

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
HURON COUNTY

State of Ohio

Court of Appeals No. H-11-023

Appellee

Trial Court No. CRI-2011-0513

v.

Larry W. Charlton

**DECISION AND JUDGMENT**

Appellant

Decided: October 26, 2012

\* \* \* \* \*

Nancy L. Jennings, for appellant.

\* \* \* \* \*

**HANDWORK, J.**

{¶ 1} This appeal is from the November 7, 2011 judgment of the Huron County Court of Common Pleas, which sentenced appellant, Larry Charlton, after his guilty plea to an amended charge of attempted aggravated arson, a violation of R.C. 2923.02(A) and 2909.02(A)(2), a felony of the third degree, was accepted by the court.

{¶ 2} Pursuant to the guidelines set forth in *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), appellant's court appointed counsel has filed an

appellate brief and motion to withdraw as counsel. He mailed a copy of the brief and motion to appellant and informed him that he had a right to file his own brief, but he did not do so.

{¶ 3} Appellant's counsel states in his motion that he thoroughly reviewed the record in this case and concluded that the trial court did not commit any error prejudicial to appellant. However, in compliance with the requirements of *Anders, supra*, appellant's counsel has submitted a brief in which he presents two possible arguable errors:

I. THE TRIAL COURT ERRED WHEN ACCREPTING [sic]  
DEFENDANT'S PLEA [sic]

II. THE TRIAL COURT ABUSED ITS DISCRETION WHEN  
IMPOSING SENTENCE UPON DEFENDANT.

{¶ 4} Appellant's counsel first argues that since appellant entered a guilty plea, he could argue on appeal that the trial court erred in accepting his plea. However, upon an examination of the transcript in light of the trial court's obligations under Crim. R. 11(C), appellant's counsel could find no error. Furthermore, appellant's counsel found nothing in the record to suggest that appellant's plea was not knowingly, intelligently, and voluntarily made. We agree.

{¶ 5} Because the defendant gives up significant constitutional rights by entering a guilty or no contest plea, strict compliance with the Civ.R. 11(C), (D), and (E) is required to ensure that the plea is knowingly, intelligently, and voluntarily made. *State v. Veney*,

120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, ¶ 7 and *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, ¶ 29. Furthermore, Crim.R. 11(C)(2)(a) requires that, before a trial court accepts a plea of guilty, the court must substantially comply with the rule and inform the defendant 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 at the sentencing hearing.” The court must also ensure the defendant is notified of and understands the effect of entering a guilty plea and that, upon acceptance of the plea by the court, the court may proceed with judgment and sentence. Crim.R. 11(C)(2)(b). The trial court must strictly comply with Crim.R. 11(C)(2) regarding federal constitutional rights, but need only substantially comply with the rule regarding non-constitutional rights. *State v. Marcum*, 10th Dist. No. 07AP-905, 2008-Ohio-2292, ¶ 6; *State v. Stewart*, 51 Ohio St.2d 86, 93, 364 N.E. 2d 1163 (1977); and *State v. Lamb*, 6th Dist. No. L-07-1181, 2008-Ohio-1569, ¶ 10.

{¶ 6} In this case, the trial court addressed appellant with respect to each of the matters listed in Crim.R. 11 and asked appellant if he understood each notice or right as the court presented it and appellant acknowledged his understanding. Therefore, we find the trial court did not err in accepting appellant’s guilty plea. Appellant’s first proposed assignment of error is found not well-taken.

{¶ 7} Secondly, appellant’s counsel argues that the only other argument he could present due to the guilty plea was that the trial court’s sentence was contrary to law or

that the trial court abused its discretion by imposing the maximum sentence. However, counsel could not find any error.

{¶ 8} When reviewing a felony sentence, the appellate court must first examine the trial court's sentence to determine if it is clearly and convincingly contrary to law pursuant to R.C. 2953.08(G). If the appellate court finds that the trial court complied with all applicable rules and statutes, it then determines whether the trial court abused its discretion by imposing the sentence. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶ 14-17. The abuse of discretion standard requires that we find the trial court's sentence was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 9} The trial court acknowledged it had to consider the principles and purposes of sentencing (R.C. 2929.11) and that it considered appellant's rehabilitation along with the seriousness of the offense and need to protect the public (R.C. 2929.12). The court noted that this was appellant's first felony offense, but also that the victim suffered serious psychological and economic harm. The trial court also considered that appellant was under a community control sanction from another court at the time of this offense and had a long history of misdemeanor offenses reflecting a pattern of violence. The court also did not believe appellant was genuinely remorseful. Therefore, the court determined that a community control sanction would not be effective (R.C. 2929.13). The court imposed a sentence of three years of imprisonment, which was within the statutory range and below the maximum sentence permissible. The court also ordered

appellant to pay restitution for the economic damages. We find the trial court did not violate any statutory duty and also that the court did not abuse its discretion in sentencing. Appellant's second proposed assignment of error is found not well-taken.

{¶ 10} This court has the obligation to fully examine the record in this case to determine whether an appeal would be frivolous. *Anders, supra*, at 744. Our review of the record does not disclose any errors by the trial court which would justify a reversal of the judgment. Therefore, we find this appeal to be wholly frivolous. Counsel's request to withdraw as appellate counsel is found well-taken and is hereby granted. Having found that the trial court did not commit error prejudicial to appellant, the judgment of the Huron County Court of Common Pleas is hereby affirmed. Pursuant to App.R. 24, appellant is hereby ordered to pay the court costs incurred on appeal.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J. \_\_\_\_\_

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JUDGE

Mark L. Pietrykowski, J. \_\_\_\_\_

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JUDGE

Thomas J. Osowik, J. \_\_\_\_\_  
CONCUR.

\_\_\_\_\_  
JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.