

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Patricia A. Delaney, P.J.
Plaintiff-Appellee	:	Hon. W. Scott Gwin, J.
	:	Hon. Andrew J. King, J.
-vs-	:	
	:	
ISAIAH MAYLE	:	Case No. CT2023-0089
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas, Case No. CR2023-0493

JUDGMENT: Affirmed

DATE OF JUDGMENT: June 20, 2024

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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King, J.

{¶ 1} Defendant-Appellant Isaiah Mayle appeals the October 20, 2023 judgment of conviction and sentence of the Muskingum County Court of Common Pleas. Plaintiff-Appellee is the state of Ohio. We affirm the trial court.

FACTS AND PROCEDURAL HISTORY

{¶ 2} On August 2, 2023, the Muskingum County Grand Jury returned an indictment charging Mayle with one count of domestic violence pursuant to R.C. 2919.25(A) and (D)(4). Because Mayle had numerous prior domestic violence convictions, the charge was a felony of the third degree.

{¶ 3} On September 6, 2023, Mayle pled guilty to the charge. The trial court ordered a presentence investigation and set the matter over for sentencing.

{¶ 4} Mayle appeared for sentencing on October 18, 2023. The presentence investigation revealed eleven prior domestic violence charges among other charges. Transcript of Sentencing 3-4. Based on Mayle's prior record, the trial court imposed the maximum sentence of 36 months. *Id.* 7.

{¶ 5} Mayle filed an appeal and was appointed counsel. Thereafter, Mayle's attorney filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). In *Anders*, the United States Supreme Court held that if, after a conscientious examination of the record, the defendant's counsel concludes that the case is wholly frivolous, then counsel should so advise the court and request permission to withdraw. *Id.* at 744. Counsel must accompany the request with a brief identifying anything in the record that could arguably support the defendant's appeal. *Id.* Counsel also must: (1) furnish the defendant with a copy of the brief and request to withdraw; and (2) allow the defendant sufficient time to

raise any matters that the defendant 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 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.*

{¶ 6} By judgment entry filed March 7, 2024, this court noted counsel had filed an *Anders* brief and indicated to the court that she had served Mayle with the brief. Accordingly, this court notified Mayle via certified U.S. Mail that he "may file a pro se brief in support of the appeal within 60 days from the date of this entry." Mayle did not do so.

{¶ 7} The matter is now before this court for consideration of counsel's *Anders* brief. Counsel urges this court to review the following:

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{¶ 8} "THE TRIAL COURT ERRED IN ACCEPTING MAYLE'S GUILTY PLEAS UNDER CRIM.R. 11 AND ERRED IN SENTENCING MAYLE."

{¶ 9} In the proposed assignment of error, counsel suggests Mayle's plea was not knowingly, intelligently and voluntarily made. Counsel further suggests Mayle's sentence was contrary to law pursuant to R.C. 2953.08(G)(2). We disagree.

Plea

{¶ 10} When reviewing a plea's compliance with Crim.R. 11(C), we apply a de novo standard of review. *State v. Nero*, 56 Ohio St.3d 106, 108-109 (1990); *State v. Groves*, 2019-Ohio-5025, at ¶7 (5th Dist.).

{¶ 11} Criminal Rule 11 requires guilty pleas to be made knowingly, intelligently, and voluntarily. Although literal compliance with Crim.R. 11 is preferred, the trial court need only "substantially comply" with the rule when dealing with the non-constitutional elements of Crim.R. 11(C), and strictly comply with the constitutional notifications. *State v. Ballard*, 66 Ohio St.2d 473, 475 (1981), citing *State v. Stewart*, 51 Ohio St.2d 86 (1977); *State v. Veney*, 2008-Ohio-5200 at ¶ 31.

{¶ 12} As to the constitutional notifications, before accepting a plea, a trial court must inform a defendant that by entering his plea, he waives important constitutional rights, specifically: (1) the right to a jury trial; (2) the right to confront witnesses against him; (3) compulsory process for obtaining witnesses in his favor; (4) the right to require the state to prove the defendant's guilt beyond a reasonable doubt at trial; and (5) that the defendant cannot be compelled to testify against himself. *Veney*, ¶ 19. If the trial court fails to strictly comply with these requirements, the defendant's plea is invalid. *Id.* at ¶ 31.

{¶ 13} As to the non-constitutional rights, a trial court must notify a defendant of: (1) the nature of the charges; (2) the maximum penalty involved, which includes, if applicable, an advisement on post-release control; (3) if applicable, that the defendant is not eligible for probation or the imposition of community control sanctions; and (4) that after entering a guilty plea or a no contest plea, the court may proceed directly to judgment and sentencing. Crim.R. 11(C)(2)(a)(b); *Veney* at ¶ 10-13. For these non-constitutional rights, the trial court must substantially comply with the mandates of Crim.R. 11. *State v. Nero*, 56 Ohio St.3d 106, 108 (1990). "Substantial compliance means that under the totality of the circumstances the defendant subjectively understands the implications of his plea and the rights he is waiving." *Veney* at ¶ 15.

{¶ 14} We have reviewed the transcript of Mayle's plea and find it reflects the trial court's strict compliance with each constitutional notification and its substantial compliance with each non-constitutional notification. Transcript of Plea, September 6, 2023 (T.) 4-9.

Sentence

{¶ 15} As for Mayle's sentence, this court reviews felony sentences using the standard of review set forth in R.C. 2953.08. *State v. Marcum*, 2016-Ohio-1002, at ¶ 22; *State v. Howell*, 2015-Ohio-4049, at ¶ 31 (5th Dist.). Subsection (G)(2) sets forth this court's standard of review as follows:

(2) The court hearing an appeal under division (A), (B), or (C) of this section shall review the record, including the findings underlying the sentence or modification given by the sentencing court.

The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing. The appellate court's standard for review is not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division if it clearly and convincingly finds either of the following:

(a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or

(C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;

(b) That the sentence is otherwise contrary to law.

{¶ 16} "Clear and convincing evidence is that measure or degree of proof which is more than a mere 'preponderance of the evidence,' but not to the extent of such certainty as is required 'beyond a reasonable doubt' in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus.

{¶ 17} "A sentence is not clearly and convincingly contrary to law where the trial court 'considers the principles and purposes of R.C. 2929.11, as well as the factors listed in R.C. 2929.12, properly imposes post release control, and sentences the defendant within the permissible statutory range.' " *State v. Morris*, 2021-Ohio-2646, at ¶ 90 (5th Dist.) reversed on other grounds, *State v. Morris*, 2022-Ohio-4609, quoting *State v. Dinka*, 2019-Ohio-4209 at ¶ 36 (12th Dist.).

{¶ 18} After a proper Crim.R. 11 colloquy, Mayle pled guilty to a felony of the third degree. Transcript of Plea at 9. Under R.C. 2929.14(3)(b), felonies of the third degree are punishable by "a definite term of nine, twelve, eighteen, twenty-four, thirty, or thirty-six months." The trial court sentenced Mayle to thirty-six months. The sentence is within the statutory range for a third-degree felony. The trial court noted its consideration of the appropriate sentencing factors in its sentencing judgment entry.

{¶ 19} Upon review of the record, we find the trial court properly informed Mayle of the consequences of his plea, properly considered the factors set forth in R.C. 2929.11

and R.C. 2929.12, imposed a sentence within the permissible statutory range, and properly imposed post release control. Mayle's sentence is therefore not clearly and convincingly contrary to law.

Conclusion

{¶ 20} "*Anders* equated a frivolous appeal with one that presents issues lacking in arguable merit. . . . An issue lacks arguable merit if, on the facts and law involved, no responsible contention can be made that it offers a basis for reversal." *State v. Pullen*, 2002-Ohio-6788 at ¶ 4 (2d Dist).

{¶ 21} After independently reviewing the record, we agree with appellate counsel's conclusion that no arguably meritorious claims exist upon which to base an appeal.

{¶ 22} We find the appeal to be wholly frivolous under *Anders*, grant counsel's request to withdraw, and affirm the judgment of the trial court.

{¶ 23} The judgment of the Court of Common Pleas of Muskingum County, Ohio,
is hereby affirmed.

By King, J.,

Gwin, J. and

Delaney, J. concur.