

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

City of Toledo

Court of Appeals No. L-11-1212

Appellee

Trial Court No. CRB-11-05816

v.

Brandon L. Hoffman

DECISION AND JUDGMENT

Appellant

Decided: November 16, 2012

* * * * *

Charles R. McDonald, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Brandon Hoffman appeals his conviction and sentence for domestic violence, a violation of Toledo Municipal Code 537.19(A) and a first degree misdemeanor. The ordinance makes it a crime to “knowingly cause or attempt to cause physical harm to a family or household member.” Hoffman’s wife, Tina Croghan, is the complainant on the charge.

{¶ 2} The case proceeded to a bench trial in the Toledo Municipal Court on June 20, 2011. The trial court filed its judgment on June 21, 2011, convicting Hoffman of the offense. The court imposed sentence in a July 25, 2011 judgment, and ordered Hoffman to be incarcerated for 180 days in the Corrections Center of Northwest Ohio, with 60 days of the sentence suspended. The court also credited Hoffman with 91 days for time served.

{¶ 3} Hoffman has appealed the conviction and sentence to this court through appellate counsel appointed by the trial court. Appellant's counsel advises the court, however, under procedures announced in *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), that he has thoroughly examined the record, discussed the case with appellant, and is unable to find meritorious grounds for appeal. Following *Anders* procedure, appellate counsel filed a brief setting forth potential grounds for appeal and also filed a motion to withdraw as counsel.

{¶ 4} Counsel notified appellant of his inability to find meritorious grounds for appeal and provided appellant with copies of both the *Anders* brief and his motion to withdraw. Counsel advised appellant of his right to file his own appellate brief. Appellant has not filed an additional brief.

{¶ 5} In the *Anders* brief, counsel has asserted three potential assignments of error:

Potential Assignments of Error

1. Appellant was denied effective assistance of counsel.

- 2.

2. Appellant's conviction was against the manifest weight of the evidence.

3. The trial court abused its discretion by sentencing appellant to an excessive period of incarceration.

Trial

{¶ 6} Tina Croghan was the sole witness at trial. She testified that she and appellant are married and that they have been married three years. The charges in this case relate to an incident that occurred on April 24, 2011.

{¶ 7} Ms. Croghan testified that on that date appellant was angry with her because of an incident earlier in the day in Michigan. In the incident, her cousin came to her aid and an altercation followed between her cousin and appellant. Croghan testified that afterwards she went to her Bowman Street residence in Toledo with plans to remove her belongings and move out.

{¶ 8} Croghan testified that she was asleep on the couch at the Bowman Street residence when appellant grabbed her by her arms and slammed her onto the floor. In the process, Croghan struck her head against a table leg. Croghan testified that she suffered a gash to her head and bruising to her arm from the incident. Ms. Croghan filed a police report the next day on the incident. Exhibits at trial included photographs taken by Croghan to demonstrate her injuries.

{¶ 9} The defense offered no additional trial witnesses. It challenged the credibility of Ms. Croghan through cross-examination at trial. The trial court described the testimony in these terms:

Upon cross examination of the only trial witness, Ms. Croghan indicated that a prior case from September 2009 involving some form of alleged abuse was dropped because Ms. Croghan failed to assist in its prosecution. In fact, as Ms. Croghan admitted, she had called the police several times to respond to her allegations of Domestic Violence in the past but she never followed through with attempts to file criminal complaints. She maintained a clear denial that these prior instances were fabricated.

{¶ 10} The trial court found the testimony of Ms. Croghan credible and found the defendant guilty of domestic violence.

Manifest Weight of the Evidence

{¶ 11} In *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997), the Ohio Supreme Court described appellate review of challenges to criminal convictions based on claims that a conviction is against the manifest weight of the evidence:

When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a “thirteenth juror” and disagrees with the factfinder’s resolution of the conflicting testimony. *Tibbs*, 457 U.S. at 42, 102 S.Ct. at 2218, 72 L.Ed.2d at 661. See, also, *State v. Martin* (1983), 20 Ohio App.3d

172, 175, 20 OBR 215, 219, 485 N.E.2d 717, 720-721 (“The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.”).

{¶ 12} We have reviewed the record and in our view the trial court acted within its province in resolving issues of credibility and contested fact in determining whether appellant was guilty of domestic violence in violation of Toledo Municipal Code 537.19(A). The record does not support a claim of miscarriage of justice in this verdict.

{¶ 13} We find appellant’s Potential Assignment of Error No. 2 not well-taken.

Ineffective Assistance of Counsel

{¶ 14} To prevail on a claim of ineffective assistance of counsel, a defendant must prove two elements:

First, the defendant must show that counsel’s performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the “counsel” guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient

performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

{¶ 15} Proof of prejudice requires a showing “that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694; *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), paragraph three of the syllabus.

{¶ 16} A claim of ineffective assistance of counsel that requires consideration of evidence outside the record of trial court proceedings cannot be considered on direct appeal. *State v. Hartman*, 93 Ohio St.3d 274, 299, 754 N.E.2d 1150 (2001); *State v. Carter*, 89 Ohio St.3d 593, 606, 734 N.E.2d 345 (2000).

{¶ 17} Counsel for appellant has not argued that representation by trial counsel was deficient on any specific issue. Our review of the record does not disclose that trial counsel was deficient.

{¶ 18} We find appellant’s Potential Assignment of Error No. 1 is not well-taken.

Abuse of Discretion as to Sentence

{¶ 19} Under Potential Assignment of Error No. 3, appellant asserts that the trial court abused its discretion as to sentence by imposing an excessive period of incarceration in his sentence. An abuse of discretion implies that the trial court’s attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 20} Appellant was convicted of domestic violence, a first degree misdemeanor. Under Toledo Municipal Code 501.99(a), the maximum term of imprisonment for a first degree misdemeanor is six months. The maximum fine is \$1,000. The trial court sentenced appellant to incarceration for 180 days, but suspended 60 days of the sentence. The court credited appellant with 91 days for time served. The court imposed no fine. This sentence is within the range of sentence authorized by Toledo Municipal Code 501.99(a).

{¶ 21} The overriding purposes of misdemeanor sentencing are “to protect the public from future crime by the offender and others and to punish the offender.” R.C. 2929.21(A). R.C. 2929.21(A) sets forth sentencing considerations that a court is to consider to achieve those purposes.

{¶ 22} R.C. 2929.22 sets forth factors to be considered by a court in determining the appropriate sentence for a misdemeanor. Where the court imposes a sentence within the maximum statutory limit, a reviewing court will presume the trial court followed the R.C. 2929.22 standards in determining sentence, absent evidence to the contrary. *Oregon v. Miller*, 6th Dist. No. L-11-1081, 2012-Ohio-3412, ¶ 9; *State v. Downie*, 183 Ohio App.3d 665, 2009-Ohio-4643, 918 N.E.2d 218, ¶ 48 (7th Dist.).

{¶ 23} Here the sentence imposed was within the statutory limit. We have reviewed the record including transcript of the sentencing hearing and appellant’s presentence investigative report. We find no evidence in the record to conclude that the trial court failed to consider R.C. 2929.22 factors in selecting an appropriate sentence.

We also find no basis in the record to conclude that the trial court abused its discretion as to sentence.

{¶ 24} We find appellant's Potential Assignment of Error No. 3 is not well-taken.

{¶ 25} This court, as required under *Anders*, has undertaken its own independent examination of the record to determine whether any issue of arguable merit is presented for appeal. We have found none. Accordingly, we find this appeal is without merit and wholly frivolous. We grant the motion of appellant's counsel to withdraw as counsel in this appeal and affirm the judgment of the Toledo Municipal Court. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24. The clerk is ordered to serve all parties, including Brandon Hoffman, with notice of this decision, if appellant notified the court of his address.

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

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

<p>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.</p>
