

IN THE SUPREME COURT OF OHIO

On Appeal from the Sixth Appellate District Court
for Huron County, Ohio
Case No. H 06 032

07-1658

STATE OF OHIO,
Plaintiff/Appellee,

Supreme Court No. _____

- VS -

JAVIER SALCE,
Defendant/Appellant.

MEMORANDUM IN SUPPORT OF JURISDICTION

Appearances:

FOR THE DEFENDANT/APPELLANT

JAVIER SALCE, #502-002
('pro se')
Richland Correctional Inst.
P.O. Box 8107
Mansfield, Ohio

44901

FOR THE PLAINTIFF/APPELLEE

RUSSELL V. LEFFLER (#)
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Norwalk, Ohio

44857

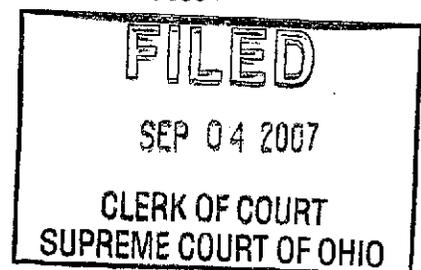


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STATEMENT AS TO WHY THIS CASE IS OF
GREAT PUBLIC INTEREST

[T]his case is of great public interest because it speaks directly to the public policy and constitutional guarantee that no person be deprived of life, liberty or property without due process of law.

This case is of great public interest because it involves a felony, i.e. one count of 'attempted' possession of drugs, in violation of O.R.C. § 2923.02(A) and O.R.C. § 2925.11(A), (C)(3)(f).

Ultimately, this case is of great public interest because it presents a prima facie case that defendant's incarceration is predicated wholly upon an unconstitutional sentencing scheme and that of a denial of the Sixth Amendment right to effective assistance of counsel at both the trial court and appellate court phase of the proceedings.

This action does thus follow.

STATEMENT OF CASE AND FACTS

[T]his case originated in the Huron County Common Pleas Court as the criminal matter entitled: State v. Ohio v. Javier Salce, Case No. CRI 2005 0960, therein charging numerous drug offenses.

Defendant had initially entered pleas of not guilty to each of offense however, acting under the advice of counsel, retracted those pleas and entered a plea of guilty ('pursuant to a plea agreement') and was sentenced to a stated prison term of: (5) five years.

Defendant was however never advised of any appellate rights and upon the subsequent discovery that he actually did have appellate rights ('and the right to appointed counsel therein') defendant filed a pro se motion for leave

to file delayed appeal in and before the Ohio Sixth Appellate District Court for Huron County, Ohio, Case No. H 06 032.

In addition, ... defendant sought appointment of counsel, Crim. R. 44(A) and U.S.C.A. Const. Amend. 6, on said appeal and the court in turn, upon granting defendant leave to file said delayed appeal, appointed counsel to the indigent defendant/appellant.

Thereafter, appointed counsel file an Anders-brief (Anders v. California, 386 U.S. 738) therein urging ('and erroneously so') that there existed in the record no appealable issue(s).

Defendant timely objected to counsel's brief and sought 'substitution of counsel' therefore.

The court of appeal overruled counsel's Anders-brief however, did not appoint substitute counsel as timely requested by defendant/appellant.

The court of appeal rendered its judgment on: 'July 20, 2007,' therein affirming the judgment of conviction and sentence of the trial court to which this action does thus follow.

[R]elief is accordingly sought.

PROPOSITION OF LAW NO. 1

A sentence predicated on an unconstitutional sentencing scheme is a nullity and void as a matter of law.

[T]he record in this case shows that defendant/appellant pled guilty to the offense of: 'attempted possession of drugs,' O.R.C. § 2923.02(A) and O.R.C. § 2925.11(A),(C)(3)(f), pursuant to a plea agreement and was sentenced to a (5) five year stated prison term pursuant to the Ohio Truth-in-Sentencing Laws' of Ohio Senate Bill 2. see: O.R.C. § 2929.14(B).

Appellant's plea occurred on: 'January 10, 2006' and sentencing followed

on: 'February 22, 2006,' well in advance of the Ohio Supreme Court ruling in State v. Foster, 109 Ohio St. 3d 1, therein declaring relevant portions of the penalty sentencing scheme unconstitutional.

The record also reveals that defendant was sentenced to the 'maximum penalty authorized for a 3rd degree felony,' i.e. (5) five years, and that though entitled to an automatic appeal as of right, defendant was never advised of any appellate rights and accordingly no appeal was ever taken. see: *below; and, O.R.C. § 2953.08

Nonetheless, ... defendant argued ('without the benefit of professional counsel') in the proceedings below that his sentence, in light of this court's ruling in Foster, supra, was unconstitutional as a matter of law where such sentenced was predicated wholly on an unconstitutional sentencing scheme.

Defendant argued that regardless of the 'nature of the sentence,' i.e. 'being an agreed sentence,' his due process and fundamental fairness rights were implicated whereas the 'sentencing scheme' upon which the sentence did lie had been several months later declared unconstitutional.

It was/is the position of defendant/appellant that the Sixth and Fourteenth Amendments to the United States Constitution forbid a criminal defendant to even willfully agree to a punishment which is contrary to law and constitutionally unsound. see: State v. Beasley, 14 Ohio St. 3d 74, citing: Colegrove v. Burns (1964), 175 Ohio St. 437, 438.

Appellant had urged that just as the federal constitution will not permit a criminal defendant, burdened under conflicted, ineffective representation to enter a guilty plea unknowingly, unintelligently and involuntarily, the same effect occurs in relations to a criminal defendant, facing a protracted prison term, may not agree to a sentence which is wholly predicated on an unconstitutional sentencing scheme.

Similarly, ... just as defendant/appellant could not agree to a sentence which exceeds the statutory maximum penalty assigned to an offense, State v. Bealsey, supra, ... the same is true where a criminal defendant agrees to a penalty, forfeiture or punishment which is wholly predicated on that which is

inherently unconstitutional.

So says basic fairness. see: U.S.C.A. Const. Amends. 6 and 14.

Defendant's sentence was simply 'not authorized by law,' and accordingly defendant/appellant is entitled to vacation of the unconstitutional sentence and resentencing pursuant to the prescribed forms and modes of law as a matter of law.

[R]elief is accordingly sought.

PROPOSITION OF LAW NO. 2

It is a denial of the Sixth Amendment right to counsel where appointed counsel breaches a complex of fundamental dut[ies] due his client.

[I]t is well-established that the Sixth Amendment right to counsel is the right to effective assistance of counsel. see: Strickland v. Washington, 466 U.S. 668; and, McMann v. Richardson, 397 U.S. 759 (1970).

In the proceedings below, defendant had averred that his trial counsel had failed to discuss the facts of the case with defendant; had failed to investigate potential witnesses or to follow-up on exculpatory and/or impeachment evidence, Strickland, supra; DeLuca v. Lord, 77 F. 3d 578, 588 n.3; Rogers v. Zant, 13 F. 3d 384, 387 (11th Cir. 1994); and, Hall v. Washington, 106 F. 3d 742 (7th Cir. 1997).

Defendant averred that trial counsel, while in full knowledge that the Ohio Truth-in-Sentencing Laws were under constitutional scrutiny in and before the Supreme Court of Ohio in: State v. Foster, 109 Ohio St. 3d 1, at the time of defendant's sentencing, made no objection to the underlying and then challenged O.R.C. § 2929.14(B), nor did trial counsel even remotely attempt to preserve in the record any constitutional and/or statutory objection to the sentence.

Defendant urged that trial counsel failed to present any mitigation evidence at the sentencing hearing and in fact, trial counsel had instructed defendant that regardless of the evidence, a jury would find defendant guilty of the underlying offenses and he would be sentenced to the maximum penalty authorized by law if [he] refused to accept the 'plea agreement' and insisted on a trial in the matter.

Again, ... trial counsel told defendant that it made no difference whether he was actually innocent of the offenses to which he was initially charged, because he would be found guilty anyway "because he had no defense." see: Anderson v. Butler, 858 F. 2d 16 (1st Cir. 1988).

In each case, trial counsel's performance was constitutionally deficient to which the prejudice did therefore systemically attach.

[R]elief is accordingly sought. see: State v. Blatnik, 17 Ohio App. 3d 201, 204.

PROPOSITION OF LAW NO. 3

Due process rights are implicated, *and a criminal defendant is depriv[ed] of his Sixth Amendment right to counsel on his only state-sponsored appeal as of right [when a trial court] fails to ensure that indigent defendant's appellate right(s) are protected

[T]his court has made it abundantly clear that:

"Under State v. Sims (1971), 27 Ohio St. 2d 79, 'the state [has] a duty to warn every person convicted of crime of his right to appeal and his right to prosecute his appeal without expense to him by counsel appointed by the state, if he is indigent.'" id. at: 81-82.

This court furthered, holding that:

"The failure to give this advice does not render the conviction void, but effectively deprives the defendant of his right to counsel on direct appeal of his conviction." id.

"Under State v. Grover (1995), 71 Ohio St. 3d 577, the appropriate remedy is for the court to vacate the judgment and then 'reenter the judgment against the defendant, with the result of reinstating the time within which the defendant may timely file a notice of appeal pursuant to App. R. 4(A).'" id. at: State v. Grover, 71 Ohio St. 3d at: 581.

In then: Wolfe v. Randle, 267 F. Supp. 2d 743 (S.D. Ohio 2003), the United States District Court for the Southern District of Ohio explicitly held, that:

"Due process is offended when defendant who pled guilty is kept completely ignorant of his appellate rights. U.S.C.A. Const. Amends. 5, 14." id.

[a]nd that:

"In order to be properly informed, defendant must be told of his right to appeal, procedures and time limits involved in proceeding with that appeal, and right to have assistance of appointed counsel for that appeal." id.

Defendant however was specifically instructed by his trial counsel that 'he had no appellate rights,' and adding insult to injury, once defendant was able to 'fend for himself' via his pro se motion for leave to file delayed appeal, even then his Sixth Amendment right to counsel was made non-existent as will argue more fully below.

Under the above analysis, *** it is manifest that the 'processes contemplated and due defendant' under the Sixth and Fourteenth Amendments of the United States Constitution were in essence suspended throughout the state court trial phase and appellate phase of the proceedings and because the prejudice did therefore systemically attach, Strickland v. Washington, 466

U.S. 668, defendant/appellant is entitled to relief as a matter of law.

[R]elief is accordingly sought.

PROPOSITION OF LAW NO. 4

Where the right to counsel (Sixth Amendment) has attached, the failure to substitute counsel 'on appeal as of right,' after [removal of the first appointed counsel] constitutes a denial of counsel altogether to which the prejudice does systemically attach

[A]s was stated infra, the right to counsel is a protected federal right. see: U.S.C.A. Const. Amend. 6; and, Strickland v. Washington, 466 U.S. 668.

The right to counsel 'in all criminal proceedings' ['including appeal as of right'] may not be manipulated so as to amount to a complete denial of counsel altogether. see: Ohio Crim. R. 44(A); and, McMann v. Richardson, infra.

In the instant case the record flowing from the court of appeals makes manifest that: (1) appellant submitted and filed a pro se motion for leave to file delayed appeal that included an independent motion for appointment of counsel; (2) that the motion for leave to file delayed appeal and the motion for counsel were each granted; (3) that appellate counsel was in turn assigned; and, (4) that appointed appellate counsel sought only to remove himself from the appeal by reason of an unsubstantiated Ander-request. see: Anders v. California, 386 U.S. 738.

Counsel, via his Anders-brief informed the court that upon his review of the record he found no appealable or triable issues for review.

Defendant in turn 'timely filed an objection' to counsel's Anders-brief therein urging numerous statutory and constitutional errors on the face of the record.

Defendant likewise incorporated in his 'objection' a particularized

request for substitution of counsel on the basis that once the right to counsel had attached, Crim. R. 44(A) and U.S.C.A. Const. Amend. 6, the court of appeals ('upon overruling counsel's Anders-brief') was required by law to substitute new counsel to ensure that appellant's appellate rights and right to counsel be and remain protected.

The court of appeals however 'overruled' counsel's Anders-brief but refused to appoint new substitute counsel for defendant/appellant.

Under the above analysis, defendant/appellant was complete deprived of his Sixth Amendment right to counsel on appeal as of right, and because the initial counsel was patently ineffective, a Murnhan-ineffective assistance of counsel claim is hereby forwarded on the instant appeal. see: State v. Murnhan, 63 Ohio St. 3d 60.

Because appellant was completely deprived of his Sixth Amendment right to counsel on appeal as of right, defendant is clearly entitled to relief pursuant to Strickland v. Washington, 466 U.S. 668; and, State v. Murnahan, supra, where the deprivation is clear and obvious on the face of the record.

It is not enough that defendant/appellant was ultimately required to 'fend for himself' whereas once the right to counsel attached, the court of appeal was required to follow through with and comport to procedures consistent with due process. see: U.S.C.A. Const. Amends. 6 and 14.

Defendant/appellant was entitled ('by right') to substitute counsel to adequately investigate the claims forwarded by defendant ('pro se') and to scrutinize the record 'as a whole' for the existence of other plain errors affecting substantial rights.

This court of appeal committed reversible error by failing to appoint the requested substitution of counsel upon its overruling of counsel's Anders-brief and this constitutional violation implicated appellant's right to counsel therefore.

Conclusion:

[W]herefore, *** and for each of those reasons stated above and made evident on the record, this court should accept jurisdiction in and over this matter because this case is of great public interest; involves a felony; raises a substantial constitutional question and presented a prima facie case for ineffective assistance of counsel as defined in: State v. Murnahan, 63 Ohio St. 3d 60 and the Sixth Amendment to the United States Constitution.

[R]elief is accordingly sought.

[E]xecuted this 21 day of August, 2007.

 #502-002

Javier Salce, #502-002

R.I.C.I.

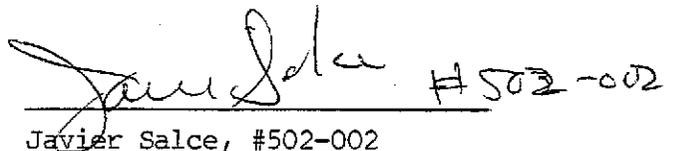
P.O. Box 8107

Mansfield, Ohio

44901

CERTIFICATE OF SERVICE:

This is to certify that the foregoing was duly served by United States Mail on the Office of the Huron County Prosecutor, at: 12 East Main Street, 4th Floor, Norwalk, Ohio, 44857, on this 21 day of August, 2007.

 #502-002

Javier Salce, #502-002

R.I.C.I.

P.O. Box 8107

Mansfield, Ohio

44901

F

COPY

HURON COUNTY
COURT OF APPEALS
FILED.

JUL 20 2007

SUSAN S. HAZEL
CLERK

JOURNALIZED 7/20/07
VOL. 15 PG. 155

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

State of Ohio

Court of Appeals No. H-06-032

Appellee

Trial Court No. CRI-2005-0960

v.

Javier Salce

DECISION AND JUDGMENT ENTRY

Appellant

Decided: JUL 20 2007

Thomas M. Dusza and Javier Salce, pro se, for appellant.

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Huron County Court of Common Pleas that found appellant guilty of one count of attempted possession of drugs in violation of R.C. 2923.02(A) and 2925.11(A), (C)(3)(f), pursuant to a plea, and imposed a five-year prison sentence. For the following reasons, the judgment of the trial court is affirmed.

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{¶ 2} Appointed counsel Thomas Dusza has submitted a request to withdraw pursuant to *Anders v. California* (1967), 386 U.S. 738. In support of his request, counsel for appellant states that, after reviewing the record of proceedings in the trial court, he was unable to find any appealable issues. Counsel for appellant does, however, set forth the following proposed assignments of error:

{¶ 3} "I. The trial court abused its discretion when it imposed the agreed sentence upon the defendant/appellant.

{¶ 4} "II. Appellant was denied the effective assistance of counsel.

{¶ 5} "III. Whether the trial court committed error when it waived appellant's right to appeal the outcome of his plea."

{¶ 6} *Anders*, supra, and *State v. Duncan* (1978), 57 Ohio App.2d 93, set forth the procedure to be followed by appointed counsel who desires to withdraw for want of a meritorious, appealable issue. In *Anders*, the United States Supreme Court held that if counsel, after a conscientious examination of the case, determines it to be wholly frivolous he should so advise the court and request permission to withdraw. *Id.* at 744. This request, however, must be accompanied by a brief identifying anything in the record that could arguably support the appeal. *Id.* Counsel must also furnish his client with a copy of the brief and request to withdraw and allow the client sufficient time to raise any matters that he chooses. *Id.* Once these requirements have been satisfied, the appellate court must then conduct a full examination of the proceedings held below to determine if the appeal is indeed frivolous. If the appellate court determines that the appeal is

frivolous, it may grant counsel's request to withdraw and dismiss the appeal without violating constitutional requirements or may proceed to a decision on the merits if state law so requires. *Id.*

{¶ 7} In the case before us, appointed counsel for appellant has satisfied the requirements set forth in *Anders*, supra. This court notes further that appellant responded to counsel's request to withdraw by filing a pro se brief. Appellant sets forth arguments in support of six separate proposed assignments of error, which assert that Huron County did not have subject matter jurisdiction over his case; his guilty plea was not entered knowingly and he was given "bad advice" concerning the plea; he was not correctly advised at sentencing of the possibility of post-release control; he was not allowed the opportunity to challenge his presentence investigation report and he did not waive his right to a jury trial in writing.

{¶ 8} Accordingly, this court shall proceed with an examination of the potential assignments of error set forth by counsel for appellant as well as those proposed by appellant and the entire record below to determine if this appeal lacks merit and is, therefore, wholly frivolous.

{¶ 9} The facts relevant to the issues raised on appeal are as follows. On July 8, 2005, appellant was indicted on one count of possession of drugs in violation of R.C. 2925.11(A), (C)(3)(f), a second-degree felony. The incidents giving rise to the charge occurred in Huron County, Ohio. On January 10, 2006, appellant entered a negotiated plea of guilty to one count of attempted possession of drugs, a third-degree felony. The

trial court referred appellant for a pre-sentence investigation. On February 22, 2006, appellant was sentenced to five years imprisonment and a mandatory fine of \$5,000; the trial court did not impose a driver's license suspension.

{¶ 10} As his first proposed assignment of error, counsel for appellant suggests that the trial court abused its discretion when it imposed the agreed-upon sentence.

{¶ 11} R.C. 2953.08(D) provides that "[a] sentence imposed upon a defendant is not subject to review under this section if the sentence is authorized by law, has been recommended jointly by the defendant and the prosecution in the case, and is imposed by a sentencing judge." A sentence is "authorized by law" as long as the prison term imposed does not exceed the maximum term prescribed by statute for the offense. See, e.g., *State v. Dorsey*, 7th Dist. No. 03-MA-151, 2004-Ohio-4822. The sentence imposed in this case was the maximum allowable for a third-degree felony. Further, the record clearly reflects that the sentence was imposed by a sentencing judge following a joint recommendation by the state and the defense. Based on the foregoing, we find that the trial court did not abuse its discretion by imposing the agreed-upon sentence and, accordingly, counsel's first proposed assignment of error is not well-taken.

{¶ 12} As his second proposed assignment of error, counsel for appellant suggests that trial counsel was ineffective for failing to inform appellant when he entered his plea that he could receive a maximum sentence of five years and for advising him to accept the plea without conducting a pretrial discovery. Similar arguments are also raised in appellant's pro se brief, as his second and third proposed assignments of error.

{¶ 13} To prevail on a claim of ineffective assistance of counsel, appellant must show counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. This standard requires appellant to satisfy a two-part test. First, appellant must show counsel's representation fell below an objective standard of reasonableness. Second, appellant must show a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different when considering the totality of the evidence that was before the court. *Strickland v. Washington* (1984), 466 U.S. 668. This test is applied in the context of Ohio law that states that a properly licensed attorney is presumed competent. *State v. Hamblin* (1988), 37 Ohio St.3d 153.

{¶ 14} These arguments fail for several reasons. First, the record clearly shows that appellant was advised at the time he entered his guilty plea that he could receive the maximum sentence of five years. At the plea hearing, the prosecutor informed the court that the parties would jointly recommend a five-year sentence for the offense; when asked by the trial court whether that was correct, defense counsel stated that it was. The trial court then advised appellant that it was required to ask him several questions before accepting his plea. After ascertaining that appellant could read and write the English language and was not under the influence of any medication, drugs or alcohol, the trial court asked appellant the following questions:

{¶ 15} "THE COURT: Okay. Do you understand the charges to which you're pleading?"

{¶ 16} "THE DEFENDANT: Yes, ma'am.

{¶ 17} "THE COURT: Do you understand that it's now a felony of the third degree? Do you know the maximum, worst punishment you could receive for this?

{¶ 18} "THE DEFENDANT: No, ma'am.

{¶ 19} "THE COURT: Five years is the worst.

{¶ 20} "THE DEFENDANT: Yes, ma'am.

{¶ 21} "THE COURT: It's also a possible fine of up to \$10,000; do you understand that?

{¶ 22} "THE DEFENDANT: Now I do.

{¶ 23} "* * *

{¶ 24} "THE COURT: Do you understand that as part of this plea agreement, you are agreeing that you will serve the five years in prison?

{¶ 25} "THE DEFENDANT: Yes, ma'am."

{¶ 26} Based on the foregoing, we find that appellant's plea was knowingly, intelligently and voluntarily entered.

{¶ 27} Further, when a defendant enters a guilty plea, as appellant did in this case, he waives all appealable errors which may have occurred during the court proceedings, unless such errors are shown to have precluded him from entering a knowing and voluntary plea. *State v. Kelley* (1991), 57 Ohio St.3d 127. Appellant has not demonstrated any error in the proceedings or any misconduct on his attorney's part that precluded him from entering a knowing and voluntary plea.

{¶ 28} Accordingly, we find that trial counsel's representation did not fall below an objective standard of reasonableness. Appointed counsel's second proposed assignment of error and appellant's second and third assignments of error are not well-taken.

{¶ 29} As his third proposed assignment of error, appointed counsel suggests that the trial court committed error when it "waived appellant's right to appeal the outcome of his plea." Counsel does not explain how the trial court waived appellant's right to appeal. By entering a plea of guilty, appellant himself waived certain rights, including the right to appeal his conviction. Prior to accepting appellant's plea, the trial court advised him of the numerous rights which he was giving up and then asked: "Do you understand by pleading guilty, you will be giving up your right to appeal. If you were found guilty by a jury or judge, you would have the right to appeal that, but by entering a guilty plea you are giving that right up?" Appellant responded that he understood. Based on the forgoing, counsel's third proposed assignment of error is not well-taken.

{¶ 30} In his pro se brief, appellant sets forth several more proposed assignments of error. Appellant argues that the Huron County Court of Common Pleas did not have subject matter jurisdiction over his case. It is undisputed that the offense of possession of drugs that gave rise to the charge against appellant occurred in Huron County, Ohio, and is a second-degree felony. "The court of common pleas has original jurisdiction of all crimes and offenses, except in cases of minor offenses the exclusive jurisdiction of which is vested in courts inferior to the court of common pleas." R.C. 2931.03. This proposed assignment of error is without merit.

{¶ 31} Appellant also claims that the trial court erred by informing him at sentencing that, upon his release from prison, the adult parole authority would have the discretion to place him on post-release control for up to three years. Appellant appears to argue that he should have been told he could be placed on post-release control "by order of the court." Our review of the record shows that the trial court properly notified appellant of the possibility of post-release control, at the parole board's discretion, pursuant to R.C. 2967.28(C). This proposed assignment of error is without merit.

{¶ 32} Appellant claims that he was not allowed time to challenge his presentence investigation report. The report and its contents are governed by Crim.R. 32.2 and R.C. 2951.03. Paragraph (B)(1) of that section provides that "the court, at a reasonable time before imposing sentence, shall permit the defendant or the defendant's counsel to read the report." Recognizing that this typically occurs only moments before the sentencing hearing, R.C. 2951.03(B)(2) states: "Prior to sentencing, the court shall permit the defendant and the defendant's counsel to comment on the presentence investigation report and, in its discretion, may permit the defendant and the defendant's counsel to introduce testimony or other information that relates to any alleged factual inaccuracy contained in the report."

{¶ 33} In this case, the transcript of appellant's sentencing hearing reflects the following statements by the court: "The Court has received and reviewed a presentence report dated February 10, 2006. I've made that report available to counsel for the State, and counsel for the defendant to be shared with the defendant except those portions

protected by Ohio Revised Code 2951.03. Copies of the report are to be returned to the Court at the conclusion of today's hearing. A copy of the report will be sealed and made part of the record.

{¶ 34} "Does the defendant claim there are any factual inaccuracies in the presentence report, Ms. Perkovic." Appellant's counsel replied that there were no inaccuracies in the report.

{¶ 35} Based on the foregoing, we find that appellant was not denied the opportunity to challenge his presentence investigation report. This proposed assignment of error is without merit.

{¶ 36} Lastly, appellant asserts that he did not waive in writing his right to a jury trial and that the trial court therefore did not have jurisdiction to impose sentence. To the contrary, the "Plea of Guilty" which appellant, his attorney and the prosecutor signed on January 10, 2006, states: "I understand that by pleading Guilty *I give up my right to a jury trial* or court trial, where I could confront and have my attorney question witnesses against me, and where I could use the power of the court to call witnesses to testify for me." (Emphasis added.) This proposed assignment of error is without merit.

{¶ 37} Upon our own independent review of the record, we find no other grounds for a meritorious appeal. All of appellant's proposed assignments of error are found not well-taken. Accordingly, this appeal is found to be without merit and is wholly frivolous. Appellant's counsel's motion to withdraw is found well-taken and is hereby granted. The decision of the Huron County Court of Common Pleas is affirmed. Appellant is ordered

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to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Huron County.

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.

William J. Skow, J.

Thomas J. Osowik, J.
CONCUR.

Peter M. Handwork :

William J. Skow
JUDGE

Thomas J. Osowik
JUDGE

Thomas J. Osowik
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:
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