[Cite as *State v. Anglen*, 2018-Ohio-749.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105976

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

NORMAN L. ANGLEN

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED IN PART, VACATED IN PART

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-17-613133-A

BEFORE: Stewart, J., E.T. Gallagher, P.J., and Blackmon, J.

RELEASED AND JOURNALIZED: March 1, 2018

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MELODY J. STEWART, J.:

{¶1} Defendant-appellant Norman Anglen requested that this appeal from his eight-year sentence on a second-degree felony count of robbery be placed on our accelerated calendar under App.R. 11.1 and Loc.App.R. 11.1. By doing so, he has agreed that we may render a decision in "brief and conclusionary form consistent with App.R. 11.1(E)."

{¶2} We reject Anglen's argument that his sentence is contrary to law because the court did not indicate that it considered the sentencing factors contained in R.C. 2929.11 and 2929.12. Not only did the court's sentencing entry state that it considered "all required factors of the law," *see State v. Powell*, 8th Dist. Cuyahoga No. 99386, 2014-Ohio-2048, ¶ 113, the court specifically mentioned the sentencing factors as it pronounced sentence. *See* tr. 43-44.

{¶3} Anglen argues that his eight-year sentence is inconsistent with sentences given to similar offenders, but he failed to raise this issue at sentencing and offer "some evidence, however minimal, in order to provide a starting point for analysis and to preserve the issue for appeal." *State v. Munson*, 8th Dist. Cuyahoga No. 93229, 2010-Ohio-1982, ¶ 29. *See also State v. Black*, 8th Dist. Cuyahoga No. 100114, 2014-Ohio-2976, ¶ 9 ("it serves no purpose for a defendant to complain that a sentence is inconsistent with those given to similar offenders if the defendant cannot prove the point to the judge by giving some sense of what kind of sentences similar offenders have received.").

{¶4} Anglen next argues that trial counsel was ineffective for failing to request a transfer to the court's mental health docket due to Anglen's IQ of 75. We reject this contention because the court referred Anglen to the court's psychiatric clinic for evaluation and, according to the court, "the conclusion reached by that psychologist is that he is not eligible for transfer to the mental health docket for all the reasons set forth in his opinion." Tr. 14. That a referral had been made to the court's psychiatric clinic showed that the issue of Anglen's competency had been raised and decided. In addition, Anglen gives no reason to conclude that his limited intelligence prevented him from entering a knowing and intelligent guilty plea. No prejudice exists sufficient to establish an ineffective assistance of counsel claim. *State v. Jackson*, 8th Dist. Cuyahoga No. 80299, 2002-Ohio-2711, ¶ 14.

{¶5} We sustain Anglen's third assignment of error — that the court erred by ordering Anglen to pay restitution — based on the state's concession of error that the court stated on the record at sentencing that it would not order restitution. *See* tr. 54. The order of restitution is vacated.

{¶6} Judgment affirmed in part and vacated in part.

It is ordered that appellant and appellee share the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

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.

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MELODY J. STEWART, JUDGE

EILEEN T. GALLAGHER, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR