

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

State of Ohio

Court of Appeals No. S-11-027

Appellee

Trial Court No. 10 CR 830

v.

Lance Brooks

DECISION AND JUDGMENT

Appellant

Decided: January 18, 2013

* * * * *

Christopher S. Clark, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} This matter is before the court on the judgment of the Sandusky County Court of Common Pleas wherein, on January 13, 2011, appellant, Lance Brooks, pled to and was found guilty of aggravated vehicular assault, in violation of R.C. 2903.08(A)(2)(b), a felony of the third degree, the second count in the indictment. Appellant failed to appear for his original sentencing date of March 14, 2011, and a

capias was issued for his arrest. Appellant was eventually sentenced on June 9, 2011,¹ to five years in prison, to be served consecutively to the term he was then serving out of Cuyahoga County. A nolle prosequi was entered as to the first count in the indictment, and appellant was ordered to pay costs and restitution in the amount of \$3,400. Appellant was appointed counsel and a notice of appeal was timely filed.

{¶ 2} On April 10, 2012, appellant's counsel filed an amended request to withdraw pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, for lack of a meritorious, appealable issue. Although counsel found no meritorious issue to present on appellant's behalf, counsel addressed the potential for raising the following assignments of error:

I. The trial court denied appellant due process when it failed to adequately explain to appellant the effect of a mandatory sentence. This error adversely affect appellant's ability to enter a plea that was knowing, voluntary and intelligent.

II. Trial court abused its discretion by imposing an unreasonable sentence that is contrary to law.

Although notified, appellant never raised any matters for our consideration. No response was filed by the state.

{¶ 3} *Anders* 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

¹ Appellant's judgment entry of sentencing was journalized on June 13, 2011.

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 it may proceed to a decision on the merits if state law so requires. *Id.* In this case, appointed counsel for appellant has satisfied the requirements set forth in *Anders*.

{¶ 4} In the first proposed assignment of error, appellant's counsel suggests that the trial court violated appellant's rights to due process by failing to inform him of the effect of a mandatory sentence, as required by R.C. 2903.08. In order to protect the defendant's due process rights, Crim.R. 11(C)(2)(a) provides that the trial court shall not accept a guilty plea without first addressing the defendant personally and "[d]etermining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and if applicable, that the defendant is not

eligible for probation or for the imposition of community control sanctions at the sentencing hearing.”

{¶ 5} Pursuant to R.C. 2929.14(A)(3)(a), having been previously convicted in two or more separate proceedings, the possible sentence for appellant’s conviction was 12, 18, 24, 30, 36, 42, 48, 54, or 60 months. At his plea hearing, appellant was informed of his constitutional rights, voluntarily gave up those rights, was informed of the possible maximum sentence of five years, was told he was not eligible for community control, and was explained the terms of postrelease control. Appellant indicated that no promises had been made to get him to enter the plea. Based upon our review, we find that appellant was informed of the maximum potential sentence for his offense, as required by Crim.R. 11(C), and entered his guilty plea knowingly, intelligently and voluntarily.

{¶ 6} In the second proposed assignment of error, appellant’s counsel suggests that the trial court abused its discretion by imposing a sentence that was unreasonable. Specifically, counsel states that the nature of the crime would not appear to justify a sentence to serve the maximum period of confinement allowed by R.C. 2929.14(A)(3)(a). 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). Given appellant’s extensive criminal record, including nine convictions for driving under suspension and six convictions for driving under the influence, we find that the trial court’s imposition of the maximum sentence allowed by statute was not an abuse of discretion.

{¶ 7} Based upon the foregoing and our own independent review of the record, we find that counsel for appellant correctly determined that no meritorious issue for appeal is present in this case. This appeal, therefore, is found to be without merit and is wholly frivolous. As such, appellant's counsel's motion to withdraw is found well-taken and ordered granted. The judgment of the Sandusky County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

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

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>.