

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
ERIE COUNTY

State of Ohio

Court of Appeals No. E-09-015

Appellee

Trial Court No. 2007-CR-136

v.

Laquan Brown

**DECISION AND JUDGMENT**

Appellant

Decided: May 21, 2010

\* \* \* \* \*

Kevin J. Baxter, Erie County Prosecuting Attorney, and  
Mary Ann Barylski, Assistant Prosecuting Attorney, for appellee.

Thomas M. Dusza, for appellant; Laquan Brown, pro se.

\* \* \* \* \*

HANDWORK, J.

{¶ 1} This case is before the court on appeal from the judgment of the Erie County Court of Common Pleas which, following a guilty plea on May 1, 2008, found appellant, Laquan Brown, guilty of three counts of trafficking in cocaine, each with an enhancement of selling within 1,000 feet of the boundaries of a school premises, in

violation of R.C. 2925.03(A)(1) and (C)(4)(b), each a felony of the fourth degree.

Appellant was sentenced on June 17, 2008,<sup>1</sup> to 17 months imprisonment on each count, to be run consecutively, for a total term of incarceration of four years and three months.

Additionally, appellant's postrelease control in Erie County Court of Common Pleas case No. 2000-CR-324 was terminated and appellant was sentenced to 12 months in prison, to be served consecutively to the sentences imposed in this case. Appellant was granted leave to file a delayed appeal.

{¶ 2} On December 15, 2009, appellant's counsel filed a request to withdraw pursuant to *Anders v. California* (1967), 386 U.S. 738. *Anders* and *State v. Duncan* (1978), 57 Ohio App.2d 93, set forth the procedure to be followed by appointed counsel who desires to withdraw for want of a meritorious, appealable issue. In *Anders*, the United States Supreme Court held that if counsel, after a conscientious examination of the case, determines it to be wholly frivolous he should so advise the court and request permission to withdraw. *Id.* at 744. This request, however, must be accompanied by a brief identifying anything in the record that could arguably support the appeal. *Id.* Counsel must also furnish his client with a copy of the brief and request to withdraw and allow the client sufficient time to raise any matters that he chooses. *Id.* Once these requirements have been satisfied, the appellate court must then conduct a full examination of the proceedings held below to determine if the appeal is indeed frivolous. If the appellate court determines that the appeal is frivolous, it may grant counsel's

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<sup>1</sup>The judgment entry of sentencing was journalized on July 10, 2008.

request to withdraw and dismiss the appeal without violating constitutional requirements or it may proceed to a decision on the merits if state law so requires. Id.

{¶ 3} In this case, appointed counsel for appellant has satisfied the requirements set forth in *Anders*, supra. In support of his request, counsel for appellant states that, after reviewing the record of proceedings in the trial court, and after researching the applicable law, he found no arguable issues to raise on appeal. Although counsel found no meritorious issue to present on appellant's behalf on appeal, counsel addressed the potential for raising an assignment of error regarding appellant's sentence. Appellant submitted an appellate brief in his own behalf and raises the following assignments of error for our review:

{¶ 4} "1. The trial court abused its discretion when it sentenced appellant beyond the negotiated plea agreement where the state presented insufficient evidence that appellant breached the terms of the agreement.

{¶ 5} "2. A trial court cannot impose consecutive sentences unless it makes findings as to all of the relevant statutory criteria.

{¶ 6} "3. The PRC [postrelease control] enhancement is an illegal sentence where the trial court dismissed the original case with PRC.

{¶ 7} "4. The trial court failed to comply with statutory mandate pursuant to Ohio Revised Code section 2967.28(B)(1) postrelease control, thereby voiding the sentence pursuant to the holding set forth in *State v. Bezak*, 114 Ohio St.3d 94, 868 N.E.2d 961.

{¶ 8} "5. The trial court abused its discretion when it informed appellant that he could not withdraw his plea where the court rejected the plea bargain.

{¶ 9} "6. The appellant was denied the effective assistance of counsel during the plea and sentencing hearing where he allowed the trial judge to sentence appellant to a void sentence. Thus, failed to object to the trial court violation of Ohio Revised Code section 2929.19(B)(5)."

{¶ 10} At the time appellant received the charges in this case, he was on postrelease control with respect to case 2000-CR-324. On May 1, 2008, appellant pled guilty in this case to the three counts of trafficking in cocaine, as set forth in the indictment. In exchange for his plea, the state dismissed two other cases, Erie County Court of Common Pleas case Nos. 2006-CR-427 and 2007-CR-220, the first alleging one count of trafficking, a felony of the fifth degree, and the second alleging one count of escape, and agreed to appellant being sentenced on each count of trafficking to 12 months incarceration, to be run concurrently. The state also agreed not to pursue a sentence for appellant's postrelease control violation in case 2000-CR-324. However, as stated on the record and on the plea agreement signed by appellant, the plea agreement was conditioned as follows: "Should defendant fail to appear for sentencing and/or receive any new charges, the state will argue for sentence and will ask for a PRC enhancement." Appellant was notified of the maximum sentence the trial court could impose and was told that the trial court was not required to impose the sentence to which appellant and the state agreed.

{¶ 11} Appellant was released on a personal recognizance ("O.R.") bond in the amount of \$30,000 on May 5, 2008. As a condition of his O.R. bond, appellant was under house arrest at 1221 Ransom Street, with his cousin Briana Seavers.

{¶ 12} On June 17, 2008, the matter was heard for sentencing. The state indicated that warrants had been issued for appellant on May 15, 2008, and his O.R. bond was revoked on May 19, 2008, because appellant was not at the house arrest address that he provided to the court. Additionally, appellant received new charges out of the city of Fremont, Sandusky County, Ohio, on May 16, 2008, for unauthorized use of an automobile and domestic violence.

{¶ 13} Because appellant received new charges, the state argued that appellant should be sentenced to 17 months on each count in this case, to be run consecutively, and that the trial court should impose a 12 month postrelease control violation, pursuant to R.C. 2929.141, to be run consecutively to the other sentences. Appellant and counsel conceded that he was not at the house arrest address and that he had picked up additional charges in Sandusky County. Counsel, however, argued that the charges were only misdemeanors, appellant had not yet been convicted of them, and that the original agreement for 12 months on each count, to be run concurrently, was still an appropriate sentence. After being presented with appellant's prior record, including a three-year incarceration for attempted robbery and 17 months for an aggravated assault, the fact that appellant was on postrelease control when the offenses in this case occurred, and appellant's behavior while released on O.R. bond in this case, the trial court sentenced

appellant to 17 months on each count, to be run consecutively, and 12 months for having committed the offenses in this case while on postrelease control.

{¶ 14} Appellant argues in his first assignment of error that the trial court abused its discretion by sentencing appellant beyond the negotiated plea agreement where the state presented insufficient evidence that appellant breached the terms of the agreement. We disagree.

{¶ 15} Appellant's negotiated plea agreement and sentencing was conditioned, in part, upon him receiving no new charges. While awaiting sentencing on an O.R. bond, appellant admittedly was charged with new offenses. The agreement did not require appellant to be convicted of the new charges. Accordingly, we find that there was sufficient evidence presented to permit the state to seek a more severe sentence beyond the terms of the plea agreement.

{¶ 16} We further find that appellant was fully advised of and received a sentence within the statutory limits. Although the trial court is not required to make judicial findings, it must nevertheless consider the purposes and principles of felony sentencing and the seriousness and recidivism factors, pursuant to R.C. 2929.11 and 2929.12, when sentencing appellant. *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, ¶ 38. The overriding purposes of felony sentencing are "to protect the public from future crime by the offender and others and to punish the offender." R.C. 2929.11(A). As reflected in its judgment entry of sentencing, and by having been presented with appellant's record and the offenses in this case, we find that the trial court properly considered the purposes and

principles of felony sentencing and the seriousness and recidivism factors. Accordingly, we find that the trial court did not abuse its discretion regarding appellant's sentence. Appellant's first assignment of error is therefore found not well-taken.

{¶ 17} Appellant argues in his second assignment of error that the trial court was required to make statutory findings pursuant to R.C. 2929.14(E) before imposing consecutive sentences. Appellant is incorrect. Pursuant to *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, paragraph seven of the syllabus, "[t]rial courts have full discretion to impose a prison sentence within the statutory range and are no longer required to make findings or give their reasons for imposing maximum, consecutive, or more than the minimum sentences." Accordingly, appellant's second assignment of error is found not well-taken.

{¶ 18} Appellant argues in his third assignment of error that the trial court erroneously sentenced him to a postrelease control enhancement when the trial court had dismissed the original case for which appellant was on postrelease control. Specifically, appellant argues the following:

{¶ 19} "[T]he trial court dismissed the original case where appellant had PRC. Upon conviction of the new offense, the trial court dismissed the old cases. However, the court then sentenced appellant to an enhancement above the time in which appellant could have received for the new charges."

{¶ 20} Appellant, however, is incorrect. As part of the plea agreement, the trial court dismissed 2006-CR-427 and 2007-CR-220. The 12 months incarceration for a

postrelease control violation arose out of case No. 2000-CR-324, which was never dismissed by the trial court. Accordingly, appellant's third assignment of error is found not well-taken.

{¶ 21} Appellant argues in his fourth assignment of error that the trial court failed to comply with statutory mandate, pursuant to R.C. 2967.28(B)(1), regarding postrelease control. As such, appellant argues that his sentence is void pursuant to the holding in *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250. Appellant is incorrect. The trial court informed appellant on the record and in its judgment entry that he would be subject to postrelease control upon his release from prison. Accordingly, appellant's fourth assignment of error is found not well-taken.

{¶ 22} Appellant argues in his fifth assignment of error that the trial court abused its discretion when it informed appellant that he could not withdraw his plea when the court rejected the plea bargain. Contrary to appellant's assertion, our review of the sentencing transcript reveals that appellant never requested to have his plea vacated and the trial court never informed him that if he sought such a motion, it would be denied. Accordingly, appellant's fifth assignment of error is found not well-taken.

{¶ 23} Appellant argues in his sixth assignment of error that he was denied the effective assistance of counsel due to trial counsel's failure to object to the trial court's noncompliance with R.C. 2929.19(B)(5), the trial court's denial of appellant's desire to withdraw his plea when it was determined that his 12 month sentencing agreement would not be upheld, and the imposition of a sentence for appellant's postrelease control

violation. Based on our findings that the trial court's sentence was not contrary to law, we find that counsel's representation was not deficient for failing to object to a lawful sentence. See *Strickland v. Washington* (1984), 466 U.S. 668, 686. Accordingly, appellant's sixth assignment of error is found not well-taken.

{¶ 24} Based on the foregoing and our own independent review of the record, we find no grounds for a meritorious appeal. This appeal is, therefore, found to be without merit and is wholly frivolous. Appellant's counsel's motion to withdraw is found well-taken and is hereby granted. The judgment of the Erie County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

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JUDGE

Thomas J. Osowik, P.J.

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JUDGE

Keila D. Cosme, J.  
CONCUR.

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JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.