

[Cite as *State v. Steele*, 2009-Ohio-6019.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23402
vs.	:	T.C. CASE NO. 09-CR-124
JAMIE L. STEELE	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	

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O P I N I O N

Rendered on the 13th day of November, 2009.

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GRADY, J.:

{¶ 1} Defendant, Jamie Steele, entered a plea of guilty to one count of theft involving property valued at over five hundred dollars in violation of R.C. 2913.02(A)(1), a fifth degree felony. The trial court sentenced Defendant to an eight month prison term.

{¶2} Defendant timely appealed to this court from his conviction and sentence. Defendant's appellate counsel filed an *Anders* brief, *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 19 L.Ed.2d 493, stating that he could find no meritorious issues for appellate review. We notified Defendant of his appellate counsel's representations and afforded him ample time to file a pro se brief. None has been received. This case is now before us for our independent review of the record. *Penon v. Ohio* (1988), 488 U.S. 75, 109 S.Ct. 346, 102 L.Ed.2d 300.

{¶3} Defendant's appellate counsel has identified one possible issue for appeal:

ASSIGNMENT OF ERROR

{¶4} "APPELLANT'S CONVICTION AND SENTENCING IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶5} Defendant's plea of guilty constitutes a complete admission of factual guilt that removes that issue, factual guilt, from the case. *Menna v. New York* (1975), 423 U.S. 61, 96 S.Ct. 241, 46 L.Ed.2d 195; *State v. Wilson* (1979), 58 Ohio St.2d 52; *State v. Buhrman* (Sept. 12, 1997), Greene App. No. 96CA45; Crim.R. 11(B)(1). As a consequence of entering a plea of guilty in this case, Defendant is precluded from arguing on appeal that his conviction is not supported by legally sufficient evidence or is against the manifest weight of the evidence. *Buhrman; State*

v. *McGhee* (Jan. 18, 1995), Montgomery App. No. 14515. This assignment of error lacks arguable merit.

{¶ 6} Defendant's appellate counsel also states that Defendant believes his eight month sentence is too harsh.

{¶ 7} In *State v. Jeffrey Barker*, Montgomery App. No. 22779, 2009-Ohio-3511, at ¶36-38, we wrote:

{¶ 8} "The trial court has full discretion to impose any sentence within the authorized statutory range, and the court is not required to make any findings or give its reasons for imposing maximum, consecutive, or more than minimum sentences. *State v. Foster*, 109 Ohio St.3d 1, 845 N.E.2d 470, 2006-Ohio-856, at paragraph 7 of the syllabus. Nevertheless, in exercising its discretion the trial court must consider the statutory policies that apply to every felony offense, including those set out in R.C. 2929.11 and 2929.12. *State v. Mathis*, 109 Ohio St.3d 54, 846 N.E.2d 1, 2006-Ohio-855, at ¶ 37.

{¶ 9} "When reviewing felony sentences, an appellate court must first determine whether the sentencing court complied with all applicable rules and statutes in imposing the sentence, including R.C. 2929.11 and 2929.12, in order to find whether the sentence is contrary to law. *State v. Kalish*, 120 Ohio St.3d 23, 896 N.E.2d 124, 2008-Ohio-4912. If the sentence is not clearly and convincingly contrary to law, the trial court's decision in

imposing the term of imprisonment must be reviewed under an abuse of discretion standard. *Id.*

{¶ 10} “The term “abuse of discretion” connotes more than an error of law or judgment; it implies that the trial court's attitude is unreasonable, arbitrary, or unconscionable.’ *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144.”

{¶ 11} At the sentencing hearing the trial court indicated that it had considered the presentence investigation report, which recommended a term of imprisonment, the principles and purposes of felony sentencing, R.C. 2929.11, and the seriousness and recidivism factors, R.C. 2929.12. The court also afforded both Defendant and his counsel an opportunity to speak before imposing sentence. The trial court complied with the applicable rules and statutes in imposing its sentence. Accordingly, that sentence is not clearly and convincingly contrary to law. *Kalish*.

{¶ 12} The prison term imposed by the trial court, eight months, is not the maximum allowable sentence for this fifth degree felony offense. Rather, it is a middle-of-the-road sentence that the trial court ordered served concurrently with the sentence imposed upon Defendant by Darke County. The eight month sentence is clearly within the authorized range of available punishments for a fifth degree felony. R.C.

2929.14(A)(5). We see no abuse of discretion on the part of the trial court in imposing an eight month prison term for this fifth degree felony. This assignment of error lacks arguable merit.

{¶ 13} In addition to reviewing the possible issues for appeal raised by Defendant's appellate counsel, we have conducted an independent review of the trial court's proceedings and have found no error having arguable merit. Accordingly, Defendant's appeal is without merit and the judgment of the trial court will be affirmed.

DONOVAN, P.J., and BROGAN, J., concur.

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Hon. Mary Wiseman