

[Cite as *State v. Brogan*, 2010-Ohio-4527.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23983
v.	:	T.C. NO. 09 CR 4255/2
DAVID J. BROGAN	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	
	:	

OPINION

Rendered on the 24th day of September, 2010.

CARLEY J. INGRAM, Atty. Reg. No. 0020084, Assistant Prosecuting Attorney, 301 W. Third Street, 5th Floor, Dayton, Ohio 45422
Attorney for Plaintiff-Appellee

BRYON K. SHAW, Atty. Reg. No. 0073124, 4800 Belmont Place, Huber Heights, Ohio 45424
Attorney for Defendant-Appellant

DAVID J. BROGAN, Corrections Reception Center, 11271 State Route 762, P. O. Box 300, Orient, Ohio 43146
Defendant-Appellant

DONOVAN, P.J.

{¶ 1} Defendant-appellant David J. Brogan appeals his conviction and sentence for one count of burglary, in violation of R.C. 2911.12(A)(1), a felony of the second degree.

Brogan filed a timely notice of appeal with this Court on April 13, 2010.

I

{¶ 2} The incident which forms the basis for the instant appeal occurred on December 18, 2009, when Brogan unlawfully entered the residence of Joyce Moorefield located at 8166 Farmersville-West Carrollton Road in Germantown, Ohio. Moorefield, who was at home at the time of the burglary, called police who arrived in time to arrest Brogan at the scene of the crime.

{¶ 3} Brogan was indicted on January 14, 2010, for one count of burglary of an occupied structure with a person present. At his arraignment on January 19, 2010, Brogan stood mute, and the trial court entered a plea of not guilty on his behalf. Brogan waived his right to trial and entered a plea of guilty to the charged offense on February 11, 2010. The trial court accepted his plea and ordered that a sentencing hearing be held on March 10, 2010. On March 9, 2010, however, Brogan filed a motion to vacate his guilty plea, and his defense attorney asked to withdraw as counsel of record. On March 10, 2010, the court allowed Brogan's counsel to withdraw and ordered that new counsel be appointed to represent him. On March 17, 2010, new counsel was appointed, and the hearing on Brogan's motion to vacate his guilty plea was set for March 26, 2010. Brogan subsequently withdrew his motion to vacate his guilty plea and asked that the court proceed to sentencing. The trial court proceeded to disposition and sentenced Brogan to four years in prison, and ordered him to pay restitution to Moorefield in the amount of \$500.00.

{¶ 4} It is from this judgment that Brogan now appeals.

II

{¶ 5} Initially, we note that Brogan’s appointed counsel filed a brief pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, in which he asserted that he could locate no arguable issues for review on appeal. Pursuant to *Anders*, we granted Brogan sixty days from our order filed on June 22, 2010, in which to file a brief for our review. Brogan failed to do so.

III

{¶ 6} We have conducted an independent review of the record and have found no error having arguable merit. Accordingly, Brogan’s appeal is without merit, and the judgment of the trial court is affirmed.

.....

BROGAN, J. and FAIN, J., concur.

Copies mailed to:

- Carley J. Ingram
- Byron K. Shaw
- David J. Brogan
- Hon. Michael L. Tucker