

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

State of Ohio

Court of Appeals No. L-14-1049

Appellee

Trial Court No. CR0201401024

v.

Randall Hildebrand

DECISION AND JUDGMENT

Appellant

Decided: March 13, 2015

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Charles R. McDonald, Assistant Prosecuting Attorney, for appellee.

Mollie B. Hojnicki, for appellant.

* * * * *

YARBROUGH, P.J.

I. Introduction

{¶ 1} This is an *Anders* appeal. Appellant, Randall Hildebrand, appeals the judgment of the Lucas County Court of Common Pleas, imposing a two-year prison

sentence following appellant's plea of guilty to one count of failure to register. For the following reasons, we affirm.

A. Facts and Procedural Background

{¶ 2} Appellant was indicted on one count of failure of a sexually oriented offender to register, in violation of R.C. 2950.04(E) and 2950.99(A)(1)(a), a felony of the third degree. Appellant entered into a plea agreement with the state whereby in exchange for his plea of guilty the state would recommend no more than a two-year prison sentence. Following a detailed plea colloquy, the trial court accepted appellant's plea, found him guilty, and at a subsequent sentencing hearing, ordered him to serve two years in prison. This appeal followed.

B. *Anders* Requirements

{¶ 3} 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. *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.*

C. Proposed Assignments of Error

{¶ 4} In her brief, counsel proposes two potential assignments of error:

Appellant was denied effective assistance of counsel as guaranteed by the United States and Ohio constitutions.

Appellant's sentence is contrary to law.

{¶ 5} Appellant has not filed a pro se brief.

II. Analysis

{¶ 6} In the first potential assignment of error, counsel raises the possibility that appellant's trial counsel was ineffective. In order to demonstrate ineffective assistance of counsel, appellant 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, appellant 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.

{¶ 7} Here, appellate counsel does not identify any instances where trial counsel's performance fell below an objective standard of reasonableness. Our independent review of the record also fails to find any. The record reflects that trial counsel spoke with appellant numerous times, explained to appellant the nature of the charge and the possible consequences of entering a plea, and advocated on appellant's behalf in mitigation.

Further, appellant acknowledged that he had adequate time to speak with trial counsel, that he informed counsel of facts that would support his defense to the charge, and that he was satisfied with counsel's advice. Therefore, we do not find that appellant was deprived the effective assistance of counsel.

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

{¶ 9} As the second potential assignment of error, counsel offers that appellant's sentence is contrary to law. Under R.C. 2953.08(G)(2)(b), we may increase, reduce, or modify a sentence, or vacate the sentence and remand the matter for resentencing if we clearly and convincingly find "[t]hat the sentence is otherwise contrary to law." We do not so find. The record at the sentencing hearing and the subsequent judgment entry reveal that, in fashioning its sentence, the trial court adhered to the statutory requirements, including the requirement to consider the principles and purposes of sentencing under R.C. 2929.11 as well as the sentencing factors under R.C. 2929.12. Further, appellant's two-year prison sentence was within the acceptable range of punishment for a felony of the third degree. R.C. 2929.14(A)(3)(b). Therefore, appellant's sentence is not contrary to law.

{¶ 10} Accordingly, appellant's second potential assignment of error is not well-taken.

III. Conclusion

{¶ 11} 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.

{¶ 12} The judgment of the Lucas County Court of Common Pleas 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.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

Stephen A. Yarbrough, P.J.
CONCUR.

JUDGE

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.
