[Cite as *State v. Bellamy*, 2013-Ohio-1271.]

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

State of Ohio — Court of Appeals No. L-12-1157

Appellee — Trial Court No. CR0201103086

v.

Dakila Bellamy — **DECISION AND JUDGMENT**

Appellant — Decided: March 29, 2013

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
David F. Cooper, Assistant Prosecuting Attorney, for appellee.

Timothy W. Longacre, for appellant.

* * * * *

JENSEN, J.

{¶ 1} Defendant-appellant, Dakila Bellamy, appeals the May 9, 2012 judgment of the Lucas County Court of Common Pleas. The trial court sentenced appellant to two six-year terms of incarceration to be served consecutively. Acting pro se, appellant appealed, and counsel was appointed for purposes of this appeal only. Appointed counsel

has filed a "no merit" brief and requested leave to withdraw from the case, pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). For the following reasons, we affirm the judgment below and grant counsel's motion to withdraw.

{¶ 2} On December 27, 2011, appellant was indicted on three counts of robbery, all felonies of the second degree. At a plea hearing on April 16, 2012, appellant pled guilty to Counts 1 and 3 of the indictment, and Count 2 was dismissed. Counts 1 and 3 involved two separate incidents of purse snatching whereby appellant used physical force and injured his victims, both elderly women. Pursuant to Crim.R. 11, the trial court advised appellant of the effect of his guilty pleas including the waiver of various constitutional rights and the maximum penalties he faced. The court determined that appellant was making the pleas without threat or promise. With regard to the prison sentence, the following exchange took place:

> THE COURT: As I stated, you are entering a plea to two felonies of the second degree. Do you understand that each of those offenses carries a basic prison term of two to eight years?
>
> THE DEFENDANT: Yes.
>
> THE COURT: So as you stand here today you're facing a total of 16 years in a state institution. Do you understand that?
>
> THE DEFENDANT: Yes.

THE COURT: And each of those offenses carries a possible fine of up to $15,000. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: So you are facing a total possible fine of up to $30,000. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Are you on probation or parole?

THE DEFENDANT: Yes.

THE COURT: Do you understand that by entering this plea that could result in your probation or parole being violated?

THE DEFENDANT: Yes.

THE COURT: And any sentence that you would receive in this case may run consecutive to any sentence you would receive in the other case if you're found to be in violation of your probation or parole?

THE DEFENDANT: Yes.

THE COURT: And knowing that do you still wish to go forward with the plea?

THE DEFENDANT: Yes.

{¶ 3} At the conclusion of the hearing, the trial court accepted appellant's guilty plea, found appellant guilty and referred the matter to the probation department for a presentence report.

{¶ 4} On May 9, 2012, the trial court sentenced appellant to a term of six years as to each count, to be served consecutively for a total period of incarceration of 12 years. The trial court also ordered that the sentences be served consecutive to the sentence imposed by the Erie County Court of Common Pleas (case No. CPC2001-CR144). At the conclusion of the hearing, appellant asked to withdraw his plea on the basis that he did not like the consecutive nature of the sentence. The trial court denied the request, and this appeal followed.

{¶ 5} On December 13, 2012, appellant's appointed counsel filed a motion to withdraw as counsel for lack of a meritorious, appealable issue under *Anders; see also State v. Duncan,* 57 Ohio App.2d 93, 385 N.E.2d 323 (8th Dist.1978). In *Anders*, the United States Supreme Court set forth the procedure to be followed by appointed counsel who desires to withdraw for want of a meritorious, appealable issue. The 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*, 386 U.S. at 744, 87 S.Ct. 1396, 18 L.Ed.2d 493. 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.*

{¶ 6} Appellant's counsel advises the court that he has thoroughly examined the record and is unable to find meritorious grounds for appeal. Following *Anders* procedure, appellate counsel filed a motion to withdraw from the case and a brief setting forth potential grounds for appeal. Counsel provided appellant with both filings and advised him of his right to file his own appellate brief. Appellant has not filed an additional brief or otherwise responded.

{¶ 7} Next, we examine the potential assignment of error and the entire record below to determine if this appeal lacks merit and is, therefore, wholly frivolous. In the *Anders* brief, counsel raised the following:

> I. THE TRIAL COURT ERRED BY NOT EXPRESSLY INFORMING THE DEFENDANT-APPELLANT AT THE TIME OF HIS PLEA OF THE POSSIBILITY OF CONSECUTIVE SENTENCES IN THIS MATTER THUS MAKING THE PLEA OF GUILTY NOT INTELLIGENTLY AND KNOWINGLY MADE.

{¶ 8} Before accepting a guilty plea, Crim.R. 11(C)(2) requires that the trial court inform a defendant of the constitutional rights he is waiving by entering the plea. The rule provides:

> In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest

without first addressing the defendant personally and doing all of the following:

(a) Determining 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.

(b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.

The underlying purpose of the rule is to insure that certain information is conveyed to the defendant which would allow him to make a voluntary and intelligent decision regarding whether to plead guilty. *State v. Ballard*, 66 Ohio St.2d 473, 479-480, 423 N.E.2d 115 (1981). With respect to constitutional rights, a trial court must strictly comply with the dictates of Crim.R. 11(C). *State v. Colbert*, 71 Ohio App.3d 734, 737, 595 N.E.2d 401

(11th Dist.1991). For nonconstitutional rights, the trial court must substantially comply, provided no prejudicial effect occurs before a guilty plea is accepted. *State v. Stewart*, 51 Ohio St.2d 86, 364 N.E.2d 1163 (1977). Crim.R. 11(C)(2)(a) requires that the trial court inform the defendant of the maximum penalty, including any mandatory prison term. This mandate does not involve a constitutional right and, therefore, requires substantial compliance with the rule. *State v. Abuhashish*, 6th Dist. No. WD-07-048, 2008-Ohio-3849, ¶ 33. In determining whether or not that requirement was met, "[t]he key is whether the defendant had actual notice of the maximum sentence involved." *Abuhashish* at ¶ 35.

{¶ 9} Upon review of the record, it is clear that appellant was, in fact, advised of the maximum penalties that could be imposed. Indeed, the trial court informed appellant that each count carried a prison term of two to eight years and that appellant "face[d] a total of 16 years in a state institution." It also informed appellant that his sentence could "run consecutive to any sentence [he] would receive in the [Erie County case] * * *." We find that the trial court complied with Crim.R. 11. As appellant entered his plea knowingly, intelligently, and voluntarily, the court did not err in accepting appellant's plea. Appellant's potential assignment of error is not well-taken.

{¶ 10} 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 counsel's motion to withdraw as counsel and affirm the

judgment of the Lucas County Court of Common Pleas. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal. 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

James D. Jensen, J. _____
CONCUR.
JUDGE