

IN THE SUPREME COURT, STATE OF WYOMING

2011 WY 15

October Term, A.D. 2010

February 3, 2011

FREDRIC VINCENT SACCATO,

**Appellant
(Defendant),**

v.

THE STATE OF WYOMING,

**Appellee
(Plaintiff).**

S-10-0198

ORDER AFFIRMING JUDGMENT AND SENTENCE OF THE DISTRICT COURT

This matter came before the Court upon the “Brief of Appellant in Opposition to *Anders v. California*, 386 U.S. 738 (1967),” which was filed herein January 20, 2011. Appellant pled guilty to one count of aggravated vehicular homicide and guilty to three counts of aggravated assault and battery. The district court imposed sentences of 18 to 20, 8 to 10, and 8 to 10 years. Consecutive to those sentences, the district court also imposed a sentence of 8 to 10 years, which was suspended in favor of 10 years of supervised probation. Appellant took this appeal. On November 17, 2010, appellant’s court-appointed appellate counsel filed a “Motion to Withdraw as Counsel,” pursuant to *Anders v. California*, 386 U.S. 738, 744, 87 S.Ct. 1396, 1400, 18 L.Ed.2d 493 (1967). Following a careful review of the record and the “Anders brief” submitted by counsel, this Court entered its “Order Granting Permission for Court Appointed Counsel to Withdraw,” on December 7, 2010. That Order provided that the District Court’s July 26, 2010, “Judgment, Sentence and Order of Incarceration” will be affirmed unless, on or before January 21, 2011, the appellant filed a brief that persuades this Court that the captioned appeal is not wholly frivolous. In response to this Court’s order, Appellant filed his “Brief of Appellant in Opposition to *Anders v. California*, 386 U.S. 738 (1967).”

This Court has carefully reviewed Appellant’s brief. This Court advises Appellant that, in reviewing appointed counsel’s *Anders* brief, this Court carefully considered the prosecutor’s statements about good time credit. This Court could not locate anything in the record to indicate that the district court relied on the prosecutor’s statements in imposing sentence. *Noller v. State*, 2010 WY 30, ¶ 23, 226 P.3d 867, 873 (Wyo. 2010); *Carothers v. State*, 2008 WY 58, ¶ 24, 185 P.3d 1, 15 (Wyo. 2008). This Court also considered the sentencing proportionality claim. Just as in the recent case of *Tucker v. State*, 2010 WY 162, ¶ 50 (Wyo. 2010), this Court concluded

that “we do not need to engage in a proportionality analysis because the length of Appellant’s sentence is not extreme or unusual when compared to the gravity of the offense.” This Court then analyzed the sentences under our “standard rubric for assessing the reasonableness of the sentence, which gives consideration to the crime, its circumstances, and the character of the defendant.” *Id.* In doing so, we concluded that there was nothing in the record to support a claim that the district court abused its discretion in imposing sentence. Overall, this Court concludes that Appellant’s brief has not provided any reason to conclude that his appeal has merit. It is, therefore,

ORDERED that the District Court’s July 26, 2010, “Judgment, Sentence and Order of Incarceration” be, and the same hereby is, affirmed.

DATED this 2nd day of February, 2011.

BY THE COURT:

/s/

MARILYN S. KITE
Chief Justice