

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

State of Ohio

Court of Appeals No. F-10-023

Appellee

Trial Court No. 10CR32

v.

Eugene E. Snyder

DECISION AND JUDGMENT

Appellant

Decided: June 10, 2011

* * * * *

Terice A. Warncke, for appellant.

* * * * *

OSOWIK, P. J.

{¶ 1} This is an appeal from a judgment of the Fulton County Court of Common Pleas which found appellant guilty of one count of felonious assault, in violation of R.C. 2903.11(A)(1), a felony of the second degree. Pursuant to a negotiated plea agreement, appellant pled guilty to felonious assault in exchange for the dismissal of one count of

aggravated arson and one count of domestic violence. For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} Appointed counsel Terice Warncke has submitted a request to withdraw pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396. In the accompanying brief filed on appellant's behalf, appointed counsel sets forth three proposed assignments of error. In support of his request to withdraw, counsel for appellant states that, after reviewing the record of proceedings in the trial court, he was unable to find any meritorious appealable issues.

{¶ 3} *Anders*, supra, sets 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 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 on a pro se basis. *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 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.*

{¶ 4} In the case before us, appointed counsel for appellant has satisfied the requirements set forth in *Anders*, supra. This court finds further that appellant was notified by counsel of his right to file an appellate brief on his own behalf; however, no pro se brief was filed.

{¶ 5} Accordingly, this court shall proceed with an examination of the potential assignments of error proposed by counsel for appellant and the entire record from below to determine if this appeal lacks merit and is, therefore, wholly frivolous.

{¶ 6} The following undisputed facts are relevant to this appeal. On January 26, 2010, in the course of a serious domestic violence incident with his wife, appellant threatened to burn the house down. Appellant poured rubbing alcohol into an ash tray and lit it. Subsequently, he doused his wife with rubbing alcohol and lit it, setting her on fire. She suffered severe burn injuries.

{¶ 7} In the wake of these events, appellant was indicted on one count of domestic violence, one count of aggravated arson, and one count of felonious assault. On July 13, 2010, appellant entered a plea of guilty to one count of felonious assault, in violation of R.C. 2903.11(A)(1), a felony of the second degree. In exchange, the remaining two counts were dismissed. On October 6, 2010, the trial court sentenced appellant to a term of incarceration of seven years out of a potential sentence of two to eight years. On October 27, 2010, appellant's counsel filed a timely motion to withdraw and an *Anders* brief. It is from that judgment that appellant's counsel brings this appeal pursuant to *Anders*, supra.

{¶ 8} Counsel sets forth three potential assignments of error:

{¶ 9} "1. WHETHER IT WAS ERROR TO FIND APPELLANT LEGALLY SANE AND COMPETENT TO STAND TRIAL.

{¶ 10} "2. WHETHER APPELLANT ENTERED HIS PLEA KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY.

{¶ 11} "3. WHETHER THE COURT ERRED BY IMPOSING A NEAR-MAXIMUM PRISON TERM."

{¶ 12} In the first proposed assignment of error, it is suggested the trial court committed prejudicial error in finding appellant legally sane and competent to stand trial. A defendant is presumed to be competent to stand trial, and the burden is on the defendant to prove by a preponderance of the evidence that he is not competent. R.C. 2945.37(G); *State v. Jordan*, 101 Ohio St.3d 216, 2004-Ohio-783, ¶ 28.

{¶ 13} The record unequivocally establishes that appellant was determined to be competent on at least two separate occasions. First, the court psychiatrist evaluated appellant and deemed appellant legally competent to face trial on March 25, 2010. In conformity with this finding, appellant's own independent mental health expert likewise concurred in this determination. Incompetency must not be equated with mere mental or emotional instability or even with outright insanity. A defendant may be emotionally disturbed or even psychotic and still be capable of understanding the charges against him and of assisting his counsel. *State v. Bock* (1986), 28 Ohio St.3d 108, 110.

{¶ 14} A trial court's finding that a defendant is competent to stand trial will not be disturbed when there is some reliable and credible evidence supporting that finding. *State v. Vrabel*, 99 Ohio St.3d 184, 2003-Ohio-3193, ¶ 33. The record encompasses ample credible evidence in support of the competency finding. We find the first proposed assignment of error not well-taken.

{¶ 15} In the second proposed assignment of error, it is suggested that appellant did not enter his plea knowingly, voluntarily, and intelligently. We need not belabor our analysis on this point. As counsel correctly states and is indicated in Crim.R. 11(B)(1), a plea of guilty is a complete admission of the defendant's guilt. The right to be informed that a guilty plea is a complete admission of guilt is nonconstitutional and therefore is subject to review under a standard of substantial compliance. *State v. Nero* (1990), 56 Ohio St.3d 106, 107. Though failure to adequately inform a defendant of his constitutional rights would invalidate a guilty plea under a presumption that it was entered involuntarily and unknowingly, failure to comply with nonconstitutional rights will not invalidate a plea unless the defendant thereby suffered prejudice. *Id.* at 108. The test for prejudice is whether the plea would have otherwise been made. *Id.*

{¶ 16} The record unambiguously shows full compliance with Crim.R. 11. The transcript of the proceedings reflects the following exchange:

{¶ 17} "The Court: Sure. Mr. Kennedy will you please place on the record what has been worked out here?"

{¶ 18} "Mr. Kennedy: Your Honor, I understand that the Defendant will withdraw his two pending motions and enter a plea of guilty to Count III of the indictment, which alleges Felonious Assault, a Felony of the second degree for which he would face anywhere from two to eight years in prison. In exchange for the plea the state has agreed to dismiss the remaining two counts in the indictment. And I understand the Court will order a Presentence Investigation Report.

{¶ 19} "The Court: Mr. Urenovitch, is that as you understand the agreement?

{¶ 20} "Mr. Urenovitch: It is, Your Honor.

{¶ 21} "The Court: Mr. Snyder, is that what you understand is going to happen today?

{¶ 22} "Mr. Snyder: Yes."

{¶ 23} The record goes on to reveal the following exchange whereby the trial court delineated the consequences to appellant:

{¶ 24} "The Court: Alright. Mr. Snyder, you may be seated. Mr. Snyder, your attorney has entered a plea of guilty on your behalf as to Count III. You in fact are concurring in that plea of guilty; is that correct?

{¶ 25} "Mr. Snyder: Yes.

{¶ 26} "The Court: Do you understand that your plea of guilty to the charge, Felonious Assault, a Felony of the second degree, is a complete admission of guilt to that offense?

{¶ 27} "Mr. Snyder: Yes.

{¶ 28} "The Court: Do you understand that that does carry a potential penalty of incarceration for a definite term of anywhere from two to eight years?

{¶ 29} "Mr. Snyder: Yes.

{¶ 30} "The Court: And a possible fine of up to \$15,000.00, and there is a presumption in favor of prison, however it is probationable. And you would be eligible for judicial release; do you understand that?

{¶ 31} "Mr. Snyder: Yes."

{¶ 32} The trial court informed appellant of the nature of the charges and the exact rights appellant waived. The colloquy further stated:

{¶ 33} "The Court: Well, before I can accept your plea, I need to assure myself you understand what is happening here today. The nature of the charges and your various Constitutional rights and that you are making a free and voluntary waiver of those rights. First, do you understand that if I accept this plea, you are giving up the right to a trial, either to the Court, which would be to a judge or to a jury...But nevertheless by entering this plea you are giving up the constitutional right to a trial; do you understand that right?

{¶ 34} "Mr. Snyder: Yes.

{¶ 35} "The Court: And you intend to give that right up?

{¶ 36} "Mr. Snyder: Yes.

{¶ 37} "The Court: So you are telling the Court that you are entering this plea freely and voluntarily, with full knowledge of your constitutional rights, charge, potential penalties and the terms of the Plea Agreement; is that correct?

{¶ 38} "Mr. Snyder: Yes.

{¶ 39} "The Court: Do you understand that if I accept this plea your right to appeal any sentence to a higher court is pretty well gone because the waivers you have executed at this time?

{¶ 40} "Mr. Snyder: Yes."

{¶ 41} The record clearly reflects that appellant's plea of guilty was entered voluntarily, knowingly, and intelligently. We find the second proposed assignment of error not well-taken.

{¶ 42} In the third proposed assignment of error, it is suggested that the trial court erred in sentencing appellant to a near-maximum sentence of seven years. As well-established by *Foster*, the trial court is vested with full discretion to impose any sentence within the statutory range without any corollary requirement to issue specific reasons or findings prior to imposition of such a sentence. *State v. Foster* (2006), 109 Ohio St.3d 1, ¶ 100.

{¶ 43} Both the transcript and sentencing entry demonstrate that the trial court carefully considered the record, the oral statements, the victim impact statement, the presentence investigation report, and the principals and purposes of sentencing as required under R.C. 2929.11. The trial court balanced the seriousness and recidivism factors as the court is required to do under R.C. 2929.12 and found appellant not amenable to community control, given the severity of the offense and overriding need to protect the public.

{¶ 44} Consistent with this, the trial court further found, pursuant to R.C. 2929.14(B), the shortest prison term possible would demean the seriousness of the offense. The record reflects the trial court sentence did not breach the statutory parameters or in any way constitute an abuse of discretion. The third assignment of error is not well-taken.

{¶ 45} The record clearly reflects that the trial court engaged in a thorough, precise and detailed colloquy with appellant. The trial court fully reviewed each element of the offense with appellant and affirmed his understanding of same. The trial court completely reviewed each of appellant's rights being waived as a result of the negotiated plea agreement. We find that the trial court properly instructed appellant as to the elements of the offense, the rights being waived, and that the record establishes that appellant's plea was in conformity with Crim.R. 11.

{¶ 46} Upon our own independent review of the record, we find no grounds for a meritorious appeal. Accordingly, this appeal is found to be without merit and is wholly frivolous. Appellant's counsel's motion to withdraw is found well-taken and is hereby granted.

{¶ 47} The decision of the Fulton County Court of Common Pleas is hereby affirmed. Appellant is ordered to pay costs pursuant to App.R.24. The clerk is ordered to serve, by regular mail, all parties, including Eugene Snyder, with notice of this decision.

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.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

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>.