

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

DENNIS L. MCCAULEY

Defendant-Appellant

: JUDGES:

:
: Hon. Patricia A. Delaney, P.J.
: Hon. John W. Wise, J.
: Hon. Earle E. Wise, Jr., J.

: Case No. 16-CA-94

: OPINION

CHARACTER OF PROCEEDING:

Appeal from the Licking County Court of
Common Pleas, Case No. 16 CR 105

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

June 2, 2017

APPEARANCES:

For Plaintiff-Appellee:

BILL HAYES
LICKING COUNTY PROSECUTOR
20 S. Second Street
Newark, OH 43055

For Defendant-Appellant:

STEPHEN T. WOLFE
1350 W. 5th Ave., Suite 124
Columbus, OH 43212

Delaney, P.J.

{¶1} Defendant-Appellant Dennis L. McCauley appeals the June 7, 2016 sentencing entry of the Licking County Court of Common Pleas.

FACTS AND PROCEDURAL HISTORY

{¶2} On February 3, 2016, a Newark Police Department officer arrested Defendant-Appellant Dennis L. McCauley on an outstanding felony warrant. Once the officer informed McCauley he was under arrest, McCauley was handcuffed and the officer began to search McCauley's backpack incident to arrest. During the search, McCauley ran away, jumped off a concrete divider, and continued to run. The officer gave chase and was able to apprehend McCauley a short distance later.

{¶3} During the search of McCauley's backpack, officers located numerous syringes typically used for drugs.

{¶4} On February 18, 2016, the Licking County Grand Jury returned a two-count indictment against McCauley. McCauley was charged with one count of escape in violation of R.C. 2921.34(A)(1)(C)(2)(b), a felony of the third-degree, and one count of possession of drug abuse instruments in violation of R.C. 2925.12(A)(C), a misdemeanor of the second-degree. McCauley entered pleas of not guilty. He remained in jail during the pendency of the case.

{¶5} McCauley requested discovery on March 8, 2016. The State responded on March 11, 2016. Trial was originally set for May 3, 2016. On April 25, 2016, McCauley requested a continuance of the trial date and waived his rights to a speedy trial. The trial court granted the motion to continue and set the trial for June 7, 2016.

{¶6} On May 9, 2016, McCauley filed a pro se motion to dismiss. McCauley contended his statutory and constitutional rights to a speedy trial were violated. The trial court overruled his motion on May 12, 2016. The trial court found that accepting the general proposition that McCauley should be brought to trial within 90 days, the speedy trial time was extended by tolling events pursuant to case law and R.C. 2945.72.

{¶7} McCauley withdrew his not guilty pleas on June 7, 2016. He entered pleas of guilty to both counts in the indictment. The trial court sentenced McCauley to 12 months in prison on Count One and 90 days in jail on Count Two. The terms were ordered to run concurrently. The trial court gave McCauley 110 days of jail time credit.

{¶8} On November 14, 2016, McCauley sent the trial court a handwritten letter claiming speedy trial violations and ineffective assistance of counsel. The trial court deemed McCauley's November 14, 2016 letter to be a notice of appeal. On January 3, 2017, this Court granted McCauley's motion for delayed appeal.

ASSIGNMENTS OF ERROR

{¶9} Appellate counsel for McCauley has filed a motion to withdraw and a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), asserting two potential Assignments of Errors:

{¶10} "I. APPELLANT WAS NOT BROUGHT TO TRIAL WITHIN THE STATUTORILY REQUIRED TIME PURSUANT TO R.C. 2945.71(C)(2).

{¶11} "II. APPELLANT WAS PREJUDICED BY INEFFECTIVE ASSISTANCE OF COUNSEL."

ANALYSIS

{¶12} In *Anders*, the United States Supreme Court held if, after a conscientious examination of the record, a defendant's counsel concludes the case is wholly frivolous, then he should so advise the court and request permission to withdraw. 386 U.S. at 744. Counsel must accompany his request with a brief identifying anything in the record that could arguably support his client's appeal. *Id.* Counsel also must: (1) furnish his client with a copy of the brief and request to withdraw; and, (2) allow his client sufficient time to raise any matters that the client chooses. *Id.* Once the defendant's counsel satisfies these requirements, the appellate court must fully examine the proceedings below to determine if any arguably meritorious issues exist. If the appellate court also determines that the appeal is wholly frivolous, it may grant counsel's request to withdraw and dismiss the appeal without violating constitutional requirements, or may proceed to a decision on the merits if state law so requires. *Id.*

{¶13} By judgment entry filed March 20, 2017, this Court noted counsel filed an *Anders* brief and indicated to the Court that he served McCauley with the brief. This Court notified McCauley he could file a pro se brief in support of the appeal on or before April 12, 2017.

{¶14} We find McCauley's counsel followed the procedures required by *Anders* in this case.

I.

{¶15} Counsel for McCauley argues in the first potential Assignment of Error that the trial court violated McCauley's right to speedy trial. The trial court denied McCauley's motion to dismiss for lack of speedy trial via judgment entry on May 12, 2016.

{¶16} Ohio Revised Code Section 2945.71 provides in pertinent part:

(C) A person against whom a charge of felony is pending:

(2) Shall be brought to trial within two hundred seventy days after the person's arrest.

(E) For purposes of computing time under divisions (A), (B), (C)(2), and (D) of this section, each day during which the accused is held in jail in lieu of bail on the pending charge shall be counted as three days. This division does not apply for purposes of computing time under division (C)(1) of this section.

{¶17} Upon our review of the record, we find, as did the trial court, McCauley's speedy-trial time did not expire. Multiple tolling events occurred within the speedy trial parameters. Further, on April 25, 2016, McCauley requested a continuance of the trial date and waived his rights to a speedy trial.

{¶18} The first potential Assignment of Error is overruled.

II.

{¶19} Counsel for McCauley argues in the second potential Assignment of Error that McCauley was misrepresented by his trial counsel. Counsel has not directed this court to any particular instance which would demonstrate ineffective assistance of counsel.

{¶20} The two-part test for ineffective assistance of counsel is set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). "In order

to prevail on a claim of ineffective assistance of counsel, a defendant must show that counsel's representation fell below an objective standard of reasonableness and that, but for counsel's errors, the result of the proceeding would have been different." *Id.*

{¶21} We have reviewed the record and do not find trial counsel committed any errors, which would have resulted in a different outcome in the proceedings.

{¶22} The second proposed Assignment of Error is overruled.

CONCLUSION

{¶23} After independently reviewing the record, we agree with counsel's conclusion that no arguably meritorious claims exist upon which to base an appeal. Hence, we find the appeal to be wholly frivolous under *Anders*, grant counsel's request to withdraw, and affirm the judgment of the Licking County Court of Common Pleas.

By: Delaney, P.J.,

Wise, John, J. and

Wise, Earle, J., concur.