

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

State of Ohio

Court of Appeals No. L-10-1283

Appellee

Trial Court No. CR0201002058

v.

Randall Gilreath

DECISION AND JUDGMENT

Appellant

Decided: August 19, 2011

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Andrew J. Lastra, Assistant Prosecuting Attorney, for appellee.

Rebecca L. West-Estell, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} This appeal is from the September 14, 2010 judgment of the Lucas County Court of Common Pleas, which sentenced appellant, Randall Gilreath, who was convicted by the court after acceptance of his guilty plea, to a charge of theft, a fifth degree felony in violation of R.C. 2913.02(A)(1) and (B)(2). The prosecution entered a

nolle prosequi as to a second count of theft. While the prosecution agreed to recommend a maximum of six months of imprisonment, the court imposed a sentence of eleven months of imprisonment. Appellant's court-appointed counsel now requests leave of court to withdraw as counsel under the procedures set forth in *Anders v. California* (1967), 386 U.S. 738.

{¶ 2} Pursuant to the guidelines set forth in *Anders v. California*, supra, appellant's court-appointed counsel has filed an appellate brief and motion to withdraw as counsel. She 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 her motion that she 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 *Anders* requirements, appellant's counsel has submitted a brief setting forth the following potential assignment of error and her conclusion that the assignment of error would be frivolous:

{¶ 4} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FAILED TO SENTENCE ACCORDING TO THE PLEA AGREEMENT."

{¶ 5} When reviewing a trial court's sentencing decision, the appellate court considers first whether the sentence is clearly and convincingly contrary to law by considering whether the trial court complied with all applicable rules and statutes in imposing the sentence. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, ¶ 26. If there was no error as a matter of law, we next consider whether the trial court abused its

discretionary power in imposing the sentence. *Id.* The trial court's sentence will not be overturned absent a finding that it was unreasonable, arbitrary, or unconscionable.

Blakemore v. Blakemore (1983), 5 Ohio St.3d 217, 219.

{¶ 6} Appellant's counsel suggested an assignment of error could be raised alleging that the trial court abused its discretionary power in sentencing. Appellant asserted that he had finally determined that he was going to make a change in his life and was willing to make restitution. He informed the court that he had employment waiting for him if he were to receive community control as his sentence.

{¶ 7} The court, however, considered in detail the facts of appellant's current offense and his extensive prior felony and misdemeanor criminal record, including theft offenses (facts relating to the seriousness and recidivism factors of R.C. 2929.12). The court also considered that appellant had been offered numerous opportunities to correct his behavior and continues to steal the property of others (facts relating to the principles and purposes of sentencing R.C. 2929.11). The court concluded that appellant was not "a proper candidate for community control" and determined that "state incarceration must be imposed." Therefore, the sentence was not clearly and convincingly contrary to law and there were facts in the record to support the trial court's sentencing decision.

{¶ 8} Appellant also contends that the trial court abused its discretion by failing to limit his sentence of imprisonment to six months as the prosecution had recommended. This argument lacks merit because courts are not bound by the prosecution's recommendations and the trial court in this case made that fact perfectly clear to appellant

prior to accepting his guilty plea. *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, ¶ 28, reconsideration denied, 124 Ohio St.3d 1494, 2010-Ohio-670, citing *State ex rel. Duran v. Kelsey*, 106 Ohio St.3d 58, 2005-Ohio-3674, ¶ 6.

{¶ 9} Finally, we have fully examined the record in this case and determined that an appeal would be wholly 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 Lucas 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. The clerk is ordered to serve all parties, including the defendant if he or she has filed a brief, with notice of this decision.

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.

JUDGE

Thomas J. Osowik, P.J.

JUDGE

Stephen A. Yarbrough, 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>.