

[Cite as *State v. Harding*, 2014-Ohio-730.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO

Plaintiff-Appellee

v.

DANA HARDING

Defendant-Appellant

Appellate Case No. 25700

Trial Court Case No. 2012-CRB-2016

(Criminal Appeal from
Municipal Court)

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OPINION

Rendered on the 28th day of February, 2014.

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DANA HARDING, 2620 Fairport Avenue, Dayton, Ohio 45406

Defendant-Appellant

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WELBAUM, J.

{¶ 1} Upon the filing of an *Anders* brief, we are asked to decide whether the record indicates any potential assignments of error having arguable merit.

Facts and Course of Proceedings

{¶ 2} On October 3, 2013, Appellant, Dana Harding’s appellate counsel filed a brief under the authority of *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), indicating that he could not find a potential assignment of error having arguable merit. On October 16, 2013, Harding was granted 60 days to file a pro se brief assigning any errors for review by this court. Harding did not file a brief. We find no potential assignment of error having arguable merit. Accordingly, the judgment of the trial court is affirmed.

{¶ 3} Harding was charged with Petty Theft, a misdemeanor of the first degree. Her attorney negotiated a plea bargain wherein Harding entered a plea to the amended reduced charge of Unauthorized Use of Property, a misdemeanor of the fourth degree. The court ordered a pre-sentence investigation.

{¶ 4} At sentencing, the trial court noted that at the time of the offense Harding was on diversion for a previous theft offense. The court also stated that the offense was pre-meditated. The reports in the court’s file indicated that Harding was a manager at Burlington Coat Factory. She confessed to stealing \$365.00 from her employer by retaining receipts from transactions, voiding them, and keeping the money. She also admitted to crediting gift cards with returned merchandise and giving the gift cards to family and friends.

{¶ 5} Harding offered mitigation by stating to the court that “It was on two occasions that came up. It wasn’t pre-planned or anything. It - - it happened because it came out of nowhere and yeah, I was in need; uniforms and things for my children.” Sentencing Tr. p. 3. The court evidently discredited Harding’s mitigation and imposed a maximum 30 day jail sentence.

We Find No Potential Assignments of Error Having Arguable Merit

{¶ 6} Appellate counsel discussed two potential assignments of error. The first is whether the trial court committed reversible error in accepting Harding’s plea of guilty.

{¶ 7} The transcript of the change of plea hearing is unavailable. Harding did not respond to her appellate attorney’s request to be interviewed for the purpose of supplementing the record. The proceedings are entitled to a presumption of regularity and validity. Moreover, Harding was represented by counsel at the change of plea. *State v. Buennagel*, 2d Dist. Greene No. 2010-CA-74, 2011-Ohio-3413.

{¶ 8} Secondly, we must consider whether there is an indication that the trial court committed reversible error when it sentenced Harding. We agree with appellate counsel that in light of the record of this case neither issue has arguable merit.

{¶ 9} Under *Anders v. California*, we have an independent duty to review the record to determine if there are any potential assignments of error having arguable merit. We have done so.

We find no potential assignments of error having arguable merit. Accordingly, the judgment of the trial court is Affirmed.

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FROELICH, P.J., and HALL, J., concur.

Copies mailed to:

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