

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

State of Ohio

Court of Appeals No. S-12-034

Appellee

Trial Court No. 12 CR 462

v.

Mary J. Orona

DECISION AND JUDGMENT

Appellant

Decided: September 20, 2013

* * * * *

Jon M. Ickes, for appellant.

* * * * *

SINGER, P.J.

{¶1} Appellant, Mary Orona, appeals from the September 6, 2012 judgment of the Sandusky County Court of Common Pleas convicting her following acceptance of her guilty plea to one count of robbery, a second degree felony, and forgery, a fifth degree felony.

{¶2} Pursuant to the guidelines set forth in *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967) appellant’s court-appointed counsel has filed an appellate brief and motion to withdraw as counsel. He mailed a copy of the brief and motion to appellant and informed her that she had a right to file her own brief, but she did not do so.

{¶3} Appellant’s counsel identified potential areas of error in his brief but concluded that there was no prejudicial error and an appeal would be frivolous. In compliance with the requirements of *Anders*, appellant’s counsel identified the following single potential assignment of error:

The Court made errors advising the Defendant concerning post-release control issues at the sentencing hearing.

{¶4} Appellant argues that while the trial court properly stated at the sentencing hearing that appellant “will” be subject to a three-year period of postrelease control, the trial court erred in the sentencing entry by stating that appellant “may” be subject to a period of postrelease control. Pursuant to R.C. 2967.28(B)(2) and (C) and R.C. 2967.28(F)(4)(c), appellant was subject to up to three years of mandatory postrelease control. The trial court was required to inform appellant of the mandatory nature of the postrelease control. *State v. Torres*, 6th Dist. Lucas No. L-03-1203, 2005-Ohio-3365, ¶ 18. Obviously, the court in the case before us, issued an erroneous judgment entry, which can be corrected pursuant to R.C. 2929.191(C).

{¶5} Appellant’s counsel also presented issues raised by appellant, misrepresentation of counsel, “Disability Act,” and excessive sentencing. Counsel explained that appellant believed the prosecution promised that appellant could apply for judicial release after two years. However, since there is nothing in the record to support this assertion and it is contrary to the written plea agreement appellant signed, there is no merit to this argument. We agree. Furthermore, we have examined appellant’s sentence and find that it is not excessive.

{¶6} Finally, this court has the obligation to fully examine the record in this case to determine whether an appeal would be frivolous. *Anders*, 386 U.S. at 744, 87 S.Ct. 1396, 18 L.Ed.2d 493. Our review of the record does not disclose any additional errors by the trial court which would justify a reversal of the judgment.

{¶7} Although we find there is merit to the postrelease control notification error identified by appellant’s appointed counsel, no purpose would be served by giving new counsel an opportunity to argue the appeal. Instead, we will proceed immediately to address the merits of the appeal. Counsel’s request to withdraw as appellate counsel is thus rendered moot.

{¶8} We find the trial court committed error prejudicial to appellant and reverse the judgment of the Sandusky County Court of Common Pleas in part. The judgment is reversed only with respect to the postrelease control notification. This case is remanded to the trial court for correction of the judgment pursuant to R.C. 2929.191(C). Pursuant

to App.R. 24, appellee is hereby ordered to pay the court costs incurred on appeal. The clerk is ordered to serve all parties by regular mail with a copy of the decision.

Judgment reversed in part.

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

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>.