

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

State of Ohio

Court of Appeals No. E-07-065

Appellee

Trial Court No. 2006-CR-231

v.

Christopher Elam

DECISION AND JUDGMENT

Appellant

Decided: August 28, 2009

* * * * *

Kevin J. Baxter, Erie County Prosecuting Attorney, and
Mary Ann Barylski, Assistant Prosecuting Attorney, for appellee.

Thomas M. Dusza, for appellant; Christopher Elam, pro se.

* * * * *

SINGER, J.

{¶ 1} This appeal comes to us from the Erie County Court of Common Pleas wherein appellant, Christopher Elam, was convicted of felonious assault.

{¶ 2} Counsel appointed to pursue appellant's appeal has filed a brief and motion requesting withdrawal 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 states that, after careful review of the record and legal research, he cannot discern any "arguable, non-frivolous issue for appeal." *Anders*, supra, at 744. Counsel further states that he has advised appellant of his right to file a brief on his own behalf, and that a copy of both the brief and motion to withdraw have been served upon appellant. Appellant has filed a brief on his own behalf.

{¶ 3} We are required, pursuant to *Anders*, supra, to thoroughly and independently review the record to determine that counsel has made a diligent effort and that the proceedings below were free from prejudicial error and conducted without infringement of appellant's constitutional rights.

{¶ 4} Upon consideration, we conclude that counsel's brief is consistent with the requirements set forth in *Anders*, supra, and *Penson v. Ohio* (1988), 488 U.S. 75, 109 S.Ct. 346, 102 L.Ed.2d 300.

{¶ 5} The facts giving rise to this appeal are as follows. On January 9, 2007, appellant entered a guilty plea to one count of felonious assault, a violation of R.C. 2902.11 and a felony of the second degree. He was sentenced to serve seven years in prison.

{¶ 6} Counsel for appellant has set forth the following potential assignment of error:

{¶ 7} "The trial court abused its discretion when it imposed a sentence allowable by law upon the defendant."

{¶ 8} Appellant's pro se assignment of error is as follows:

{¶ 9} "The trial court's sentence finding [sic] does not support the sentence given to appellant thus making appellant's sentence contrary to law."

{¶ 10} In *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, paragraph seven of the syllabus, the Supreme Court of Ohio, in striking down parts of Ohio's sentencing scheme, held that "[t]rial courts have full discretion to impose a prison sentence within the statutory range and are no longer required to make findings or give their reasons for imposing maximum, consecutive, or more than the minimum sentences." Thus, an appellate court reviews felony sentences for an abuse of discretion. *Id.* An abuse of discretion implies that the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. When applying an abuse of discretion standard, an appellate court may not generally substitute its judgment for that of the trial court. See *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621.

{¶ 11} Pursuant to R.C. 2929.14(A)(2), the prison term for a second degree felony shall be two, three, four, five, six, seven, or eight years. Here, appellant's sentence was within applicable statutory parameters. Accordingly, appellate counsel's potential assignment of error and appellant's pro se assignment of error are found without merit.

{¶ 12} Upon our own independent review of the record, we find no grounds for a meritorious appeal. The appeal is found to be without merit. Appellant's counsel's motion to withdraw is found well-taken and is granted.

{¶ 13} The judgment of the Erie County Court of Common Pleas is affirmed.

Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

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.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

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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