[Cite as *State v. Philpot,* 2014-Ohio-5839.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No. 14CA6
vs. :		
JARED W. PHILPOT,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant. :		

APPEARANCES:

COUNSEL FOR APPELLANT: Joseph H. Brockwell, 313 Oakwood Avenue, Marietta, Ohio 45750[1]

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 12-30-14

[1] Neither the State nor appellant pro se entered an appearance in this appeal.

ABELE, P.J.

{¶ 1} This is an appeal from a Washington County Common Pleas Court judgment of conviction and sentence. Jared W. Philpot, defendant below and appellant herein, pled guilty to (1) three counts of breaking and entering in violation of R.C. 2911.13(A)(1); (2) possession of criminal tools in violation of R.C. 2923.24(A); (3) theft in violation of R.C. 2913.002(A)(1); and (4) vandalism in violation of R.C. 2909.05(B)(1)(b).

{¶ 2} Appellant's counsel advised us that his review of the record reveals no meritorious issue to pursue on appeal. Thus, pursuant to Anders v. California (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, counsel requests, and we hereby grant, leave to withdraw.

{¶ 3} Although the brief assigns no error per se, counsel asks us, on page three of his brief, to consider the following issue:

> "[W]HETHER THE TRIAL COURT ABUSED ITS DISCRETION BY BY [sic] FINDING THAT THE APPELLANT WAS NOT AMENABLE TO ANY AVAILABLE COMMUNITY CONTROL SANCTION WHEN THE APPELLANT ADMITTED THAT DRUG ABUSE MOTIVATED HIS CRIMES, AND THE REGIONAL COMMUNITY-BASED CORRECTIONAL FACILITY, SEPTA, HAD INDICATED A WILLINGNESS TO TAKE THE APPELLANT."[2]

{¶ 4} The record is somewhat sparse as to the facts of the case, but it appears that appellant was linked to a number of theft offenses.[3] On March 4, 2013, the Washington County Grand Jury returned an indictment that charged appellant with the previously mentioned offenses. Appellant pled not guilty to all offenses.

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[2] SEPTA is an acronym standing for "Southeastern Probation Treatment Alternative." *State v. Franklin*, 4th Dist. Meigs No. 05CA9, 2006-Ohio-1198, at ¶2.

[3] By sparse, we mean that although allegations are set out in various motions and memoranda, the record on appeal contains no transcript of either the suppression hearing or the change of plea hearing.

{¶ 5} Subsequently, appellant agreed to plead guilty to all offenses in exchange for the State's agreement to amend the indictment and strike the language that appellant was on post-release control at the time he committed the crimes. At the November 15, 2013 hearing, the trial court endeavored to explain to appellant the consequences of his pleas and then accepted appellant's pleas.

{¶ 6} At the January 8, 2014 sentencing hearing, defense counsel indicated that although SEPTA considered his client to be "high risk," they were "certainly willing to take him." Appellant also explained to the trial court that he committed the offenses because he "f[e]ll back into drugs and fell off the wagon." The trial court, apparently unimpressed, sentenced appellant to serve twelve months in prison on each of the three breaking and entering charges with the sentences to be served consecutively for an aggregate total of thirty-six months. The court also sentenced appellant to serve twelve months for the possession of criminal tools and for theft, as well as five months for vandalism. However, the court ordered the latter sentences to be served concurrently to the sentences for breaking and entering. This appeal followed.

{¶ 7} Appellate counsel asserts that the only arguable issue is that the trial court abused its discretion by imposing a prison sentence rather than a community control sanction. However, we recently stated that trial court decisions on such matters are no longer reviewed under the abuse of discretion standard. We certainly acknowledge that criminal sentencing is an ever-changing, ever-evolving, area of the law. See *State v. Marcum*, 4th Dist. Gallia No. 13CA11, 2014-Ohio-4048, at ¶22, fn. 4. As we reiterated in *Marcum*, we now may increase, reduce, modify or vacate and remand a challenged sentence if we clearly and convincingly find either (1) that the record does not support the trial court's findings under the specified statutory provisions,

or (2) the sentence is otherwise contrary to law. Id. at ¶22; also see e.g. *State v. Brewer*, 4th Dist. Meigs No. 14CA1, 2014-Ohio-1903, 11 N.E.3d 317, at ¶37. Thus, under this standard we no longer consider whether a trial court abused its discretion. See *Marcum*, supra at ¶22; *Brewer*, supra at ¶33.

{¶ 8} Appellate counsel essentially concedes that the record supports appellant's sentence and it is not otherwise contrary to law. Moreover, our independent review of the record confirms that view. This is particularly true with regard to the first criteria. The sentencing hearing transcript reveals that the trial court paid particular attention to appellant's "12 prior felony convictions" and that appellant had committed those offenses since he was eighteen or nineteen years old "depending on his birth date." The record, we believe, amply supports the trial court's decision not to impose a community control sanction.

{¶ 9} Our task under *Anders* is to determine for appeal whether any nonfrivolous issues exist. *State v. Christian*, 11th Dist. Trumbull No. 2013–T–0055, 2014-Ohio-4882, at ¶9; *State v. Eggers*, 2nd Dist. Clarke No. 11CA48, 2012-Ohio-2967, at ¶13; *In re Unrue*, 113 Ohio App.3d 844, 846-847, 682 N.E.2d 686 (Stephenson, J. Concurring). In the case sub judice, we find no meritorious or nonfrivolous issues. Consequently, we hereby affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered the judgment be affirmed and appellee to recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Common Pleas Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted, it is continued for a period of sixty days upon the bail previously posted. The purpose of said stay is to allow appellant to file with the Ohio Supreme Court an application for a stay during the pendency of the proceedings in that court. The stay as herein continued will terminate at the expiration of the sixty day period.

The stay will also terminate if appellant fails to file a notice of appeal with the Ohio Supreme Court in the forty-five day period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Ohio Supreme Court. Additionally, if the Ohio Supreme Court dismisses the appeal prior to the expiration of said sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

McFarland, J. & Hoover, J.: Concur in Judgment & Opinion

For the Court

BY:_____

Peter B. Abele
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.