

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

State of Ohio/City of Oregon

Court of Appeals No. L-11-1081

Appellee

Trial Court No. 10TRC03235-0102

v.

Thomas S. Miller

DECISION AND JUDGMENT

Appellant

Decided: July 27, 2012

* * * * *

Jack J. Brady, for appellant.

* * * * *

SINGER, P.J.

{¶ 1} Appellant appeals his conviction for operating a motor vehicle under the influence of alcohol, entered on a no contest plea in the Oregon Municipal Court.

{¶ 2} In the early morning hours of December 27, 2010, police stopped appellant, Thomas S. Miller, for driving erratically on an Oregon, Ohio street. The officer concluded that appellant was under the influence of alcohol and took him into custody.

Appellant refused an alcohol breath test and was charged with a violation of Oregon Municipal Code 333.01(a)(1)(A), operating a vehicle under the influence of alcohol.

{¶ 3} Appellant initially pled not guilty, but following negotiations with the city agreed to amend his plea to no contest. The court accepted appellant's plea, found him guilty and sentenced him to 180 days in jail, with 177 days suspended, a \$750 fine and a one-year license suspension.

{¶ 4} Appellant filed a pro se notice of appeal and appellate counsel was appointed. Counsel for appellant filed an appellate brief, but has also moved for leave to withdraw as counsel under *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). Counsel advises the court that he is unable to find a meritorious ground for appeal. Counsel has provided appellant with copies of both the appellate brief and the motion to withdraw. Included in the motion to withdraw is notice to appellant of his right to submit his own appellate brief in this appeal.

{¶ 5} The procedure to be followed by appointed counsel who desires to withdraw for want of a meritorious, appealable issue is set forth in *Anders, supra* and *State v. Duncan*, 57 Ohio App.2d 93, 385 N.E.2d 323 (8th Dist.1978). 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 request to withdraw and dismiss the appeal without violating constitutional requirements or may proceed to a decision on the merits if state law so requires. *Id.*

{¶ 6} In this case, appointed counsel for appellant has satisfied the requirements set forth in *Anders, supra*. We note further that appellant has not filed a pro se brief or otherwise responded to counsel's request to withdraw. Accordingly, we shall proceed with an examination of the potential assignment of error set forth by counsel for appellant and the entire record below to determine if this appeal lacks merit and is, therefore, wholly frivolous.

{¶ 7} Appellate counsel offers a single potential assignment of error:

The trial court erred in imposing a sentence of 180 days in Correction Center of Northwest Ohio, 177 days suspended, fine of \$750 plus court costs, and a one-year license suspension.

{¶ 8} The city ordinance under which appellant was convicted is the equivalent of R.C. 4511.19. Conviction of a violation of Oregon Municipal Code 333.01(a)(1)(A) (R.C. 4511.19(A)(1)(a)) is a first degree misdemeanor, Oregon Municipal Code 333.01(h)(1)(A); R.C. 4511.19(G)(1)(a), carries a mandatory jail term of three days, and may subject the offender to a cumulative jail term of as much as 180 days. Oregon Municipal Code

333.01(h)(1)(A); R.C. 4511.19(G)(1)(a)(i). The court may impose a fine of not less than \$375 and not more than \$1,075. Oregon Municipal Code 333.01(h)(1)(A)(3); R.C. 4511.19(G)(1)(a)(iii).

{¶ 9} When a court's sentence is within the statutory limit, it is presumed that the trial judge followed the standards for misdemeanor sentencing articulated in R.C.

2929.22. *State v. Downie*, 183 Ohio App.3d 665, 2009-Ohio-4643, 918 N.E.2d 218, ¶ 48 (7th Dist.). In this matter, the sentence imposed was within the statutory limits and there was nothing in the record to suggest that the court did not adhere to the sentencing principles. Accordingly, the potential assignment of error put forth by appellate counsel is without merit.

{¶ 10} We have also thoroughly examined the record for other errors. We note that in his notice of appeal appellant articulates several other topics: the knowing and intelligent nature of his plea, alleged personal bias by the court and the alleged breach of the plea agreement. We also note that appellant has provided no transcript of the proceedings in the trial court. Absent a transcript, we must presume the regularity of the proceedings and affirm. *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980); App.R. 9(B).

{¶ 11} Upon this record, we concur with appellate counsel that appellant's appeal is without merit. Moreover, upon our own independent review of the record, we find no other grounds for meritorious appeal. Accordingly, this appeal is found to be without

merit, and wholly frivolous. Counsel's motion to withdraw is found well-taken and is, hereby, granted.

{¶ 12} On consideration whereof, the judgment of the Oregon Municipal Court is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24. The clerk is ordered to serve all parties, including the defendant if he or she has filed a brief, 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

Arlene Singer, 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:
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