

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23245
v.	:	T.C. NO. 2007 CR 4826
	:	
RAYMOND PIERRE	:	(Criminal appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	

OPINION

Rendered on the 26th day of June, 2009.

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RAYMOND PIERRE, #A597-870, Madison Correctional Institute, P. O. Box 740, London, Ohio 43140
Defendant-Appellant

DONOVAN, P.J.

{¶ 1} This matter is before the Court on Notice of Appeal of Raymond Pierre, filed March 18, 2009. On December 22, 2008, Pierre was indicted on one count of

Tampering with Evidence in violation of R.C. 2921.12(A)(1), a felony of the third degree, and one count of Drug Possession in violation of 2925.11(A), a felony of the fifth degree. At the time of his arrest and indictment, Pierre was on community control sanctions. On January 7, 2009, Pierre appeared before the court and entered guilty pleas to both new counts. He was sentenced to one year in prison on February 4, 2009 for the two-count indictment and the community control violations to be served concurrently.

{¶ 2} Pierre's appointed appellate counsel filed an *Anders* brief pursuant to *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 Pierre of his counsel's representations and afforded him ample time to file a pro se brief. None has been filed. This case is now before us for our independent review of the record. *Penon v. Ohio* (1988), 488 U.S. 75, 109 S.Ct. 356, 102 L.Ed.2d 300.

{¶ 3} The events giving rise to this matter began at approximately 4:00 p.m. on December 4, 2008. Pierre was driving a rental car on North Main Street with a light missing from the rear license plate. Dayton Police Officers Adam Sharp and Rod Roberts initiated a traffic stop. During the course of the traffic stop, the officers observed Pierre attempt to swallow a substance that appeared to be crack cocaine while seated in the back seat of the officers' vehicle. The officers removed Pierre from the vehicle where he coughed up a white substance, plastic bag, and foil onto the ground. The white substance was later tested and discovered to be cocaine.

{¶ 4} Pierre was arrested. On December 17, 2008 he appeared before the court after receiving a notice of revocation of community control sanctions stemming

from an indictment for Tampering with Evidence and Possession of Cocaine, filed on January 15, 2008. After the indictment was issued on the new charges, Pierre appeared in court on January 7, 2009 and entered “guilty” pleas. Thereafter, Pierre was sentenced to the one-year prison term.

{¶ 5} As noted above, Pierre’s appointed appellate counsel filed a brief stating the appeal had no meritorious assignments of error. Pierre’s counsel has identified one potential assignment of error on appeal.

{¶ 6} Pierre’s sole potential assignment of error is as follows:

{¶ 7} “APPELLANT’S CONVICTION AND SENTENCING IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.”

{¶ 8} Pierre argues that his prison sentence of one year was harsh and that he should have received probation with drug treatment even though this was his second felony conviction before the same judge for the similar crimes. Pierre’s counsel states further that despite his client’s arguments, his independent review of the record shows no meritorious issues for appeal.

{¶ 9} Pierre entered guilty pleas to both of the counts on both of the indictments. Guilty pleas are a complete admission of guilt. *State v. Jones*, Greene App. No. 08CA0008, 2009 -Ohio- 694 at ¶ 13. Being thus conclusive of guilt, a plea of guilty is itself a conviction. *Id.* citing *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, at ¶ 15. As a result, and as we have held, a guilty plea waives the defendant’s right to attack his conviction on appeal. *Jones*, at ¶ 13 citing *Huber Heights v. Duty* (1985), 2 Ohio App.3d 244, 441 N.E.2d 620.

{¶ 10} “Weight of the evidence concerns ‘the inclination of the greater amount of

credible evidence, offered at trial, to support one side of the issue rather than the other.” *State v. Tompkins* (1977), 78 Ohio St.3d 380, 386 (citation omitted). That issue is the defendant's guilt on which his conviction is based, or his innocence, and is determined by the trier of fact. *Jones*, at ¶ 14.

{¶ 11} Since Pierre pleaded guilty, he has essentially made a full admission of guilt, resulting in a conviction. Pierre’s conviction, pursuant to his guilty plea waives his right to attack the conviction as against the manifest weight of the evidence on appeal.

{¶ 12} We have stated that a “[s]entence is imposed by the court upon and after a conviction. A sentence is not subject to attack in relation to the weight of the evidence presented at trial, but only on an abuse of discretion standard if it is not contrary to law.” *Jones*, at ¶ 14. (citation omitted).

{¶ 13} Pierre did not raise a separate assignment of error attacking the sentence of the trial court on an abuse of discretion standard. Therefore, the sentence is not subject to attack on this appeal. We agree with Pierre’s counsel that the potential assignment of error is frivolous.

{¶ 14} In addition to reviewing the potential assignment of error raised by Pierre’s counsel, we have conducted an independent review of the trial court’s proceedings and have found no error having arguable merit. Accordingly, Pierre’s appeal is without merit and the judgment of the trial court is affirmed.

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BROGAN, J. and FAIN, J., concur.

Copies mailed to:

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Byron K. Shaw
Raymond Pierre
Hon. Barbara P. Gorman