

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

State of Ohio

Court of Appeals Nos. L-10-1351
L-10-1352

Appellee

Trial Court Nos. CR0201002316
CR0201002714

v.

Daniel Wolf

DECISION AND JUDGMENT

Appellant

Decided: January 13, 2012

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and Brenda J. Majdalani,
Assistant Prosecuting Attorney, for appellee.

Tim A. Dugan, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is a consolidated appeal from judgments of the Lucas County Court of Common Pleas that found appellant guilty of one count of felonious assault with a firearm specification and one count of trafficking in marijuana following no contest pleas to both offenses pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27

L.Ed.2d 162 (1970). For the reasons that follow, the judgments of the trial court are affirmed.

{¶ 2} Appointed counsel, Tim Dugan, has submitted a request to withdraw pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). In his brief filed on appellant's behalf, appointed counsel sets forth two proposed arguments. 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 appealable issues.

{¶ 3} *Anders, supra*, and *State v. Duncan*, 57 Ohio App.2d 93, 385 N.E.2d 323 (8th Dist. 1978), 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 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.*

{¶ 4} In the case before us, appointed counsel has satisfied the requirements set forth in *Anders, supra*. This court further finds that appellant was notified by counsel of his right to file an appellate brief on his own behalf but has not done so. Accordingly, this court shall proceed with an examination of the potential assignments of error proposed by counsel for appellant and the record from below in order to determine if this appeal lacks merit and is, therefore, wholly frivolous.

{¶ 5} On October 12, 2010, appellant entered pleas of guilty to one count of felonious assault in violation of R.C. 2903.11(A)(2) with a firearm specification (case No. CR10-2316), and one count of trafficking in marijuana in violation of R.C. 2925.03(A)(2) and (C)(3)(c) in case No. CR10-2714. On October 27, 2010, appellant was sentenced to four years for the felonious assault conviction along with a mandatory three-year sentence for the firearm specification, and 16 months for the trafficking in marijuana conviction. All sentences were ordered to be served consecutively.

{¶ 6} Counsel for appellant presents the following potential arguments on appeal:

{¶ 7} “A. The Trial Court erred by not making statutory findings before sentencing Appellant to consecutive sentences.

{¶ 8} “B. The Trial Court abused its discretion by giving Appellant an unreasonable sentence that is contrary to law.”

{¶ 9} Appointed counsel’s potential arguments will be addressed together as both raise sentencing issues.

{¶ 10} Pursuant to the Ohio Supreme Court’s decision in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, “[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. Sentencing courts, however, remain required to “carefully consider the statutes that apply to every felony case. Those include R.C. 2929.11, which specifies the purposes of sentencing, and R.C. 2929.12, which provides guidance in considering factors relating to the seriousness of the offense and recidivism of the offender. In addition, the sentencing court must be guided by statutes that are specific to the case itself.” *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1, ¶ 38.

{¶ 11} Accordingly, we find no merit in the proposed argument that the trial court herein erred by not making statutory findings before imposing sentence. The record reflects that, prior to imposing sentence in each of the two cases before us on appeal, the trial court stated, pursuant to *Foster, supra*, that it had considered the record, oral statements, any victim impact statements and presentence reports prepared, as well as the principles and purposes of sentencing under R.C. 2929.11, and balanced the seriousness and recidivism factors under R.C. 2929.12. Additionally, the sentencing judgment entries

for both cases state that the trial court considered the factors set forth in R.C. 2929.11 and R.C. 2929.12.

{¶ 12} We further find that the sentences imposed were not contrary to law and were within the ranges provided by statute. Appellant's four-year sentence for his conviction for felonious assault, a second-degree felony, is within the statutory range set forth by R.C. 2929.14(A)(2). Additionally, appellant's 16-month sentence for trafficking in marijuana is clearly within the statutory range set forth in R.C. 2929.14(A)(4) for a felony of the fourth degree. Further, the trial court was required by law to impose a three-year consecutive term for the firearm specification. See R.C. 2941.145. Finally, as appellant's sentences were all within the statutory range, we find that the trial court did not abuse its discretion in imposing the sentences as set forth above. See *State v. Davidson*, 6th Dist. No. L-09-1194, 2010-Ohio-3928, 2010 WL 3292919, citing *State v. Foster*, *supra*.

{¶ 13} On consideration of the foregoing, appointed counsel's proposed arguments are without merit.

{¶ 14} In conclusion, upon our own independent review of the record, we find no grounds for a meritorious appeal. This appeal is found to be wholly without merit. Appointed counsel's motion to withdraw is found well-taken and is granted.

{¶ 15} The judgments of the Lucas County Court of Common Pleas are affirmed. Costs of this appeal are assessed to appellant.

{¶ 16} 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.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE