

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No.
Plaintiff-Appellee	:	
	:	Trial Court Case No. 2007-CR-3644
v.	:	
	:	
MAHDI AL-MOSAWI	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 15<sup>th</sup> day of January, 2010.

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MATHIAS H. HECK, JR., by R. LYNN NOTHSTINE, Atty. Reg. #0061560,  
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FAIN, J.

{¶ 1} Defendant-appellant Mahdi Al-Mosawi appeals from his conviction and sentence, following his guilty plea, upon two counts of Attempted Murder. Al-Mosawi was convicted of attempting the murder of the mother of his child, by means of a brutal attack upon her with the back end of an axe, causing long-term, if

not permanent, physical and neurological injury. He was sentenced to ten years – the maximum – upon each count, to be served concurrently.

{¶ 2} Al-Mosawi's assigned appellate counsel has filed a brief under the authority of *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, indicating that he was unable to find any potential assignments of error having arguable merit. Upon being notified that his counsel had filed an *Anders* brief, Al-Mosawi filed his own, pro se brief.

{¶ 3} We have reviewed the briefs, and we have conducted an independent review of the entire record, as required by *Anders v. California*, supra. We have found no potential assignments of error having arguable merit. Accordingly, the judgment of the trial court is Affirmed.

I

{¶ 4} Al-Mosawi's victim, Sherita Wilson, was the mother of their infant son. They were not married, and the relationship that resulted in their son had, according to Wilson, ended before Al-Mosawi's assault upon her. They had contact as a result of being the parents of their son.

{¶ 5} On September 3, 2007, Al-Mosawi called Wilson to arrange to retrieve his truck, which she had borrowed. According to the plan, Al-Mosawi would pick up Wilson and Wilson's daughter from Wilson's uncle's home, they would go to Wilson's home to retrieve the truck, and then Wilson would take her to her grandmother's house. But Al-Mosawi instead took Wilson and her daughter to his home in Dayton.

{¶ 6} Upon entering his house, Al-Mosawi guided Wilson into the bathroom,

leaving Wilson's daughter outside the bathroom, and shut the door. Al-Mosawi began questioning Wilson about her MySpace page in the internet, and about the men she communicated with on the internet. He turned on the shower, took off his shirt, then turned around and began striking Wilson with his closed fist. He hit her repeatedly, and also put her in a choke hold and threatened to kill her.

{¶ 7} Then Al-Mosawi picked up a tool with a hatchet on one side and a hammer on the other, which was next to the toilet. Al-Mosawi struck Wilson in the right side of the head with the hammer side of the tool, several times. Wilson wound up in the tub, in a pool of blood. She testified that she believed she was going to die.

{¶ 8} The next thing Wilson remembered was being in the intensive care unit at Miami Valley Hospital, where she was treated for two weeks. She was treated in her home for four weeks after that. She had surgery for skull fractures.

{¶ 9} At the time of trial, Wilson was suffering the loss of her sense of smell, short-term memory loss, and she had no feeling in her right hand. She reported poor balance, pain, headaches, and weakness along the left side of her body. She has required speech therapy, physical therapy, and psychotherapy.

{¶ 10} Shortly after his attack, Al-Mosawi: (1) called his wife and informed her that he had "hurt" Wilson; (2) called 911 and reported that he had killed Wilson with a hammer; and (3) told Wilson's father that he had killed her.

{¶ 11} The trial court ordered a mental examination of Al-Mosawi. At a hearing, based upon the report of the examiner, the trial court found Al-Mosawi competent to stand trial. Al-Mosawi moved to suppress statements he had made to

police, which was overruled following a hearing. Although Al-Mosawi had interposed a plea of not guilty by reason of insanity, on the morning of trial, he withdrew his not-guilty-by-reason-of-insanity pleas.

{¶ 12} In due course, a jury was empaneled, and Al-Mosawi was tried to a jury. Before the commencement of the trial, Al-Mosawi's trial counsel made a record of the fact that he had advised Al-Mosawi to plead no contest to the charges, which would allow him to argue the suppression issue on appeal, but that Al-Mosawi had insisted on going to trial. Al-Mosawi's trial counsel asserted that Al-Mosawi would stand a much better chance at trial if he could obtain the suppression of his incriminating statements. Al Mosawi confirmed that he had been so advised, but had decided to go to trial.

{¶ 13} On the second day of trial, after Wilson had testified, Al-Mosawi elected to plead guilty to the charges. The plea colloquy included the following:

{¶ 14} "THE COURT: Do you understand that the effect of your guilty plea today is a complete admission of your guilt, *you're giving up your right to appeal any pretrial ruling, including the decision on the motion to suppress*, and you're also giving up your right to continue the trial. Do you understand that?"

{¶ 15} "THE DEFENDANT: Yes, ma'am." (Emphasis added.)

{¶ 16} Although Al-Mosawi can speak and understand English to some extent, at his competency hearing, suppression hearing, trial, plea proceeding, and sentencing, the trial court qualified an English-Arabic interpreter (not always the same at each hearing) and swore in the interpreter. The proceedings are recorded in the record as video records. In the proceedings we have watched in the video

format (we have reviewed the entirety of the written transcripts of the proceedings), which includes the entire trial, plea and sentencing proceedings, the interpreter appears to be constantly interpreting the proceedings for Al-Mosawi, who does not appear to have any difficulty following the interpretation. In the plea hearing, when Al-Mosawi responds to the trial court's questions, he does so directly, in English. At the sentencing hearing, when the time came for Al-Mosawi to address the trial court, he did so directly, in English, in so much length that the trial court had to gently nudge him back to material matters at one point. (The trial court did not, however, cut him off at the sentencing hearing; Al-Mosawi was allowed to speak until he decided that he was done.)

{¶ 17} At the sentencing hearing, Wilson did not address the court, but her father did. He spoke of the devastating effect of the attack on his daughter and her family, and asked that Al-Mosawi be sentenced to the maximum prison term – ten years – on each count, to be served consecutively. At the conclusion of the sentencing hearing, the trial court indicated that the severity of the attack, and of Wilson's injuries, inclined the court to the maximum sentence, but that the trial court was satisfied that the law would not permit consecutive sentences (presumably because the same victim was involved). One count alleged an attempt to purposefully kill Wilson – R.C. 2903.02(A); the other count alleged an attempt to commit an offense of violence constituting a felony of the first or second degree that, if committed would proximately cause Wilson's death – R.C. 2903.02(B).

{¶ 18} From his conviction and sentence, Wilson appeals.

II

{¶ 19} Al-Mosawi’s appellate counsel recites three potential assignments of error that he considered, but rejected as not having arguable merit:

{¶ 20} “APPELLANT DID NOT KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY ENTER GUILTY PLEAS.”

{¶ 21} We agree with counsel’s assessment that this assignment of error has no arguable merit. The trial court painstakingly conducted the plea colloquy to ascertain that Al-Mosawi understood the consequences of his plea, including the rights he would be giving up by pleading guilty. Not only did the trial court specifically inform Al-Mosawi that his guilty plea would, as contrasted with a no-contest plea, forfeit his right to obtain appellate review of adverse pre-trial rulings, but Al-Mosawi’s trial counsel had, just before the start of the trial, advised Al-Mosawi that a no-contest plea would preserve adverse pre-trial rulings for appellate review, as part of his on-the-record counsel to Al-Mosawi that he should plead no contest, rather than stand trial.

{¶ 22} We have seen nothing, in either the written transcript, or the video, of Al-Mosawi’s guilty plea proceeding, to indicate that Al-Mosawi failed to understand the significance and consequences of his guilty plea.

{¶ 23} “THE TRIAL COURT FAILED TO FOLLOW THE REQUIREMENTS OF R.C. 2929.11(b), APPELLANT’S SENTENCE IS INCONSISTENT WITH SENTENCES OF SIMILAR OFFENDERS AND A LESSER SENTENCE IS COMMENSURATE WITH AND WOULD NOT Demean THE SERIOUSNESS OF THE OFFENSE AND IMPACT OF THE VICTIM.”

{¶ 24} After *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, a sentence imposed within the range provided by the General Assembly for an offense is reviewed for abuse of discretion. We find no abuse of discretion here. The attack upon the victim was savage, her injuries severe. No plausible argument can be made that the trial court abused its discretion by finding that any lesser sentence would not be commensurate with, but would demean the seriousness of the offense and the impact upon the victim.

{¶ 25} There is nothing in the record to support a contention that Al-Mosawi's sentence is inconsistent with sentences upon similar offenders.

{¶ 26} We agree with Al-Mosawi's appellate counsel that this potential assignment of error has no arguable merit.

{¶ 27} "APPELLANT'S TRIAL COUNSEL'S FAILURE TO OBJECT TO APPELLANT'S EXCESSIVE AND CONSECUTIVE SENTENCE CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL."

{¶ 28} Trial counsel made an argument for a less-than-maximum sentence, based upon a claim that Al-Mosawi was remorseful. There was no need to repeat this argument as an objection to the sentence once it was imposed. Consecutive sentences were not involved. Based upon the record, there was no basis to object to the sentence imposed.

{¶ 29} We agree with Al-Mosawi's appellate counsel that this potential assignment of error has no arguable merit.

{¶ 30} Al-Mosawi, in his pro se brief, proposes two assignments of error:

{¶ 31} “BY ARTICULATING NO RATIONALE FOR IMPOSING MAXIMUM SENTENCES THE TRIAL COURT VIOLATED APPELLANT’S DUE PROCESS RIGHTS UNDER THE OHIO AND FEDERAL CONSTITUTIONS AS HE IS DEPRIVED OF EFFECTIVE AND MEANINGFUL APPELLATE REVIEW OF THE SENTENCE IMPOSED.”

{¶ 32} Al-Mosawi cites *United States v. Foreman*, 436 F.3d 638 (6<sup>th</sup> Cir., 2006) for the following proposition:

{¶ 33} “Nor is it [a sentence within the federal sentencing guidelines] an excuse for an appellate court to abdicate any semblance of meaningful review. Appellate review is more important *because* the Guidelines are no longer mandatory. Under the mandatory Guideline system, appellate review was not integral to assuring uniformity. Now, with the advisory Guidelines and more sentencing variables, appellate review is all the more important in assuring uniformity and reducing sentencing disparities across the board.” *Id.*, at 644 (emphasis in original).

{¶ 34} It is apparent that *United States v. Foreman*, *supra*, was concerned with issues of federal sentencing, under the newer, advisory guidelines, not with Ohio’s very different sentencing scheme. The concerns that Al-Mosawi extracts from the above-quoted excerpt are not presented as issues of constitutional dimension, but as issues of concern under the federal sentencing scheme.

{¶ 35} Al-Mosawi then complains that there was no expert testimony in the record to support a finding that Wilson’s injuries were severe. As the State notes in its brief, there would have been, but for Al-Mosawi’s mid-trial decision to plead guilty.

Furthermore, Wilson's own testimony was ample to prove that her injuries were horrifically severe.

{¶ 36} We find no arguable merit in this proposed assignment of error.

{¶ 37} "THE TRIAL COURT FAILED TO INFORM APPELLANT AS TO THE SPECIFIC LENGTH OF THE TERM OF HIS MANDATORY POST RELEASE CONTROL. THUS THE TRIAL COURT FAILED TO SUBSTANTIALLY COMPLY WITH CRIM. R. 11(C)(2)(a) AND R.C. §2943.032(E) THEREBY APPELLANT'S GUILTY PLEA WAS NOT VOLUNTARILY AND INTELLIGENTLY MADE."

{¶ 38} Initially, the trial court, in explaining the period of post-release control to which Al-Mosawi would be subject, said it would be for a period of "up to five years." But immediately thereafter, the trial court expanded upon its initial statement by saying: "It's like parole. When you're released from prison you will be supervised by the Parole Board for five years." Al-Mosawi gave no indication that he was confused about the period of mandatory post-release control to which he would be subject.

{¶ 39} The trial court also appropriately warned Al-Mosawi, not a United States citizen, that he faced the prospect of deportation after completing his prison sentence, while correctly stating that any decision about deportation would be strictly up to federal authorities. At one point, Al-Mosawi made reference to the likelihood that he would not see his son again.

{¶ 40} In view of the fact that Al-Mosawi was sentenced to ten years imprisonment, and faced the prospect of deportation thereafter, we find it unlikely in the extreme that any thought Al-Mosawi may have had that his period of post-release control might be shorter than five years contributed to his decision to plead guilty.

{¶ 41} We find no arguable merit to this proposed assignment of error.

{¶ 42} Finally, we have independently reviewed the record, as required, and we have found no potential assignments of error having arguable merit.

IV

{¶ 43} We find no potential assignments of error having arguable merit, and we conclude that this appeal is wholly frivolous. Accordingly, the judgment of the trial court is Affirmed.

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BROGAN and FROELICH, JJ., concur.

Copies mailed to:

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