

[Cite as *State v. Whaley*, 2017-Ohio-4307.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105298

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

RONSON D. WHALEY

DEFENDANT-APPELLANT

**JUDGMENT:
DISMISSED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-16-604179-A

BEFORE: Jones, J., E.A. Gallagher, P.J., and Boyle, J.

RELEASED AND JOURNALIZED: June 15, 2017

ATTORNEY FOR APPELLANT

Michael P. Maloney
24441 Detroit Road, Suite 200
Westlake, Ohio 44145

FOR APPELLANT

Ronson D. Whaley, pro se
Inmate No. A684-174
North Central Correctional Institution
P.O. Box 1812
Marion, Ohio 43302

ATTORNEYS FOR APPELLEE

Michael C. O'Malley
Cuyahoga County Prosecutor

BY: Daniel A. Cleary
Assistant County Prosecutor
The Justice Center, 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

LARRY A. JONES, SR., J.:

{¶1} Defendant-appellant Ronson D. Whaley appeals from his conviction and sentence to seven years in prison for the offenses of attempted rape and abduction. Whaley's counsel filed a brief under *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), indicating that there are no meritorious, nonfrivolous issues for this court's review.

Background

{¶2} In March 2016, Whaley was charged with the following five crimes: Count 1, rape; Count 2, aggravated robbery; Count 3, felonious assault; and Counts 4 and 5, kidnapping, each with a sexual motivation specification.

{¶3} In June 2016, Whaley pleaded guilty to Count 1, amended to attempted rape, and Count 4, amended to abduction. The parties agreed that the two counts would merge for the purpose of sentencing. The matter was referred to the adult probation department for a presentence investigation, after which, the trial court sentenced Whaley to a seven-year-prison term on the attempted rape count, and labeled him a Tier III sex offender.

Counsel's Request to Withdraw and Anders Brief

{¶4} In *Anders*, the United States Supreme Court held that, if after a conscientious examination of the record, a defendant's counsel concludes the case is wholly frivolous, then he or she should so advise the court and request permission to withdraw. *Id.* at 744.

Counsel must accompany his or her request with a brief identifying anything in the

record that could arguably support his or her client's appeal. *Id.* Counsel also must: (1) furnish his or client with a copy of the brief and request to withdraw; and, (2) allow his or her client sufficient time to raise any matters that the client chooses. *Id.* Once the defendant's counsel satisfies these requirements, the appellate court must fully examine the proceedings below to determine if any arguably meritorious issues exist. *Id.* If the appellate court also determines that the appeal is wholly frivolous, it may grant counsel's request to withdraw and dismiss the appeal without violating constitutional requirements, or may proceed to a decision on the merits if state law so requires. *Id.*

{¶5} Here, Whaley's appellate counsel filed a motion to withdraw on the ground that he found no merit to the appeal. Counsel also filed a brief, in which he has identified one potential assignment of error for our consideration. It is: "Whether appellant entered his guilty plea knowingly, intelligently and voluntarily." Counsel served Whaley with a copy of both his motion to withdraw and his *Anders* brief. By order dated March 20, 2017, we informed Whaley that the *Anders* brief had been filed and advised him of his right to file his own brief and the time limit for doing so. Whaley has not filed a pro se brief, and the time for filing has expired.

{¶6} Crim.R. 11(C) "governs the process that a trial court must use before accepting a felony plea of guilty or no contest." *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, ¶ 8. Before "accepting a guilty * * * plea, the court must make the determinations and give the warning required by Crim.R. 11(C)(2)(a) and (b)," as well as "notify the defendant of the constitutional rights listed in Crim.R.

11(C)(2)(c).” *Id.* at ¶ 13. To “satisfy the requirements of due process, a plea of guilty * * * must be knowing, intelligent, and voluntary, and the record must affirmatively demonstrate” as much. *State v. Chessman*, 2d Dist. Greene No. 03 CA 100, 2006-Ohio-835, ¶ 15, citing *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

{¶7} Crim.R. 11(C)(2)(a) requires that a court determine whether a “defendant is making [a] plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions.”

{¶8} Under Crim.R. 11(C)(2)(b), a court must ascertain whether a defendant “understands the effect of [a] plea of guilty * * *, and [advise the defendant] that the court, upon acceptance of the plea, may proceed with judgment and sentence.”

{¶9} Pursuant to Crim.R. 11(C)(2)(c), a court must inform a defendant that by entering a plea of guilty, the defendant is

waiving [his or her] rights to [a] jury trial, to confront witnesses against * * * [him or her], to have compulsory process for obtaining witnesses in [his or her] favor, and to require the state to prove [his or her] guilt beyond a reasonable doubt at a trial at which [he or she] cannot be compelled to testify against * * * [himself or herself].

{¶10} We have reviewed the transcript of the plea hearing and find that the trial court engaged in a complete Crim.R. 11 colloquy with Whaley. There is nothing in the record from which one could fashion an argument that the plea was somehow deficient. Therefore, there is no nonfrivolous issue for review.

{¶11} Dismissed.

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

It is ordered that a special mandate issue out of this court directing the common pleas 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.

LARRY A. JONES, SR., JUDGE

EILEEN A. GALLAGHER, P.J., and
MARY J. BOYLE, J., CONCUR