

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

vs.

~~LEXIE MCDORMAN,~~

Defendant-Appellant.

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Case No. 09-1902

On Appeal from the Auglaize
County Court of Appeals
3rd Appellate District

C.A. Case No. 2-09-16

MOTION FOR LEAVE TO FILE DELAYED APPEAL OF
APPELLANT ~~Lexie McDorman~~

Lexie McDorman 74150
NAME AND NUMBER

Ohio Reformatory For Women
INSTITUTION

1479 Collins Avenue
ADDRESS

Marysville, Ohio 43040
CITY, STATE & ZIP

PHONE

DEFENDANT-APPELLANT, PRO SE

Edwin A. Pierce
PROSECUTOR NAME

P. O. Box 1992
ADDRESS

Wapakoneta, Ohio 45895
CITY, STATE & ZIP

PHONE

COUNSEL FOR APPELLEE, STATE OF OHIO

FILED
OCT 20 2009
CLERK OF COURT
SUPREME COURT OF OHIO

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : Case No.
 :
 vs. : On Appeal from the Auglaize
 : County Court of Appeals
 : 3rd Appellate District
LEXIE MCDORMAN, :
 : C.A. Case No. 2-09-16
 Defendant-Appellant. :

**MOTION FOR LEAVE TO FILE DELAYED APPEAL OF
APPELLANT Lexie McDorman**

Lexie McDorman respectfully moves this Court for leave to file a delayed appeal.
S.Ct.Prac.R II(2)(A)(4)(a).

During the time of my Appeal I also filed a Motion for
Sentence Modification at Auglaize County Court of Common
Pleas. They received the Motion on July 24, 2009. I
received my denial from the Appeal on July 31, 2009 with
no further instructions from the attorney. I was unaware
of the next legal action to take. I awaited the Auglaize
County Courts decision on the Sentence Modification and
received notice on September 11, 2009 that it was out of
their jurisdiction and denied. I kited the Public Defender
and spoke to her about other options on September 22, 2009.
It was then that I was told about Appealing to the Supreme
Court and given a Delayed Appeals Packet.

~~I appologize for missing the deadline, but without
legal counsel to guide me I was unaware of the next
legal action to take. It was only after I did my own
research and spoke to the Public Defender that I was aware
of my right to file.~~

An affidavit supporting the Appellant's allegations is attached hereto. Because the Appellant did not unduly delay the filing of this appeal, this Court should permit the Appellant to file a delayed appeal.

Respectfully submitted,

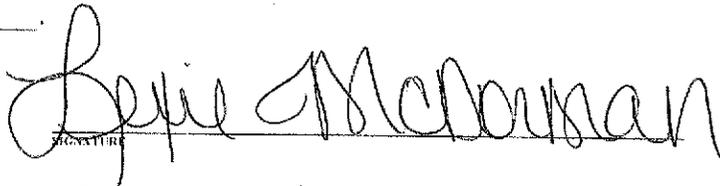

SIGNATURE

~~Lexie McDorman~~
INSTITUTION
Ohio Reformatory for Women
ADDRESS
1479 Collins Avenue
Marysville, Ohio 43040
CITY, STATE & ZIP

DEFENDANT-APPELLANT, PRO SE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion For Leave to File Delayed Appeal was forwarded by regular U.S. Mail to Edwin A. Pierce, Prosecuting Attorney
P. O. Box 1992, Wapakoneta, Ohio 45895, on
October 15, 2009.


SIGNATURE

Lexi McDorman 74150

NAME AND NUMBER

DEFENDANT-APPELLANT, PRO SE

AFFIDAVIT

State of Ohio)
) ss:
County of Auglaize)

I, Lexie McDorman, swear that the following is true:

1. July 31, 2009 I received the denial from 3rd District Appeals Court.
2. At no time during the Appeals process did I speak to Mr. VanHorn and no further instruction came with the Appeals denial. On August 5th I received the attached letter from Mr. VanHorn. Without legal assistance I was unaware of the next legal action to take. On September 11, I received the denial for Sentence Modification. On September 22nd I spoke to the Public Defender and only then was I made aware my right to file a Supreme Court Appeal.

Lexie McDorman 74150
NAME AND NUMBER
Lexie McDorman 74150
DEFENDANT-APPELLANT, PRO SE

Sworn to and subscribed in my presence this 9 day of Oct,
20 09.

Jessie D Jacobs
NOTARY PUBLIC
My Commission exp 1-7-10

**IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
AUGLAIZE COUNTY**

STATE OF OHIO,

PLAINTIFF-APPELLEE,

CASE NO. 2-09-16

v.

LEXIE MCDORMAN,

**J U D G M E N T
E N T R Y**

DEFENDANT-APPELLANT.

This cause came on for determination upon the original papers and transcript of proceedings from the Auglaize County Court of Common Pleas, and the brief and motion for leave to withdraw filed by appellant's counsel.

Counsel appointed to prosecute this appeal filed a motion requesting that he be granted leave of court to withdraw as appellate counsel, pursuant to the guidelines established in *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493. Counsel indicates that he has thoroughly reviewed the proceedings and can find no reversible error to present on appeal. Counsel's brief sets forth and argues one issue of potential error, but concludes that the same is not supported upon review of the record and transcript of proceedings. Appellate counsel requests permission to withdraw on the basis that ~~the appeal is without merit and frivolous.~~

AUGLAIZE COUNTY
COURT OF APPEALS
FILED

JL 30 2009

SUE ELLEN KOHLER
CLERK

VOL 1 PAGE 825

Upon consideration the court finds that the brief and motion of counsel are sufficient and consistent with appellant's Sixth Amendment right to counsel. See *Smith v. Robbins* (2000), 528 U.S. 259, 120 S.Ct. 746, 145 L.Ed.2d 756; *McCoy v. Ct. of Appeals of Wisconsin, Dist. 1* (1988), 486 U.S. 429, 108 S.Ct. 1895, 100 L.Ed.2d 440; and *Penson v. Ohio* (1988), 488 U.S. 75, 109 S.Ct. 346, 102 L.Ed.2d 300.

In the instant case, appellant was indicted on a fifteen-count indictment, including: six counts of aggravated vehicular assault, six counts of vehicular assault, one count of possession of cocaine, one count of driving under the influence, and one count of driving under suspension. Appellant ultimately entered negotiated pleas of guilty to three counts of aggravated vehicular assault and three counts of vehicular assault in exchange for the State's dismissal, or nolle prosequi, of the remaining counts. The trial court accepted the pleas, convicted appellant of each count, and proceeded to sentencing on only one count of vehicular assault, imposing a sentence of four years, with sentencing continued for all other counts until a pre-sentence investigation and victim impact statements were completed. Appellant was subsequently sentenced to three eight-year prison terms for the convictions for aggravated vehicular assault and to two five-year prison terms for the vehicular assault convictions, with those sentences to be served consecutively to each other but concurrently to appellant's other

conviction. Additionally, appellant was ordered to make restitution in the amount of \$34,115.00.

Upon our examination of the record, we find no merit to the “arguable” issue raised by appellate counsel. The prison sentences imposed by the trial court were within the authorized statutory range for felonies of the second and third degree. See R.C. 2929.14(A). Additionally, the record reflects that the trial court properly considered the statutory guidelines in sentencing appellant and there is no indication of an abuse of discretion in a record that reflects that the trial court was presented with evidence from the victims regarding the seriousness of the injuries suffered by the victims and that the court made specific observations regarding appellant’s course of conduct, including, but not limiting to, her two prior driving under the influence convictions. See *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912; R.C. 2929.11; R.C. 2929.12. Accordingly, we agree that the issue raised by counsel is without merit.

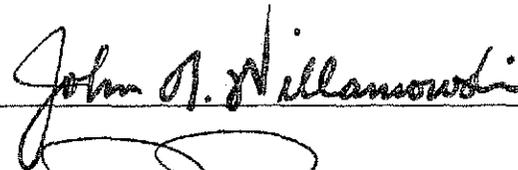
“Only after the appellate court finds no nonfrivolous issue for appeal [i.e. no arguable issue], may the court proceed to consider the appeal on the merits without the assistance of counsel.” *Penson v. Ohio* (1988), 488 U.S. 75, 80. Counsel's brief and motion for leave to withdraw were served upon appellant by counsel. In addition, this court served appellant with counsel's brief and provided

substantial time for a response to the issue raised by counsel or any other issue appellant would like set forth for review, and no response was filed.

After a separate and full examination of the record, we find no arguable issue in this appeal and declare it wholly frivolous. Accordingly, there exists no error prejudicial to appellant's rights and counsel's motion to withdraw is well taken.

It is therefore **ORDERED** that counsel's motion for leave to withdraw from representation of appellant be, and hereby is, granted.

It is further **ORDERED, ADJUDGED and DECREED** that the appeal be, and the same hereby is, **DISMISSED** at the costs of appellant for which judgment is hereby rendered and that the cause be, and hereby is, remanded to the trial court for execution of the judgment for costs.



JUDGES

DATED: July 29, 2009

/jlr

AUGLAIZE COUNTY
COMMON PLEAS COURT
FILED

IN THE COURT OF COMMON PLEAS
AUGLAIZE COUNTY, OHIO
CRIMINAL DIVISION

2009 SEP 10 PM 12:49

SUE ELLEN KOHLER
CLERK OF COURTS

STATE OF OHIO

*

CASE NO: 2008-CR-121

Plaintiff,

*

-VS-

*

JOURNAL ENTRY—ORDERS
DENYING MOTION FOR
MODIFICATION OF
SENTENCE

LEXIE S. MCDORMAN

*

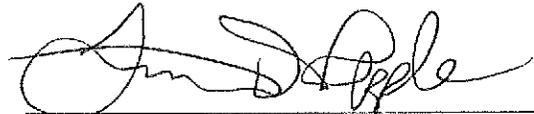
Defendant

*

The Defendant's pleading of July 24, 2009 is beyond the jurisdiction of the Court and the same is DENIED.

The Clerk of Courts shall cause a copy of this Journal Entry to be served on the Defendant Lexie S. McDorman #W074150, Ohio Reformatory for Women, 1479 Collins Avenue, Marysville, Ohio 43040 by Regular U.S. Mail; the Auglaize County Sheriff, and the Prosecuting Attorney by hand delivering the same.

IT IS SO ORDERED.



JUDGE FREDERICK D. PEPPLER

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Andrew J. Van Horn
Attorney at Law
124 S. Metcalf Street
Lima, Ohio 45801
(419) 225-5706
Fax No. (419) 225-6003

TO: Lexie

RE: 2-09-16

DATE: August 5, 2009

ENC: Judgment Entry

(Please refer to items checked below)

- The enclosed is for your information and files.
- The enclosed is for your further handling.
- Enclosed please find your Hearing Date Notice.
- Please sign the enclosed document and return it to my office.
- Please examine the enclosed and contact my office.
- Please record or file the enclosed on my behalf.
- Please forward me a receipt.
- A check in the amount of \$ _____ is enclosed.
- A self-addressed, stamped envelope is enclosed.
- Please telephone my office for an appointment.
- Please fill out the enclosed and return to me for filing.

Thank you,

Andrew J. Van Horn