

[Cite as *State v. Hayes*, 2016-Ohio-2639.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 103507

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**GREGORY HAYES**

DEFENDANT-APPELLANT

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**JUDGMENT:  
DISMISSED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-15-595715-A

**BEFORE:** Boyle, J., Kilbane, P.J., and Laster Mays, J.

**RELEASED AND JOURNALIZED:** April 21, 2016

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**Also listed:**

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MARY J. BOYLE, J.:

{¶1} Defendant-appellant, Gregory Hayes, appeals from a judgment convicting him of having weapons while under disability and aggravated menacing and sentencing him to one year in prison. Hayes’s appointed counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), and now seeks leave to withdraw as counsel. After a thorough review of the record, we grant counsel’s request to withdraw, and we dismiss the appeal.

#### **A. Procedural History and Facts**

{¶2} Hayes was indicted on four counts: (1) having weapons while under disability, (2) improperly handling a firearm in a motor vehicle, (3) using weapons while intoxicated, and (4) aggravated menacing. Each count also carried a forfeiture specification for a Beretta .380 caliber semiautomatic handgun.

{¶3} In July 2015, pursuant to a plea agreement, Hayes ultimately pleaded guilty to Counts 1 and 4, along with the forfeiture specification, and the trial court nolledd the other two counts. After accepting Hayes’s guilty plea, the trial court referred the matter for a presentence investigation report (“PSI”).

{¶4} Relying on the police report, the PSI set forth a summary of the offenses committed by Hayes. According to the PSI, on May 9, 2015, at 5:56 p.m., the victim, who is Hayes’s cousin, got into a verbal altercation with Hayes. After the altercation, Hayes left in his truck. A short time later, Hayes returned, pulled out a loaded handgun, pointed it at two people on the front porch, and threatened them. Hayes then left and

returned multiple times to the location in an effort to intimidate the victims. Cleveland police responded to the area and ultimately located Hayes at his residence and placed him under arrest. Cleveland police located a loaded handgun on the floor of the truck.

{¶5} On September 3, 2015, the trial court held the sentencing hearing, first hearing from defense counsel, who expressed Hayes's remorse and urged the trial court to impose community control sanctions. The trial court then heard from two victims who were on the porch at the time that Hayes brandished the firearm. The first victim urged the trial court to impose the maximum sentence, arguing that Hayes is not remorseful and that he continues to harass his family. The second victim provided his version of the incident giving rise to Hayes's arrest, stating that Hayes got into an altercation with Fred, the victim's 87-year-old father, and then later circled their house approximately eight times to intimidate them. The victim further testified that he ran inside after seeing Hayes with a gun.

{¶6} Hayes addressed the court and stated that the victims were not telling the truth. According to Hayes, he went over to Fred's house to talk to him but was attacked by Fred's son, who also damaged Hayes's truck. Hayes admitted that he had been drinking and "just lost it." Hayes admitted that he pointed the gun but never intended on using it. He further stated that he drove around the house "maybe a few times." Hayes apologized for his actions and pleaded with the court to impose community control sanctions.

{¶7} The trial court addressed Hayes, discussing his criminal history and noting that “every time that you’ve been on probation, you’ve pretty much had violations.”

Prior to imposing a prison term, the trial court stated the following:

After consideration of the record, the oral statements made today, looking at the presentence report, the purposes and principles of sentencing under Ohio Revised Code Section 2929, looking at the seriousness and recidivism factors relevant to the offense and offender, pursuant to Revised Code Section 2929.12, and the need for deterrence, incapacitation, rehabilitation and restitution, the Court finds that a prison term is consistent with the purposes and principles of sentencing set forth in Section 2929.11 of the Revised Code, and finds that the offender is not amenable to a minimal community controlled sanction.

Furthermore, the Court has considered the factors set forth in 2929.12 and finds that a prison term is commensurate with the seriousness of the defendant’s conduct and the impact on the victim that is reasonably necessary to deter the offender in order to protect the public from future crimes and would not place an unnecessary burden on government resources.

{¶8} The trial court sentenced Hayes to a total of one year in prison — one year on the having weapons while under disability count and six months on the aggravated menacing conviction, to be served concurrently. Hayes was appointed appellate counsel.

{¶9} Based on the belief that no prejudicial error occurred below and that any grounds for appeal would be frivolous, Hayes’s appellate counsel filed a motion to withdraw pursuant to *Anders*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493.

## **B. *Anders* Standard**

{¶10} *Anders* outlines the procedure counsel must follow to withdraw as counsel due to the lack of any meritorious grounds for appeal. In *Anders*, the United States Supreme Court held that if appointed counsel, after a conscientious examination of the

case, determines the appeal to be wholly frivolous, he or she should advise the court of that fact and request permission to withdraw. *Anders* at 744. This request, however, must be accompanied by a brief identifying anything in the record that could arguably support the appeal. *Id.* Further, counsel must also furnish the client with a copy of the brief, and allow the client sufficient time to file his or her own brief, pro se. *Id.*

{¶11} Once the appellant's counsel satisfies these requirements, this court must fully examine the proceedings below to determine if any arguably meritorious issues exist. *Id.*; Loc.App.R. 16(C). If we determine that the appeal is wholly frivolous, we may grant counsel's request to withdraw and dismiss the appeal without violating constitutional requirements, or we may proceed to a decision on the merits if state law so requires. *Anders*; Loc.App.R. 16(C).

{¶12} In this case, appointed counsel fully complied with the requirements of *Anders*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, and Loc.App.R. 16(C). Hayes has failed to file a pro se brief.

### **C. Potential Issues for Review Under *Anders***

{¶13} Hayes's appointed counsel states in his *Anders* brief that he extensively reviewed the record, including the transcript of the proceedings, and concluded he could not make any meritorious arguments on Hayes's behalf. Nevertheless, counsel presents the following three potential issues for our review pursuant to *Anders*: (1) trial court's failure to comply with Crim.R. 11 prior to accepting Hayes's guilty plea; (2) trial court's

failure to consider the purposes and principles of felony sentencing; and (3) the sentence imposed was contrary to law.

{¶14} “When a defendant enters a plea in a criminal case, the plea must be made knowingly, intelligently, and voluntarily. Failure on any of those points renders enforcement of the plea unconstitutional under both the United States Constitution and the Ohio Constitution.” *State v. Engle*, 74 Ohio St.3d 525, 527, 660 N.E.2d 450 (1996).

{¶15} To ensure that a plea to a felony charge is knowingly, intelligently, and voluntarily entered into, a trial court must follow the dictates of Crim.R. 11(C)(2). This provision provides that the court must address defendants personally and (1) determine that they understand the nature of the charges against them and of the maximum penalty involved, (2) inform them of and determine that they understand the effect of a plea of guilty or no contest and that the court may proceed with judgment and sentence, and (3) inform them of and determine that they understand the constitutional rights that they are giving up by entering into their plea. Crim.R. 11(C)(2)(a) - (c).

{¶16} Counsel asserts that the trial court complied with the requirements of Crim.R. 11(C) and that Hayes knowingly, intelligently, and voluntarily entered his guilty pleas. We have conducted an independent examination of the record and also find that the trial court strictly complied with the dictates of Crim.R. 11(C) in accepting Hayes’s plea. The trial court advised Hayes of his constitutional rights and the potential penalties. Hayes indicated at the plea hearing that he understood the rights he was waiving by pleading guilty and that he understood the effect of his plea. Therefore, any

argument that the plea was not entered knowingly, intelligently, and voluntarily would be frivolous.

{¶17} Second, counsel points to two potential issues related to sentencing — that the court failed to consider the sentencing factors of R.C. 2929.11 and 2929.12 and that the sentence is contrary to law. We agree with counsel that both of these potential issues would be wholly frivolous to pursue.

{¶18} A trial court has discretion to impose a prison sentence that is within the statutory range. *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1, ¶ 37.

But in exercising that discretion, the trial court must “carefully consider” the statutory sentencing guidelines set forth in R.C. 2929.11 and 2929.12, as well as the “statutes that are specific to the case itself.” *Id.* at ¶ 38. A reviewing court will reverse a sentence only if it determines “by clear and convincing evidence that the record does not support the trial court’s findings under relevant statutes or that the sentence is otherwise contrary to law.” *State v. Marcum*, Slip Opinion No. 2016-Ohio-1002.

{¶19} The trial court imposed a sentence within the permissible statutory range, and the trial court ordered that the two sentences be run concurrently. Further, this court has consistently recognized that a sentencing court complies with its mandatory duty to consider the sentencing factors of R.C. 2929.11 and 2929.12 if its sentencing entry states that it has considered those factors. *See State v. Szakacs*, 8th Dist. Cuyahoga No. 101787, 2015-Ohio-1382, ¶ 4; *State v. Evans*, 8th Dist. Cuyahoga No. 101485, 2015-Ohio-1022, ¶ 35. Here, the court’s sentencing entry not only indicates that it



considered the sentencing factors but the trial court expressly stated as much in open court during the sentencing hearing. We find no errors with respect to Hayes's sentence.

{¶20} Following our independent review of the entire record, we find there exist no meritorious arguments that could be made in this appeal. We therefore conclude that Hayes's appeal is wholly frivolous pursuant to *Anders*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, and dismiss the appeal.

It is ordered that appellee recover from appellant the costs herein taxed.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, P.J., and  
ANITA LASTER MAYS, J., CONCUR