

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

State of Ohio

Court of Appeals No. L-11-1153

Appellee

Trial Court No. CR0201003073

v.

John Winfree

DECISION AND JUDGMENT

Appellant

Decided: August 3, 2012

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Frank H. Spryszak, Assistant Prosecuting Attorney, for appellee.

Stephen D. Long, for appellant.

* * * * *

SINGER, P.J.

{¶ 1} Appellant, John Winfree, appeals a judgment from the Lucas County Court of Common Pleas convicting him of burglary, a violation of R.C. 2911.12(A)(4) and (C).

{¶ 2} Appellant's appointed counsel has requested leave to withdraw in accordance with the procedure set forth in *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18

L.Ed.2d 493 (1967). In *Anders*, the United States Supreme Court held that if counsel, after a conscientious examination of the appeal, determines it to be wholly frivolous he should so advise the court and request permission to withdraw. *Id.* at 744. The request shall include a brief identifying anything in the record that could arguably support an appeal. *Id.* Counsel shall also furnish his client with a copy of the request to withdraw and its accompanying brief, and allow the client sufficient time to raise any matters that he chooses. *Id.* 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.*

{¶ 3} Here, appointed counsel has met the requirements set forth in *Anders*. Counsel also informed appellant of his right to file his own, additional assignments of error and appellate brief. Appellant has not filed an additional brief. Accordingly, this court shall proceed examining the potential assignment of error set forth by counsel and the entire record below to determine whether this appeal lacks merit deeming it wholly frivolous.

{¶ 4} On November 19, 2010, appellant was indicted on two counts of burglary. On May 5, 2011, he entered a guilty plea to burglary, a fourth degree felony. The court accepted his plea and sentenced him to serve 12 months in prison.

{¶ 5} Counsel for appellant has set forth the following potential assignments of error:

- I. Appellant was denied effective assistance of counsel.
- II. The trial court abused its discretion by accepting the appellant's guilty plea without ensuring that the plea was knowingly, intelligently and voluntarily made.
- III. The trial court abused its discretion in sentencing appellant to a term of imprisonment.

{¶ 6} In his first potential assignment of error, counsel contends that appellant was denied effective assistance of counsel. Because counsel has failed to provide this court with specific instances of alleged ineffective assistance, we are unable to conclude that the performance of appellant's counsel was deficient. Counsel's first potential assignment of error is found not well-taken.

{¶ 7} In his second potential assignment of error, counsel contends that appellant's guilty plea was not knowingly, intelligently or voluntarily made.

{¶ 8} The Supreme Court of Ohio has stated:

A trial court must strictly comply with Crim.R. 11(C)(2)(c) and orally advise a defendant before accepting a felony plea that the plea waives (1) the right to a jury trial , (2) the right to confront one's accusers, (3) the right to compulsory process to obtain witnesses, (4) the right to require the state to prove guilt beyond a reasonable doubt, and (5) the

privilege against compulsory self-incrimination. When a trial court fails to strictly comply with this duty, the defendant's plea is invalid.” *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, ¶ 31.

{¶ 9} Our review of the record shows that appellant was advised of all of these things. Accordingly, appellant’s second potential assignment of error is found not well-taken.

{¶ 10} In his third potential assignment of error, counsel contends that the court erred in sentencing him to 12 months in prison.

{¶ 11} In *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, the Supreme Court of Ohio, in striking down parts of Ohio's sentencing scheme, held that “[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.” *Id.*, at paragraph seven of the syllabus. Thus, an appellate court reviews felony sentences for an abuse of discretion. *Id.* An abuse of discretion implies that the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). When applying an abuse of discretion standard, an appellate court may not generally substitute its judgment for that of the trial court. *See Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 614 N.E.2d 748 (1993).

{¶ 12} Appellant was convicted of a fourth degree felony. Pursuant to R.C. 2929.14(A)(4), the prison term for a fourth degree felony shall be six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, or eighteen months. As appellant's sentence of 12 months is within applicable statutory parameters, we find no abuse of discretion and counsel's third potential assignment of error is found not well-taken.

{¶ 13} 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.

{¶ 14} On consideration whereof, the judgment of the Lucas County Court of Common Pleas 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 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

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, 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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