

[Cite as *State v. Moore*, 2009-Ohio-5045.]

IN THE COURT OF APPEALS FOR MIAMI COUNTY, OHIO

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2009 CA 7
v.	:	T.C. NO. 08 CR 462
	:	
JOHNNY D. MOORE	:	(Criminal appeal from Common Pleas Court)
	:	
Defendant-Appellant	:	

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**OPINION**

Rendered on the 25<sup>th</sup> day of September, 2009.

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JAMES D. BENNETT, Atty. Reg. No. 0022729, Prosecutor, 201 W. Main Street, Safety Building, Troy, Ohio 45373  
Attorney for Plaintiff-Appellee

CHRISTOPHER R. BUCIO, Atty. Reg. No. 0076517, Public Defender, 201 W. Main Street, Troy, Ohio 45373  
Attorney for Defendant-Appellant

JOHNNY D. MOORE, #A596-983, Southeastern Correctional Institute, 5900 B.I.S. Road, Lancaster, Ohio 43130  
Defendant-Appellant

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DONOVAN, P.J.

{¶ 1} Appointed counsel for Johnny Moore submitted an appellate brief under *Anders v. California*, 386 U.S. 738 (1967), alleging that no arguably meritorious issues exist

for appeal. After a thorough review of the record, this Court agrees that the trial court's proceedings were proper and affirms the trial court's judgment.

{¶ 2} Moore was charged with non-support of his three children under R.C. § 2919.21(B). Moore entered into a plea agreement with the State agreeing to plead no contest to one charge of non-support instead of facing prosecution for three charges for each child. In exchange, the State agreed to remain silent at sentencing. But there was no agreement to disposition. Moore pled no contest to one count of non-support, in violation of R.C. § 2919.21(B), a fifth degree felony. The trial court sentenced Moore to the maximum penalty of twelve months in prison with 69 days credit for time served.

{¶ 3} Moore filed a timely Notice of Appeal on February 12, 2009. On May 26, 2009, appointed counsel representing Moore submitted an *Anders* brief, alleging that no arguably meritorious issues exist for appeal. He also moved to withdraw as counsel for Moore. By magistrate's order of May 28, 2009 we informed Moore that his counsel filed an *Anders* brief and informed him of the significance of an *Anders* brief. We invited Moore to file a pro se brief assigning any error for our review within sixty days of May 28, 2009. Moore has not filed anything with this Court.

{¶ 4} Although arguing that there are no meritorious claims to raise on Moore's behalf, his lawyer found one potential assignment of error. Moore could argue that the trial court erred in sentencing him to the maximum sentence. We agree with appellate counsel that this potential assignment of error has no arguable merit.

{¶ 5} Under *State v. Foster*, 109 Ohio St.3d 1, 845 N.E.2d 470, 2006-Ohio-856, a trial court has discretion when imposing a felony sentence. We cannot say that the trial court

abused its discretion when imposing the sentence that it did. The offense Moore committed—non-support—is a felony of the fifth degree. The State already granted Moore a substantial break by allowing him to plead to only one count of non-support.

{¶ 6} The trial court properly considered the recidivism and seriousness factors set forth in R.C. 2929.11 and 2929.12. Moore’s criminal record, including his past convictions for non-support and alcohol related offenses, indicated recidivism was likely. The amount of money owed by Moore was substantial (approximately \$45,000), indicating the offense was serious. For the foregoing reasons, the prison term imposed by the trial court was not an abuse of discretion.

{¶ 7} In the performance of our duty, under *Anders v. California*, supra, to conduct an independent review of the record, we have found no potential assignments of error having arguable merit. We conclude that this appeal is wholly frivolous. Therefore, the judgment of the trial court is Affirmed and counsel’s motion to withdraw is granted.

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BROGAN, J. and FAIN, J., concur.

Copies mailed to:

James D. Bennett  
Christopher R. Bucio  
Johnny D. Moore  
Hon. Robert J. Lindeman