

[Cite as *State v. Torres*, 2017-Ohio-2991.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105052

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

EMILIANO Z. TORRES

DEFENDANT-APPELLANT

**JUDGMENT:
DISMISSED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-16-604093-A

BEFORE: Celebrezze, J., Keough, A.J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: May 25, 2017

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Also listed:

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FRANK D. CELEBREZZE, JR., J.:

{¶1} Appellant, Emiliano Z. Torres, appeals from guilty pleas and an agreed sentence imposed by the trial court. His attorney, pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct.1396, 18 L.Ed.2d 493 (1967), filed a motion to withdraw as counsel and dismiss the appeal. After a thorough examination of the record, this court grants the motion to withdraw and dismisses the appeal.

I. Factual and Procedural History

{¶2} Appellant pled guilty to amended charges of gross sexual imposition, felonious assault, and domestic violence. The plea deal included an agreed three-year sentence. A sentencing hearing was conducted on August 22, 2016. There, the trial court imposed the agreed sentence by doing the following: the trial court merged Count 1, gross sexual imposition; and Count 3, felonious assault; imposed a three-year sentence on Count 3; and imposed an 180-day sentence on the remaining count of domestic violence in Count 4. However, the journal entry of sentence entered August 29, 2016, indicates that the trial court imposed an 18-month sentence on Count 1,¹ a three-year sentence on Count 3, and an 180-day sentence on Count 4. The court also classified appellant as a Tier I sex offender.² Appellant then filed a notice of appeal.

¹ The trial court corrected this clerical error in a nunc pro tunc entry filed May 15, 2017. As this court recognized in *State v. Craig*, 8th Dist. Cuyahoga No. 103020, 2015-Ohio-5541, ¶ 4, fn.1, a clerical error such as this is not a prejudicial error in the context of *Anders* and can be corrected at any time.

² Appellant had previously been classified as a Tier III sex offender in an unrelated case, so although appellant was classified as a Tier I offender, this

II. Law and Analysis

{¶3} Appellant’s counsel filed motions to withdraw and dismiss the appeal pursuant to *Anders* and this court’s Loc.R. 16(C). Appellant was provided with notice and an opportunity to submit his own brief, which he did not. Pursuant to that rule, this court reviews the motion, brief in support, and the entire record and determines whether any arguably meritorious issue exists. If this court determines there are no meritorious issues, and the appeal is “wholly frivolous,” we may dismiss the appeal. If this court finds the existence of a meritorious issue, we must afford the appellant assistance of counsel before deciding the merits of the case. *Anders* at 744.

{¶4} Here, there is no meritorious issue to argue. Appellant’s counsel submitted a brief in support that outlined the trial court’s compliance with Crim.R. 11 during the plea colloquy, and the fact that the court imposed an agreed sentence that cannot be appealed pursuant to R.C. 2953.08(D)(1). This court’s own independent review indicates that appellant entered guilty pleas after a thorough plea colloquy and the trial court imposed an agreed prison sentence, which included an agreement as to allied offenses, that was authorized by law, and from which appellant cannot appeal.

{¶5} Therefore, this court finds no meritorious issue is present based on the record, and that an appeal would be wholly frivolous. Counsel’s request to withdraw is granted, and the appeal is dismissed.

classification was subsumed by the Tier III classification, and the trial court explained both requirements.

{¶6} Appeal dismissed.

It is ordered that appellee recover of appellant costs herein taxed.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

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

FRANK D. CELEBREZZE, JR., JUDGE

KATHLEEN ANN KEOUGH, A.J., and
SEAN C. GALLAGHER, J., CONCUR