[Cite as *State v. Williams*, 2013-Ohio-413.]

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

State of Ohio — Court of Appeals No. WD-12-007

Appellee — Trial Court No. 10 CR 331

v.

Ricky Williams — **DECISION AND JUDGMENT**

Appellant — Decided: February 8, 2013

* * * * *

Tim A. Dugan, for appellant.

* * * * *

YARBROUGH, J.

{¶ 1} This is an *Anders* appeal. Appellant, Ricky Williams, appeals the judgment of the Wood County Court of Common Pleas, finding him guilty of engaging in a pattern of corrupt activity, and ordering him to serve a five-year prison term and pay a $5,000 fine.

I. Facts and Procedural Background

{¶ 2} Williams was indicted on July 21, 2010, on one count of engaging in a pattern of corrupt activity in violation of R.C. 2923.32(A)(1), a felony of the first degree.

The indictment identified the "corrupt activity" as trafficking in drugs, possession of drugs, involuntary manslaughter, and theft of firearms. Further, the indictment set forth thirty-two incidents in which the corrupt activity took place. Finally, the indictment specified that at least one of the incidents of corrupt activity was a felony of the first, second, or third degree. Thus, R.C. 2923.32(B)(1) applied, and the felony level was amplified from a felony of the second degree to a felony of the first degree.

{¶ 3} Williams was arraigned on August 2, 2010, at which time he pled not guilty. However, on May 9, 2011, Williams entered a plea of guilty, in exchange for the state's promise to recommend a six-year prison sentence.

{¶ 4} During the plea hearing, the state indicated that, had the case gone to trial, it would have presented testimony from law enforcement personnel that Williams was part of a criminal organization involving the sale and transport of highly purified heroin. Specifically with regard to Williams, the state said that it would have introduced evidence showing that an undercover ATF agent purchased the heroin from Williams on multiple occasions from February 8, 2010 to February 19, 2010.

{¶ 5} At the conclusion of the state's recitation of the facts that would have been introduced at trial, the court concluded that a factual basis existed for Williams' guilty plea. A Crim.R. 11 colloquy followed, and the court ordered the preparation of a presentence investigation report.

{¶ 6} During the presentence investigation process, Williams indicated that he intended to withdraw his guilty plea. Following a hearing on the matter, the trial court granted Williams' request to withdraw his guilty plea.

{¶ 7} After further plea bargaining with the state, Williams reentered his guilty plea in exchange for the state's recommendation of a five-year prison term. Another Crim.R. 11 colloquy followed, and the guilty plea was accepted by the court.

{¶ 8} On December 19, 2011, the court sentenced Williams to a prison term of five years. Additionally, the court ordered Williams to pay a fine of $5,000 and submit to DNA testing pursuant to R.C. 2907.07. Following appointment of appellate counsel, Williams timely appealed. Williams' counsel has filed a motion to withdraw as appointed counsel pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).

II. Analysis

{¶ 9} *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. *Anders* at 744. This request, however, must be accompanied by a brief identifying anything in the record that could arguably support the appeal. *Id.*

{¶ 10} 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.*

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

{¶ 12} In his brief, Williams' counsel assigns the following possible grounds for appeal: (1) unreasonable sentence that is contrary to law; and (2) ineffective assistance of counsel.

Excessive or Improper Sentence

{¶ 13} In Williams' first possible assignment of error, his counsel argues that the imposition of a five-year sentence is contrary to law, and that it is an abuse of discretion.

{¶ 14} The Ohio Supreme Court decision in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, sets forth a two-step analysis to be employed in

reviewing felony sentences on appeal. First, appellate courts are required to "examine the sentencing court's compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law." *Id.* at ¶ 26. Second, if the first prong is satisfied, the appellate court reviews the decision imposing sentence under an abuse of discretion standard. *Id.*

{¶ 15} Here, Williams' counsel acknowledges that the sentence falls within the range allowed by statute. Indeed, a felony of the first degree is punishable by a prison term of up to eleven years. R.C. 2929.14(A)(1). A choice of sentence from within the permissible statutory range cannot, by definition, be contrary to law. *Id.* at ¶ 15. Further, the trial court stated:

> In determining the sentence, the record, all oral statements, the presentence report, the pertinent financial information contained in the presentence report that reflect upon the offender's present and future ability to pay any financial sanctions imposed, the purposes and principles of sentencing as well as the seriousness and recidivism factors were carefully reviewed.

Finally, the court properly notified Williams that he would be subject to a five-year term of postrelease control. Thus, the first prong under *Kalish* is satisfied.

{¶ 16} Next, we determine whether the trial court abused its discretion. 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).

{¶ 17} We note at the outset that trial courts may reject plea agreements and are not bound by the state's recommended cap. *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, ¶ 28. However, the trial court actually sentenced Williams to the recommended prison term. Prior to sentencing Williams to the recommended prison term, the trial court examined Williams' criminal history and noted that Williams had "a history of misdemeanor criminal convictions." In addition, the trial court reviewed the sentences imposed upon Williams' codefendants and considered the nature of the offense prior to imposing the sentence.

{¶ 18} With those considerations in mind, the trial court decided to adopt the recommended sentence of five years. That decision is supported by the record, and is not a product of an unreasonable, arbitrary, or unconscionable attitude. Thus, we conclude that the trial court did not abuse its discretion when it sentenced Williams to five years in prison. Accordingly, counsel's first potential assignment of error is not well-taken.

Ineffective Assistance of Counsel

{¶ 19} In the second potential assignment of error, Williams' counsel argues that Williams received ineffective assistance of counsel.

{¶ 20} To support a claim for ineffective assistance of counsel, Williams must satisfy the two-prong test developed in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). That is, Williams must show counsel's performance

fell below an objective standard of reasonableness, and a reasonable probability exists that, but for counsel's error, the result of the proceedings would have been different. *Id.* at 687-688, 694.

{¶ 21} Here, Williams received effective assistance of counsel. First, Williams' counsel performed competently during the discovery process, resulting in the production of "hundreds if not thousands of pages of discovery." Second, Williams' counsel was able to negotiate an acceptable plea agreement with the state that resulted in a prison term well below the statutory maximum. Third, Williams' counsel successfully argued on his behalf at the hearing on Williams' request to withdraw his guilty plea. Finally, during the plea hearing, Williams stated that he was satisfied with his counsel. Upon our consideration of the record, we find nothing that would indicate that the performance of Williams' counsel was less than reasonable. Accordingly, counsel's second potential assignment of error is not well-taken.

{¶ 22} Finally, this court, as required under *Anders*, has undertaken our own examination of the record to determine whether any issue of arguable merit is presented for appeal. We have found none. Accordingly, we grant the motion of counsel to withdraw.

III. Conclusion

{¶ 23} The judgment of the Wood County Court of Common Pleas is affirmed. Costs are assessed to Williams pursuant to App.R. 24. The clerk is ordered to serve all parties 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

Thomas J. Osowik, J. _____
JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.
JUDGE