

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

City of Toledo

Court of Appeals No. L-12-1303

Appellee

Trial Court Nos. CRB-09-16033-0204

CRB-11-20365-0101

v.

CRB-12-13992-0101

TRD-09-19064-0103

Darryl L. White

DECISION AND JUDGMENT

Appellant

Decided: December 30, 2013

* * * * *

Robert L. Solt IV, for appellant.

* * * * *

YARBROUGH, J.

I. Introduction

{¶ 1} This is an *Anders* appeal. Appellant, Darryl White, appeals from the judgment of the Toledo Municipal Court, convicting him of numerous offenses following a plea of no contest, and sentencing him to 18 months in jail. We affirm.

A. Factual and Procedural Background

{¶ 2} Appellant has accumulated several misdemeanor charges. In 2009, in case No. TRD-09-19064, he was charged with driving on a suspended operator's license, open container, and failure to wear a seatbelt. At the same time, in case No. CRB-09-16033, appellant was charged with obstructing official business, resisting arrest, possession of drug paraphernalia, and drug abuse. He was arraigned and entered an initial plea of not guilty.

{¶ 3} Later that year, appellant was additionally charged with domestic violence, assault, obstructing official business, and drug abuse in case No. CRB-09-18045. Appellant subsequently consented to the issuance of a temporary protection order relating to the alleged victim of the domestic violence charge.

{¶ 4} All of the cases were set for trial on May 4, 2010. However, on that day, appellant failed to appear and a bench warrant was issued.

{¶ 5} On December 30, 2011, a complaint was filed for the charge of recklessly violating a protection order. This charge was assigned case No. CRB-11-20365-0101. On August 3, 2012, a second complaint was filed for the charge of recklessly violating a protection order, which was assigned case No. CRB-12-13992-0101.

{¶ 6} All of the cases were set for trial on September 26, 2012. On that date, appellant withdrew his prior not guilty pleas and pleaded no contest to the charges of resisting arrest in violation of Toledo Municipal Code 525.09, a misdemeanor of the second degree (CRB-09-16033-0204), driving on a suspended license in violation of

Toledo Municipal Code 335.07, a misdemeanor of the first degree (TRD-09-19064-0103), and the two charges of recklessly violating a protection order in violation of Toledo Municipal Code 537.27, misdemeanors of the first degree (CRB-11-20365-0101 and CRB-12-13992-0101). The remaining nine charges were dismissed.

{¶ 7} The trial court accepted appellant's plea, found him guilty, and proceeded immediately to sentencing. The court heard statements in mitigation from appellant's attorney and from appellant himself. The court also received statements from the state and the victim. In particular, the victim stated that she was living in fear of appellant, and was afraid that when he was under the influence he could kill her. The court then sentenced appellant to 90 days in jail on the count of resisting arrest, to run concurrently to 180 days in jail on the count of driving on a suspended license. The court further ordered that sentence to be served consecutively to two consecutive terms of 180 days in jail on the two counts of recklessly violating a protection order, for a total jail term of 540 days.

{¶ 8} Appellant has timely appealed.

B. *Anders* Requirements

{¶ 9} Appointed counsel has filed a brief and requested leave to withdraw as counsel pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). Under *Anders*, if, after a conscientious examination of the case, counsel concludes the appeal to be wholly frivolous, he or she should so advise the court and request permission to withdraw. *Id.* at 744. This request must be accompanied by a brief

identifying anything in the record that could arguably support the appeal. *Id.* In addition, counsel must provide the appellant with a copy of the brief and request to withdraw, and allow the appellant sufficient time to raise any additional matters through the filing of his or her own appellate brief. *Id.* Once these requirements are satisfied, the appellate court is required to conduct an independent examination of the proceedings below to determine if the appeal is indeed frivolous. *Id.* If it so finds, the appellate court may grant counsel's request to withdraw, and decide the appeal without violating any constitutional requirements. *Id.*

{¶ 10} In his brief, counsel asserts two potential assignments of error:

1. APPELLANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL.

2. THE TRIAL COURT ABUSED ITS DISCRETION BY SENTENCING APPELLANT TO AN EXCESSIVE PERIOD OF INCARCERATION.

{¶ 11} Appellant initially filed a pro se brief, which we struck for failure to comply with numerous rules governing appellate briefs. We then granted appellant additional time to file an amended brief, and further granted an extension of time for appellant to file his amended brief. Appellant, however, has not filed the amended brief.

II. Analysis

{¶ 12} In the first potential assignment of error, counsel raises the argument that trial counsel was ineffective. To succeed on a claim of ineffective assistance of counsel,

appellant must satisfy the two-step process set forth in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). First, he must show that counsel's performance fell below an objective standard of reasonableness. Then, he must show that a reasonable probability exists that but for counsel's error, the result of the proceedings would have been different. *Id.* at 687-688, 696.

{¶ 13} Here, appointed counsel does not identify any specific instances of conduct by trial counsel that could constitute ineffective assistance. Further, our thorough review of the record does not reveal any conduct in the performance of negotiating a plea deal—which resulted in the dismissal of nine charges—that falls below an objective standard of reasonableness. Accordingly, we find the first potential assignment to be without merit, and it is not well-taken.

{¶ 14} In the second potential assignment of error, counsel challenges the length of appellant's sentence. We review misdemeanor sentences for an abuse of discretion. *State v. Ostrander*, 6th Dist. Fulton No. F-10-011, 2011-Ohio-3495, ¶ 28, citing *State v. Cossack*, 7th Dist. Mahoning No. 08 MA 161, 2009-Ohio-3327, ¶ 20.

{¶ 15} In imposing a sentence for a misdemeanor offense, a trial court must consider the purposes and principles of misdemeanor sentencing as set forth in R.C. 2929.21, as well as the sentencing factors set forth in R.C. 2929.22. The failure to do so constitutes an abuse of discretion. *State v. Dominijanni*, 6th Dist. Wood No. WD-02-008, 2003-Ohio-792, ¶ 6. Nevertheless, when a misdemeanor sentence is imposed within the statutory limits, a reviewing court will presume that the judge followed the statutes,

absent evidence to the contrary. *Toledo v. Reasonover*, 5 Ohio St.2d 22, 213 N.E.2d 179 (1965), paragraph one of the syllabus; *State v. Townsend*, 6th Dist. Lucas No. L-01-1441, 2002-Ohio-4077, ¶ 6.

{¶ 16} Here, the sentences are within the statutory limits. *See* R.C. 2929.24 (court may sentence an offender to a definite jail term of not more than 180 days for a misdemeanor of the first degree); R.C. 2929.41(B)(1) (jail terms may be ordered to be served consecutively, but the aggregate term shall not exceed 18 months). In addition, appointed counsel does not point to any evidence in the record to show that the trial court failed to comply with the sentencing statutes. We have also reviewed the record, and determine that upon consideration of the nature of appellant's conduct, his criminal history, and the impact upon the victim, the trial court did not abuse its discretion in sentencing appellant to a total jail term of 540 days.

{¶ 17} Accordingly, the second proposed assignment of error is not well-taken.

III. Conclusion

{¶ 18} 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 appellant's counsel to withdraw.

{¶ 19} The judgment of the Toledo 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 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

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>
