[Cite as *State v. Cargle*, 2015-Ohio-3629.]

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

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No. 14CA3661
vs.	:	
DAWNETTA A. CARGLE,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

Matthew F. Loesch, Portsmouth, Ohio, for appellant.

Dawnetta A. Cargle, Marysville, Ohio, Pro Se.[1]

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 8-25-15
ABELE, J.

{¶ 1} This is an appeal from a Scioto County Common Pleas Court judgment of conviction and sentence. Dawnetta A. Cargle, defendant below and appellant herein, pled guilty to (1) engaging in a pattern of corrupt activity in violation of R.C. 2923.32(A)(1), and (2) trafficking in drugs in violation of R.C. 2925.03(A)(1). Appellant's counsel states that he has reviewed the record and discerns 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

[1] The State of Ohio did not enter an appearance in this appeal.

we hereby grant, leave to withdraw.[2]

{¶ 2} On April 14, 2014, the Scioto County Grand Jury returned a twenty-two count indictment that charged appellant, inter alia, with the aforementioned offenses. She originally pled not guilty, but later agreed to plead guilty to the aforementioned offenses in exchange for the dismissal of the indictment's other twenty counts.[3]

{¶ 3} On September 3, 2014, the trial court questioned appellant as to whether she understood the plea agreement and her constitutional rights and, satisfied that she did, the court accepted her pleas and found her guilty. The court sentenced her to serve an aggregate total of ten years in prison and dismissed the remaining counts of the indictment. This appeal followed.[4]

{¶ 4} Once again, appellate counsel could find no meritorious argument on appeal and, from our own review of the record, we agree. We also considered the possibility that appellant did not knowingly and intelligently enter her guilty pleas, but, as counsel concedes, we find nothing in the record to suggest that this was the case.

{¶ 5} Appellant's own brief posits no assignments of error, per se, but does raise several issues. In light of our policy of extending considerable leniency to pro se litigants, See *State v.*

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[2] The only arguable issue that counsel points to in his brief is that, perhaps, appellant's guilty plea was neither knowing nor voluntary. He concedes, however, that he "cannot find any support" in the record for that proposition.

[3] Appellant also consented to an aggregate ten year prison sentence and the State would not oppose a motion for judicial release after six years.

[4] The agreement also included an agreed upon sentence of seven years on the charge of engaging in a pattern of corrupt activity and three years on the trafficking charge, with the two sentences ordered to be served consecutively to one another.

Esparza, 4th Dist. Washington No. 12CA42, 2013-Ohio-2138, at ¶5; S*tate v. Evans*, 4th Dist. Pickaway No. 11CA24, 2013-Ohio-4143, at ¶7, fn. 2, we will consider those issues despite appellant's failure to comply with App.R. 16(A)(3).

{¶ 6} The opening and closing parts of appellant's brief appear to center around a claim of constitutionally ineffective assistance of counsel. It is well-settled that criminal defendants have a right to counsel, which includes a right to effective assistance from counsel. *McCann v. Richardson*, 397 U.S. 759, 770, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970). To establish constitutionally ineffective assistance of counsel, a defendant must show that (1) counsel's performance was deficient, and (2) such deficient performance prejudiced the defense and deprived the defendant of a fair trial. See *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); also see *State v. Issa*, 93 Ohio St.3d 49, 67, 752 N.E.2d 904 (2001); *State v. Goff*, 82 Ohio St.3d 123, 139, 694 N.E.2d 916 (1998). However, both prongs of the *Strickland* test need not be analyzed if the claim can be resolved under one. See *State v. Madrigal*, 87 Ohio St.3d 378, 389, 721 N.E.2d 52 (2000). To establish the latter element, i.e. the existence of prejudice, a defendant must show that a reasonable probability exists that, but for counsel's alleged error, the result of the trial would have been different. *State v. White*, 82 Ohio St.3d 16, 23, 693 N.E.2d 772 (1988); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373, at paragraph three of the syllabus (1989).

{¶ 7} In the case sub judice, appellant's claim that trial counsel was constitutionally ineffective appears to be based on two factors. First, appellant contends that trial counsel was "not willing to review the information in the Motion for Discovery, as well as the Bill of Particulars." Thus, she seems to suggest, that trial counsel did not sufficiently review her case.

This contention fails for a number of reasons, not the least of which is the fact that (1) she cites nothing in the record to show that counsel failed to consider the bill of particulars and discovery[5], (2) her plea is an admission of guilt to charges pursuant to Crim.R. 11(B)(1), thus making the bill of particulars and discovery irrelevant[6], and (3) even if none of the foregoing were true, appellant has not demonstrated that the outcome of the case would have been otherwise. Thus, appellant cannot establish the prejudice prong of the Strickland test, even if we assume for purposes of argument that she received deficient representation.

{¶ 8} Appellant also cites the following portion of the transcript from the change of plea hearing:

> "THE COURT: What he's offering you, is you would plead to a ten year prison term and as long as you take all the programs they offer you and are not a disciplinary problem in prison, he would not oppose a judicial release at six years. Okay? You're actually eligible to file at five and a half by law, but he's not going to oppose it at six. Okay. That's your offer Do you have any questions about it?
>
> DEFENDANT: I just – I just don't understand.
>
> THE COURT: Well, what is that [sic] that you don't understand, because you're going to understand crystal clear before you leave this courtroom?
>
> DEFENDANT: I don't – I don't understand how I'm being charged with all this stuff and half of it is not true."

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[5] Contrary to suggestions otherwise in appellant's brief, the State's response to the defense's request for bill of particulars and discovery were filed more than a month in advance of the change of plea hearing.

[6] See Crim.R. 11(B)(1).

{¶ 9} Appellant appears to assert that the trial court and the State were "intimidating her with fifty years in prison" when no evidence supported those other charges. We reject this argument. First, as we mention above, appellant's plea is an admission of guilt to the two charges in the indictment to which she pled guilty. Second, even if we assume that no basis existed for the other counts of the indictment, those counts were dismissed. Appellant did not argue that no basis exists for either of the two counts for which she did plead guilty. Finally, and most important, after a guilty plea the only argument that can be raised on appeal is that the plea was not knowing, intelligent or voluntary. See e.g. *State v. Phillips*, 8th Dist. Cuyahoga No. 98047, 2012-Ohio-4823, at ¶8; *State v. Doll*, 11th Dist. Trumbull No. 2011–T–0119, 2012-Ohio-4467, at ¶13; *State v. Lane*, 3rd Dist. Allen No. 1-10-10, 2010-4819, at ¶35. Here, appellant does not make this argument and, as we earlier stated when appellate counsel raised this point in his brief, we find no evidence of such in the appellate record.

{¶ 10} Under *Anders* our task is to determine whether any nonfrivolous issues exist for appeal. *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, either suggested by appellate counsel, by appellant or from our own review of the record. Accordingly, we hereby affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee 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 Scioto 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.

Harsha, J. & McFarland, A.J.: Concur in Judgment & Opinion

For the Court

BY: _____
Peter B. Abele, 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.