[Cite as *State v. White*, 2016-Ohio-4726.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
GREENE COUNTY

STATE OF OHIO	:	
	:	Appellate Case No. 2015-CA-37
Plaintiff-Appellee	:	
	:	Trial Court Case No. 14-CR-252
v.	:	
	:	(Criminal Appeal from
DAVION L. WHITE	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 30th day of June, 2016.

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Defendant-Appellant

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FAIN, J.

{¶ 1} Defendant-appellant Davion White appeals from his conviction and

sentence, following a plea of guilty, for Trafficking In Cocaine. White and the State agreed to a sentence of eight years in prison, which the trial court imposed. Appellate counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), in which a potential assignment of error is discussed, and found to be without arguable merit. We informed White that his counsel had filed an *Anders* brief on his behalf, and we granted him sixty days from that date in order to file a pro se brief if he so desired. In his brief, White contends that the trial court abused its discretion in imposing a sentence that is greater than the minimum.

{¶ 2} We conclude that the potential assignment of error raised by White has no arguable merit. Furthermore, after independently reviewing the record in accordance with our duty under *Anders*, we have found no potential assignments of error having arguable merit. Accordingly, the judgment of the trial court is Affirmed.

I. Course of the Proceedings

{¶ 3} White was indicted on three counts of Possession of Heroin, two counts of Trafficking in Heroin, four counts of Possession of Cocaine, and three counts of Trafficking in Cocaine, along with seven forfeiture specifications. Three of the Possession of Cocaine counts were amended from first-degree felonies to felonies of the second degree.

{¶ 4} Following a plea agreement, the State and White entered a Plea Agreement Report, in which it was stated:

> In consideration for Defendant's guilty plea as to amended Counts 5, 7 and 9, along with 7 forfeiture specifications, the State dismissed the

> remaining counts in the indictment. The State and Defendant stipulate to an 8 year mandatory prison sentence. Defendant agrees to restitution of $3,800.00 to the ACE Task Force as part of this agreement. Defendant is responsible for reimbursing the Beavercreek [Police Department] for laboratory testing fees of $750.00. The State recommends the minimum mandatory fine if Defendant is not found to be indigent.

{¶ 5} The Report was signed by the prosecuting attorney, White, and his attorney, and was filed of record. The trial court sentenced White to the agreed upon sentence.

{¶ 6} In June 2015, White moved, pro se, for leave to file a delayed appeal, which we granted. Appellate counsel was appointed. After counsel filed an *Anders* brief, indicating that she could find no potential assignments of error having arguable merit, we afforded White the opportunity to file his own, pro se brief. White's brief addresses the propriety of the sentence imposed by the trial court.

II. White's Agreed Eight-Year Sentence Is Not Subject to Appellate Review

{¶ 7} Although White's appointed counsel asserts that there are no arguably meritorious issues on appeal, she identified the following potential Assignment of Error for our consideration:

> MR. WHITE'S EIGHT-YEAR PRISON SENTENCE IS CLEARLY AND CONVINCINGLY CONTRARY TO LAW AND AN ABUSE OF THE TRIAL COURT'S DISCRETION.

{¶ 8} Counsel's brief notes a potential Assignment of Error related to sentencing.

Specifically, she argues that the record indicates, based upon statements made during sentencing and White's lack of any criminal history, that recidivism is not likely, and that his offenses are less serious than conduct normally constituting the offenses charged. However, counsel concludes that this argument has no arguable merit. We agree.

{¶ 9} R.C. 2953.08(D)(1) governs the appeal of jointly recommended sentences. It provides that "[a] sentence imposed upon a defendant is not subject to review under this section if the sentence is authorized by law, has been recommended jointly by the defendant and the prosecution in the case, and is imposed by a sentencing judge." The Supreme Court of Ohio has held that "[o]nce a defendant stipulates that a particular sentence is justified, the sentencing judge need not independently justify the sentence." *State v. Porterfield*, 106 Ohio St.3d 5, 2005-Ohio-3095, 829 N.E.2d 690, at paragraph three of the syllabus. "The General Assembly intended a jointly agreed-upon sentence to be protected from review precisely because the parties agreed that the sentence is appropriate." *Id.*, at ¶ 25. *See also State v. Sergent*, Ohio Sup.Ct. Slip Opinion No. 2016-Ohio-2696.

{¶ 10} Therefore, the agreed sentence is not subject to appellate review. Any argument to the contrary lacks arguable merit.

{¶ 11} White asserts the following assignment of error in his pro se brief:

> THE TRIAL COURT'S IMPOSITION OF A PRISON TERM GREATER THAN THE MINIMUM UPON A FIRST OFFENDER IS NOT SUPPORTED BY THE RECORD.

{¶ 12} White contends that because he is a first-time offender, he should have received the minimum sentence. He further claims that the trial court must make certain

findings before imposing a maximum sentence.

{¶ 13} Again, R.C. 2953.08(D) precludes review of a claim that the trial court failed to make statutory findings and explanations when imposing a sentence. *State v. Dennison*, 10th Dist. Franklin No. 05AP-124, 2005-Ohio-5837, ¶ 9. White's pro se assignment of error lacks arguable merit.

III. We Find No Potential Assignments of Error Having Arguable Merit

{¶ 14} Under *Anders*, we have the duty to conduct an independent review of the record. After reviewing the various filings, and the written transcripts of the plea colloquy and the sentencing disposition, we have found no potential assignments of error having arguable merit. The trial court completed a proper Crim.R. 11 colloquy with White, who voluntarily entered his plea and agreed to the terms of the sentencing agreement, both orally and in writing. In imposing the agreed sentence, the trial court properly advised White of mandatory post-release control, the imposition of costs, and the consequences related thereto.

{¶ 15} Although White was a first-time offender, he was originally charged with twelve felony counts. The sentence imposed is within the range of sentences permissible for second-degree felonies. White entered a plea of guilty after stipulating to an agreed-upon sentence.

{¶ 16} We have found no potential assignments of error having arguable merit.

IV. Conclusion

{¶ 17} No potential assignments of error with arguable merit having been found,

the judgment of the trial court is Affirmed.

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DONOVAN, P.J., and HALL, J., concur.

Copies mailed to:

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Hon. Stephen Wolaver