

[Cite as *State v. Cage*, 2009-Ohio-3340.]

COURT OF APPEALS  
LICKING COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	W. Scott Gwin, P.J.
Plaintiff-Appellee	:	John W. Wise, J.
	:	Julie A. Edwards, J.
-vs-	:	
	:	Case No. 2008 CA 00155
VINCE R. CAGE	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Criminal Appeal From Licking County Court  
Of Common Pleas Case No. 2008 CR 163

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: June 25, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

TRACY VAN WINKLE  
Assistant Prosecutor  
20 South - 2nd Street  
Newark, Ohio 43055

JUSTIN T. RADIC  
57 East Main Street  
Newark, Ohio 43055

*Edwards, J.*

{¶1} Appellant, Vince R. Cage, was employed through a temporary agency to work at a construction site in Licking County, Ohio. Sometime during his employment, two spools of copper wire were reported missing. Each spool was valued at greater than \$500.00. Following an investigation, the spools were located at Legend Smelting. An employee of Legend Smelting identified Appellant as the person who sold the spools to Legend. Appellant signed a receipt upon delivery of the spools to Legend.

{¶2} Appellant was indicted on one count of Receiving Stolen Property (Over \$500) a felony of the fifth degree in violation of R.C. 2913.51(A). Appellant entered a no contest plea and was found guilty by the trial court. A sentence of one year in prison was imposed. A timely notice of appeal was filed.

{¶3} Counsel for appellant has filed a Motion to Withdraw and a brief pursuant to *Anders v. California* (1967), 386 U.S. 738, rehearing den. (1967), 388 U.S. 924, indicating that the within appeal was wholly frivolous and setting forth two proposed assignments of error. Appellant did not file a pro se brief alleging any additional assignments of error. Appellee also filed a brief.

{¶4} "I. THE TRIAL COURT ERRED BY IMPOSING THE MAXIMUM SENTENCE UPON APPELLANT.

{¶5} "II. THE APPELLANT'S NO CONTEST PLEA WAS NOT FREELY, VOLUNTARILY AND UNDERSTANDABLY ENTERED."

{¶6} In *Anders*, the United States Supreme Court held if, after a conscientious examination of the record, a defendant's counsel concludes the case is wholly frivolous, then he should so advise the court and request permission to withdraw. *Id.* at 744.

Counsel must accompany his request with a brief identifying anything in the record that could arguably support his client's appeal. *Id.* Counsel also must: (1) furnish his client with a copy of the brief and request to withdraw; and, (2) allow his client sufficient time to raise any matters that the client chooses. *Id.* Once the defendant's counsel satisfies these requirements, the appellate court must fully examine the proceedings below to determine if any arguably meritorious issues exist. If the appellate court also determines that the appeal is wholly 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} Counsel in this matter has followed the procedure in *Anders v. California* (1967), 386 U.S. 738, we find the appeal to be wholly frivolous and grant counsel's motion to withdraw. For the reasons which follow, we affirm appellant's conviction:

I

{¶8} In appellant's first potential assignment of error, he suggests the trial court erred in imposing a maximum sentence.

{¶9} This Court has held that trial courts have the full discretion to impose a prison sentence within the statutory range and judicial fact finding is no longer required before a court imposes non-minimum, maximum or consecutive prison terms. *State v. Firouzmandi*, Licking App. No. 06-CA-41, 2006-Oho-5823; *State v. Duff*, Licking App. No. 06-CA-81, 2007-Ohio-1294, See also, *State v. Diaz*, Lorain App. No. 05CA008795, 2006-Ohio-3282 and *State v. Freeman* 2008 WL 795381, 5 (Ohio App. 5<sup>th</sup> Dist.).

{¶10} Appellant was convicted of a felony of the fifth degree punishable by up to one year in prison. R.C. 2929.14(A)(5). Appellant's sentence fell within the statutory

range. Accordingly, the trial court did not abuse its discretion by imposing a maximum sentence.

{¶11} Appellant's first assignment of error is overruled.

## II

{¶12} In his second assignment of error, appellant suggests his plea was not entered knowingly, intelligently, and voluntarily. A review of the plea hearing demonstrates the trial court complied with the mandate of Crim. R. 11 in accepting appellant's no contest plea. The trial court explained to appellant all of his rights and the effect of entering the no contest plea.

{¶13} As we outlined in *State v. Sullivan*, 2007 WL 2410108, 2 -3 (Ohio App. 5<sup>th</sup> Dist., 2007), a determination of whether a plea is knowing, intelligent, and voluntary is based upon a review of the record. *State v. Spates* (1992), 64 Ohio St.3d 269, 272. If a criminal defendant claims that his guilty plea was not knowingly, voluntarily, and intelligently made, the reviewing court must review the totality of the circumstances in order to determine whether or not the defendant's claim has merit. *State v. Nero* (1990), 56 Ohio St.3d 106, 108.

{¶14} To ensure that a plea is made knowingly and intelligently, a trial court must engage in oral dialogue with the defendant in accordance with Crim.R. 11(C)(2). *Engle*, 74 Ohio St.3d at 527.

{¶15} The appellant indicated he had read the indictment, read the admission of no contest form containing an explanation of appellant's constitutional rights, and discussed these items with his attorney. The trial court orally went over all of the

information required to comply with Crim.R. 11. There is absolutely no evidence appellant's plea was not entered knowingly, intelligently, and voluntarily.

{¶16} Appellant's second assignment of error is overruled.

{¶17} For these reasons, after independently reviewing the record, we agree with counsel's conclusion that no arguably meritorious claims exist upon which to base an appeal. Hence, we find the appeal to be wholly frivolous under *Anders*, grant counsel's request to withdraw, and affirm the judgment of the Licking County Court of Common Pleas.

{¶18} Counsel's Motion to Withdraw is granted. The judgment of the Licking County Court of Common Pleas is affirmed

By: Edwards, J.

Gwin, P.J. and

Wise, J. concur

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JUDGES

JAE/as0610

