

[Cite as *State v. Sankis*, 2023-Ohio-2698.]

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

STATE OF OHIO

Appellee

v.

ANTHONY J. SANKIS

Appellant

:
:
:
:
:
:
:
:
:
:
:
:

C.A. No. 29643

Trial Court Case No. 2020 CR 01533

(Criminal Appeal from Common Pleas
Court)

.....

OPINION

Rendered on August 4, 2023

.....

MATHIAS H. HECK, JR., by ANDREW T. FRENCH, Attorney for Appellee

KRISTIN L. ARNOLD, Attorney for Appellant

.....

HUFFMAN, J.

{¶ 1} Defendant-Appellant Anthony J. Sankis appeals from his convictions on one count of extortion and two counts of pandering sexually oriented material involving a minor. Sankis's appointed appellate counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), asserting the absence of non-frivolous issues for review. On April 18, 2023, we notified Sankis of the *Anders* filing

and gave him an opportunity to submit his own brief by June 19, 2023. He did not file a pro se brief. We also ordered that the record be supplemented with the presentence investigation report (“PSI”).

{¶ 2} Sankis’s appellate counsel has considered two issues and has concluded that each lacks arguable merit. Based on our independent review of the record, we agree with counsel’s assessment that there are no issues with arguable merit. Accordingly, the trial court’s judgment will be affirmed.

I. Facts and Course of Proceedings

{¶ 3} Sankis was indicted on nine counts of illegal use of a minor in nudity-oriented material or performance, felonies of the second degree; one count of extortion, a felony of the third degree; seven counts of pandering sexually oriented material involving a minor, felonies of the second degree; and two counts of disseminating matter harmful to a juvenile, misdemeanors of the first degree. Sankis eventually pled guilty to one count of extortion and to two counts of pandering sexually oriented material involving a minor. In exchange for Sankis’s guilty pleas, the State dismissed the other counts against him. Sankis was sentenced to intensive probation for a maximum term of five years and was designated a Tier II sex offender. As part of the imposition of community control sanctions, the trial court incorporated potential future penalties in the event that Sankis violated the terms and conditions of his probation, including a prison term of nine to thirty-six months on the extortion count and prison terms of eight to twelve years on each of the two counts of pandering sexually oriented material involving a minor.

{¶ 4} Approximately four months later, a probation revocation was filed, and Sankis

acknowledged receipt of the revocation notice. Sankis was represented by counsel at the revocation hearing and at the final disposition hearing, during which Sankis admitted to violating the terms of his community control sanctions. The trial court sentenced Sankis to prison for thirty-six months on the extortion count and for a minimum of eight years to a maximum of twelve years on each count of pandering sexually oriented material involving a minor under the Reagan Tokes Act, R.C. 2929.19. The trial court ordered that all counts be served concurrently to one another. Sankis filed a timely notice of appeal.

II. *Anders* Standard and Review

{¶ 5} Under *Anders*, we must conduct an independent review of the record to determine whether Sankis’s appeal is wholly frivolous. “*Anders* equates a frivolous appeal with one that presents issues lacking in arguable merit. An issue does not lack arguable merit merely because the prosecution can be expected to present a strong argument in reply, or because it is uncertain whether a defendant will ultimately prevail on that issue on appeal.” *State v. Marbury*, 2d Dist. Montgomery No. 19226, 2003-Ohio-3242, ¶ 8. Rather, “[a]n issue lacks arguable merit if, on the facts and law involved, no responsible contention can be made that it offers a basis for reversal.” *Id.*, citing *State v. Pullen*, 2d Dist. Montgomery No. 19232, 2002-Ohio-6788, ¶ 4. “If we find that any issue – whether presented by appellate counsel, presented by the defendant, or found through an independent analysis – is not wholly frivolous, we must reject the *Anders* brief and appoint new appellate counsel to represent the defendant.” (Citations omitted.) *State v. Somerset*, 2d Dist. Montgomery No. 29249, 2022-Ohio-2170, ¶ 5.

{¶ 6} In the present case, the *Anders* brief identifies the following two issues that

Sankis's appellate counsel considered: (1) whether the trial court erred in sentencing Sankis in accordance with the judgment entry following his guilty plea and (2) whether the trial court erred in denying Sankis an evidentiary hearing, as Sankis had voluntarily waived a hearing. Appellate counsel sees no non-frivolous argument with regard to either of these issues. We agree with counsel's assessment.

{¶ 7} "A defendant has no expectation of finality in the original sentence when it is subject to his compliance with the terms of his probation." *State v. McMullen*, 6 Ohio St. 3d 244, 246, 452 N.E.2d 1292 (1983); *State v. Ocepek*, 9th Dist. Summit No. 25636, 2011-Ohio-6064, ¶ 13, citing *State v. Dawkins*, 8th Dist. Cuyahoga No. 88022, 2007-Ohio-1006, ¶ 10. "In the event of a violation of probation, the original sentence does not become final but is subject to modification within the standards of state law." *McMullen* at 246.

{¶ 8} Sankis was originally sentenced by the trial court to intensive probation for a maximum period of five years. As part of the judgment, the trial court included notice of potential penalties for Sankis in the event that Sankis violated any conditions of his community control sanctions or any laws. Sankis was advised that, if he violated the community control sanctions, he could face a sentence of nine to thirty-months in prison on the extortion count and eight to twelve years in prison on each of the two counts of pandering sexually oriented material involving a minor.

{¶ 9} At the hearing following his probation violation, Sankis admitted to violating the terms and conditions of his community control sanctions. Based on Sankis's admission and a review of the probation officer's report, the trial court found that Sankis

had in fact violated the terms of his community control sanctions and sentenced him to thirty-six months in prison on the extortion count and to eight to twelve years in prison on the pandering. All three counts were to run concurrently.

{¶ 10} R.C. 2929.144, the Reagan Tokes Act, sets forth felony sentencing guidelines with respect to determining a maximum prison term. R.C. 2929.144(B) states:

(3) If the offender is being sentenced for more than one felony, if one or more of the felonies is a qualifying felony of the first or second degree, and if the court orders that all of the prison terms imposed are to run concurrently, the maximum term shall be equal to the longest of the minimum terms imposed on the offender under division (A)(1)(a) or (2)(a) of [R.C.] 2929.14 * * * for a qualifying felony of the first or second degree for which the sentence is being imposed plus fifty per cent of the longest minimum term for the most serious qualifying felony being sentenced.

{¶ 11} As appellate counsel points out, Sankis clearly admitted to violating his probation during the revocation hearing. As such, the trial court had the discretion to revoke Sankis's community control sanctions and sentence him to a term of imprisonment. The trial court did not impose a term of imprisonment that was excessive or disproportionate to what Sankis was told when he entered his guilty plea. Moreover, the trial court sentenced Sankis in compliance with the Reagan Tokes Act, as Sankis was being sentenced for more than one felony, both felonies were qualifying felonies of the second degree subject to Reagan Tokes, and the trial court ordered that all of the prison terms were to run concurrently. Thus, we conclude that the trial court did not commit any

sentencing error relating to the revocation of Sankis's community control sanctions.

{¶ 12} The second issue identified in the *Anders* brief involved whether the trial court erred in denying Sankis an evidentiary hearing. "Revocation of probation has been held to implicate two due process requirements." *State v. Blakeman*, 2d Dist. Montgomery No. 18983, 2002-Ohio-2153. A defendant is entitled to both a preliminary hearing to determine whether there is probable cause to believe that the defendant has violated the terms of his probation and a final hearing to determine whether probation should be revoked. *Id.*, citing *Gagnon v. Scarpelli*, 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973). Generally, during the final revocation hearing, "the State must (1) provide the probationer with written notice of the alleged violations of probation; (2) disclose the evidence against him; (3) give the probationer an opportunity to be heard in person and to present witnesses and documentary evidence; (4) allow him to confront and cross-examine adverse witnesses; (5) afford him a neutral and detached hearing body; and, (6) provide the probationer with a written statement by the fact finder as to the evidence relied upon and the reasons for revoking probation." *Id.*, citing *Gagnon* at 782.

{¶ 13} In this case, at the initial revocation hearing, Sankis, while represented by counsel, acknowledged receipt of the notice of revocation but waived both its reading and the determination of probable cause. Sankis entered a denial at that time and sought a continuance, which the trial court granted. Approximately one week later, at the final disposition hearing, Sankis, who was again represented by counsel, did not seek an evidentiary hearing and admitted that he had violated the terms and conditions of his community control sanctions. The trial court found that, based on Sankis's admission and

its review of the probation officer's report, Sankis had violated the terms and conditions of his community control sanctions. It then sentenced him.

{¶ 14} Sankis made a voluntary admission to violating the terms and conditions of his community control sanctions at the final disposition hearing. There was no due process violation during the revocation of Sankis's probation.

{¶ 15} In view of the above discussion, there is no arguable merit in the contentions that the trial court erred to the prejudice of Sankis by sentencing him in accordance with the judgment entry of conviction upon revoking his community control sanctions or by not conducting evidentiary hearings, as Sankis waived his right to both hearings. In addition to the discussed issues, consistent with our duty under *Anders*, we have reviewed the entire record including the *Anders* brief, the sentencing transcript, and the judgment entry. This review has not revealed any arguably meritorious appellate issues.

III. Conclusion

{¶ 16} Having found no non-frivolous issues for appeal, we affirm the judgment of the trial court. We also grant appointed appellate counsel's request for permission to withdraw from further representation.

.....

WELBAUM, P.J. and LEWIS, J., concur.