[Cite as *State v. Coleman*, 2017-Ohio-1057.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105195

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

TAIREZ CARLIQ COLEMAN

DEFENDANT-APPELLANT

JUDGMENT:
DISMISSED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-16-607640-A

BEFORE: Stewart, J., McCormack, P.J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: March 23, 2017

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MELODY J. STEWART, J.:

{¶1} Defendant-appellant Tairez Carliq Coleman pleaded guilty to one count of attempted receiving stolen property, a fifth-degree felony. He received a six-month prison term, three years of mandatory postrelease control, and agreed to make restitution in the amount of $1,000.

{¶2} Appellate counsel seeks permission to withdraw from the appeal pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), on grounds that there are no nonfrivolous issues for appeal. Although given the opportunity to file his own merit brief on appeal, Coleman has not done so. Consistent with *Anders* and Loc.App.R. 16(C) of the Eighth District Court of Appeals, counsel filed a no-merit brief in conjunction with his motion to withdraw as counsel. The no-merit brief considers two possible issues that could be raised on appeal and explains why it would be frivolous for counsel to raise those issues. We examine those arguments in light of the record and legal precedent. *State v. Taylor*, 8th Dist. Cuyahoga No. 101368, 2015-Ohio-420, ¶ 20.

{¶3} Counsel first suggests that Coleman could file an assignment of error complaining that the court erred by imposing a prison term for a fifth-degree felony. R.C. 2929.13(B)(1)(a) states that if all of the provisions listed in division (B)(1)(a)(i)- (iv) apply, the court shall sentence an offender convicted of a fourth- or fifth-degree felony to at least one year of community control. The court found that the provision listed under division (B)(1)(a)(i) — that the offender previously has not been convicted of or pleaded

guilty to a felony — did not apply because Coleman had prior juvenile delinquency adjudications. The sentencing judge considered those juvenile delinquency adjudications to be convictions consistent with R.C. 2901.08(A), but the court applied that section in error because it has since been declared unconstitutional in *State v. Hand*, Slip Opinion No. 2016-Ohio-5504, paragraph one of the syllabus.

{¶4} Counsel indicates that this error is harmless because the sentencing judge articulated a second, valid reason under R.C. 2929.13(B)(1)(b)(iii) for refusing to impose a community control sanction — that Coleman violated a condition of bond. The record shows that Coleman twice violated the terms and conditions of his bond in this case. Those violations gave the court discretion to impose a prison term on Coleman. Counsel acknowledges that it would be frivolous for Coleman to argue on appeal that the sentencing judge abused his discretion by ordering a prison term because this court has no authority to review sentencing decisions for an abuse of discretion. *See* R.C. 2953.08(G)(2); *State v. Akins*, 8th Dist. Cuyahoga No. 99478, 2013-Ohio-5023, ¶ 16; *State v. Carrington*, 8th Dist. Cuyahoga No. 100918, 2014-Ohio-4575, ¶ 27.

{¶5} Counsel next suggests that Coleman could file an assignment of error complaining that the court erred by imposing a prison term, but maintains that the assignment of error would be frivolous because Coleman did not have the right to appeal the sentence. In addition, counsel represents that the sentence was within the applicable statutory range and thus not "contrary to law," nor is there any basis for arguing that the sentencing judge disregarded the statutory factors.

{¶6} "There is no constitutional right to appellate review of a criminal sentence, so 'the only right to appeal is the one provided by statute.'" *State v. Campbell*, 8th Dist. Cuyahoga No. 103982, 2016-Ohio-7613, ¶ 14, quoting *Akins* at ¶ 11.

> A defendant has the right to appeal any sentence consisting of the maximum term allowed for an offense, any prison sentence imposed for a fourth- or fifth-degree felony in certain situations, a sentence stemming from certain violent sex offenses, or any sentence that included an additional prison term imposed pursuant to R.C. 2929.14(B)(2)(a).

State v. Ongert, 8th Dist. Cuyahoga No. 103208, 2016-Ohio-1543, ¶ 8, citing R.C. 2953.08(A).

{¶7} Coleman did not receive the maximum sentence for a fifth-degree felony nor, as we have indicated, can he make a non-frivolous argument that the sentencing judge was required to impose community control under R.C. 2929.13(B). And, to extent that Coleman could argue that his sentence is contrary to law under R.C. 2953.08(A)(4), there is no question that his sentence is within the statutory range for the offense, and the court stated that it gave due consideration to the required sentencing factors. That a defendant might disagree with how the sentencing judge applied those factors raises questions involving the application of the sentencing judge's discretion that we have no ability to address. *Ongert*, *supra*, at ¶ 12 ("A sentence within the bounds of the law cannot then be deemed contrary to law because a defendant disagrees with the trial court's discretion to individually weigh the sentencing factors."). We agree with counsel that this proposed assignment of error would be frivolous.

{¶8} Finding an appeal to be frivolous, we grant counsel's motion to withdraw as appellate counsel.

{¶9} Appeal dismissed.

Costs to appellant.

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

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MELODY J. STEWART, JUDGE

TIM McCORMACK, P.J., and
SEAN C. GALLAGHER, J., CONCUR