

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2008 CA 56
v.	:	T.C. NO. 08 CR 146A
	:	
JAMES SAMMONS	:	(Criminal appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	

OPINION

Rendered on the 12th day of June, 2009.

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JAMES SAMMONS, #A578-992, Warren Correctional Institute, P. O. Box 120, Lebanon, Ohio
45036
Defendant-Appellant

FROELICH, J.

{¶ 1} James Sammons pled guilty to two counts of trafficking in crack cocaine, felonies of the fifth degree, and two counts of trafficking in crack cocaine in the presence of a juvenile, felonies

of the fourth degree, in exchange for which a fifth charge – possession of crack cocaine, a second degree felony – was dropped. He was sentenced to two terms of twelve months and two terms of eighteen months of incarceration respectively, to be served consecutively, which was the maximum sentence that could be imposed. Sammons was also fined \$2,500, which was offset by \$2,336 that was forfeited as part of the plea agreement.

{¶ 2} Sammons appealed, and counsel was appointed to prosecute the appeal. Appointed appellate counsel filed a brief in accordance with *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, wherein counsel represented that, after review of the record, he could ascertain no arguably meritorious issues to present on appeal. We informed Sammons that his counsel had filed an *Anders* brief and of its significance, and we invited Sammons to file a pro se brief assigning error for review, but he has filed nothing with this court.

{¶ 3} Pursuant to our responsibilities under *Anders*, we have independently reviewed the entire record of this case. There is no evidence in the record to suggest that Sammons did not understand his plea and the potential sentence. Although his sentence was the maximum, it was within the statutory range, and the trial court has broad discretion in the imposition of sentence, especially when a more serious charge is dismissed as part of a plea agreement.

{¶ 4} A \$2,500 fine was also imposed. Although at the sentencing hearing, the fine was imposed on Count I, the Count was not specified in the Judgment Entry. However, even if this constituted a technical lapse, it did not prejudice Sammons.

{¶ 5} Before imposing a financial sanction under R.C. 2929.18, the court is required to consider the offender's present and future ability to pay the amount of the sanction or fine. R.C. 2929.19(B)(6). A trial court need not hold a hearing under R.C. 2929.18(E); rather, "there merely must be some evidence in the record [that] the trial court considered

defendant's present and future ability to pay the sanction." *State v. Conway*, Franklin App. No. 03AP-1120, 2004-Ohio-5067, at ¶7.

{¶ 6} Sammons' Financial Disclosure Affidavit, filed after sentencing, shows no assets or income, and he has been found to be indigent for purposes of this appeal. The record of the trial court proceedings demonstrates that Sammons did post a substantial bond, was represented by retained counsel, had all but \$164 of the fine paid by forfeited assets, and was working, albeit as a bouncer.

{¶ 7} We cannot find from the record that the imposition of the fine constituted an arguably meritorious issue for review. If there were other facts not in the record that demonstrated inability to pay at the time or in the future, such an argument cannot be considered on direct appeal. "Because information regarding an appellant's finances would most often lie outside the record on direct appeal, the appropriate place to pursue this question will generally be in a hearing for post-conviction relief under R.C. 2953.21." *State v. Cochran* (June 5, 1998), Clark App. No. 97-CA-50.

{¶ 8} Based on the record before us, we have concluded, as did appointed appellate counsel, that there are no arguably meritorious issues for appellate review and that this appeal is entirely frivolous.

{¶ 9} The judgment will be affirmed.

DONOVAN, P.J. and FAIN, J., concur.

Copies mailed to:

Amy M. Smith
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James Sammons
Hon. Douglas M. Rastatter