Maxie
Hon. Douglas M. Rastatter