

[Cite as *State v. Black*, 2018-Ohio-3801.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106879

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

LAWRENCE BLACK

DEFENDANT-APPELLANT

**JUDGMENT:
DISMISSED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-15-600941-B

BEFORE: Jones, J., McCormack, P.J., and Stewart, J.

RELEASED AND JOURNALIZED: September 20, 2018

ATTORNEY FOR APPELLANT

Walter H. Edwards, Jr.
614 West Superior Avenue, Suite 1300
Cleveland, Ohio 44113

Also listed:

Lawrence Black, pro se
Inmate No. A691752
Trumbull Correctional Institution
5701 Burnett Road
Leavittsburg, Ohio 44430

ATTORNEY FOR APPELLEE

Michael C. O'Malley
Cuyahoga County Prosecutor
The Justice Center, 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

LARRY A. JONES, SR., J.:

{¶1} This appeal arises after the resentencing of defendant-appellant, Lawrence Black (“Black”), in accordance with this court’s mandate in his direct appeal, *State v. Black*, 8th Dist. Cuyahoga No. 105197, 2017-Ohio-8063. After review of the record, transcripts, and applicable case law, Black’s appellate attorney does not believe that any meritorious, nonfrivolous errors exist in this case. Counsel therefore has filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 139, 18 L.Ed.2d 493 (1967), and seeks to withdraw from this case. For the reasons that follow, we grant counsel’s motion to withdraw and dismiss this appeal.

Procedural History

{¶2} In 2015, Black and four codefendants were indicted on numerous charges and specifications relative to gang-related shootings that occurred in Cleveland during the spring and summer of 2015. *Black*, 2017-Ohio-8063, at

¶ 2 - 4. Black’s case proceeded to a bench trial, after which the trial court found him guilty of Count 1, participating in a criminal gang; Count 38, felonious assault, with a criminal gang activity specification, one- and three-year firearm specifications, and a forfeiture specification; Counts 39 and 40, improperly handling firearms in a motor vehicle, with one-, three-, and five-year firearm specifications and a forfeiture specification; Count 41, improperly discharging into a habitation, with a criminal gang activity specification, one-, three-, and five-year firearm specifications and a forfeiture specification; Count 42, discharge of firearm on or near prohibited premises, with one- and three-year firearm specifications; and Count 43, having weapons while under

disability. *Id.* at ¶ 6-7. The trial court found Black not guilty on several counts, and several counts were dismissed by the state. *Id.* at ¶ 6-8.

{¶3} At sentencing, the trial court merged Counts 38, 39, 41, and 42, and the state elected to proceed on Count 41. *Id.* at ¶ 9. The trial court imposed the following sentence: two years for Count 1, participating in a criminal gang; one year for Count 40, improperly handling firearms in a motor vehicle, to be served consecutively with the three-year firearm specification; two years for Count 41, improperly discharging into a habitation, to be served consecutively with the three- and five-year firearm specifications and the one-year criminal gang activity specification; and one year for Count 43, having weapons while under disability. *Id.* at ¶ 9. The underlying felony counts were ordered to be served concurrently with one another. *Id.* at ¶ 10. The three-year firearm specifications attendant to Counts 40 and 41 were ordered to be served consecutively to one another. *Id.* The aggregate sentence was 14 years. *Id.* at ¶ 9.

{¶4} Black appealed and raised challenges based on sufficiency of the evidence, weight of the evidence, and the imposition of costs. *Id.* at ¶ 11. This court overruled his assignments of error. *Id.* at ¶ 24, 38, 47, and 52. However, this court, sua sponte, addressed an issue, that being, the trial court's imposition of consecutive terms for the firearm specifications attendant to Counts 40 and 41. *Id.* at ¶ 53.¹

¹The panel in *Black* noted the due process issues that can arise when appellate courts address an unbriefed issue sua sponte, but also noted, in deciding to review the issue, that it had been raised on appeal, by one of Black's codefendants charged with these crimes, and responded to by the state.

{¶5} This court noted that, under R.C. 2929.14(B)(1)(b), a trial court is generally prohibited from imposing more than one prison term for firearm specifications associated with felonies “committed as part of the same act or transaction.” *Black* at ¶ 55, quoting R.C. 2929.14(B)(1)(b). This court recognized R.C. 2929.14(B)(1)(g), which contains the following exception to the general rule:

[i]f an offender is convicted of or pleads guilty to two or more felonies, if one or more of those felonies are aggravated murder, murder, attempted aggravated murder, attempted murder, aggravated robbery, felonious assault, or rape, and if the offender is convicted of or pleads guilty to a specification of the type described under division (B)(1)(a) of this section in connection with two or more of the felonies, the sentencing court shall impose on the offender the prison term specified under division (B)(1)(a) of this section for each of the two most serious specifications of which the offender is convicted or to which the offender pleads guilty and, in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications.

{¶6} The trial court’s original sentencing entry provided that “pursuant to R.C. 2929.14(B)(1)(a) and (B)(1)(g) the court is mandated to impose the 3-year [firearm specification] in Count 40 consecutive to all other [firearm specifications].”² This court found that the trial court “mistakenly believed that R.C. 2929.14(B)(1)(g) applied and required the court to order consecutive service of the firearm specifications underlying Counts 40 and 41.” *Black* at ¶ 56.

{¶7} *Black* addressed the issue as follows:

Contrary to the trial court’s assertion, R.C. 2929.14(B)(1)(g) was

²The trial court also made comments at the sentencing hearing that it was required under R.C. 2929.14(B)(1)(g) to run the gun specifications consecutive. *Black* at ¶ 56.

inapplicable. Black was only convicted of one of the felonies enumerated in R.C. 2929.14(B)(1)(g) — felonious assault as charged in Count 38. However, Black was not sentenced on his felonious assault conviction. The trial court merged Counts 38, 39, 41, and 42 for sentencing purposes, and the state elected to sentence Black on Count 41, improperly discharging into a habitation, rather than on the felonious assault count.

Id. at ¶ 57.

{¶8} Thus, in light of the above, this court reversed the imposition of consecutive sentences on the three-year firearm specifications attendant to Counts 40 and 41 and remanded the case to the trial court for resentencing on Counts 40 and 41. *Id.* at ¶ 62, 64.

{¶9} The resentencing hearing was held in January 2018. The trial court noted that it was a limited resentencing on Counts 40 and 41 only. The trial court resentedenced Black to no term on the gun specification attendant to Count 40, and reimposed the three-year term for the three-year gun specification attendant to Count 41, as well as five years on the five-year gun specification and one year on the gang specification attendant to that count. Those sentences were ordered to be served consecutively to one another. The court further imposed the same sentence on the underlying charges in Counts 40 and 41, and ordered them to be served consecutively to one another. The aggregate sentence was 11 years. The trial court waived all costs associated with the case since October 5, 2017, that is the date of this court’s decision in his original appeal, and gave Black credit for time served, including the time served while he awaited resentencing. Black filed this appeal, and as mentioned, his attorney now seeks to withdraw from the case under the

authority of *Anders*, 386 U.S. 738, 87 S.Ct. 139, 18 L.Ed.2d 493.

Law and Analysis

{¶10} In *Anders*, the United States Supreme Court outlined the procedures an attorney must follow “to withdraw as counsel due to the lack of any meritorious grounds for appeal.” *State v. Craig*, 8th Dist. Cuyahoga No. 103020, 2015-Ohio-5541, ¶ 7.

Under *Anders*, the Supreme Court

held that if counsel thoroughly reviews the record and concludes that the appeal is “wholly frivolous,” he [or she] may advise the court of that fact and request permission to withdraw from the case.

Id., quoting *Anders* at 744. Counsel’s request to withdraw, however, “must ‘be accompanied by a brief referring to anything in the record that might arguably support the [a]ppeal.’” *Craig* at *id.*, quoting *Anders* at *id.* Further, “[c]ounsel must also furnish a copy of the brief to his [or her] client in sufficient time to allow the appellant to file his [or her] own brief, pro se.” *Craig* at *id.*, citing *Anders* at *id.*

{¶11} Upon receiving an *Anders* brief, this court is required to “conduct a full examination of all the proceedings to decide whether the case is wholly frivolous.” *In re D.M.C.*, 10th Dist. Franklin No. 09AP-484, 2009-Ohio-6667, ¶ 10. If, after fully examining the proceedings, we find “only frivolous issues on appeal, we then may proceed to address the case on its merits without affording appellant the assistance of counsel.” *Id.*

{¶12} We find that the brief submitted by appellant’s counsel meets the requirements of *Anders*. In his brief, counsel has represented that he “conscientiously

reviewed the original file, the Eighth District Court of Appeals' decision in *State v. Black*, 8th Dist. Cuyahoga No. 105197, 2017-Ohio-8063, and the transcripts in this matter," and that after that review, he could "find no error by the trial court prejudicial to the rights of the Appellant which may be argued to the Court in this appeal."

{¶13} Counsel certified that he sent a copy of his *Anders* brief to Black with instructions that he could file a pro se brief, and this court issued an entry granting Black until July 16, 2018 to file a pro se brief; Black did not file a brief. In his *Anders* brief, counsel identified one potential assignment of error: "whether the trial court erred by re-sentencing [sic] Appellant to eleven years of imprisonment."

{¶14} After independently reviewing the record, we conclude that the trial court properly resentenced Black. Under this court's mandate, the resentencing was limited to Counts 40 and 41. Black was convicted in Count 40 of improperly handling firearms in a motor vehicle under R.C. 2923.16(B), with a three-year firearm specification. R.C. 2929.14(B)(1)(e) relates to the charge of improperly handling firearms in a motor vehicle and provides in relevant part as follows:

The court shall not impose any of the prison terms described in division (B)(1)(a) of this section or any of the additional prison terms described in division (B)(1)(c) of this section upon an offender for a violation of section 2923.12 or 2923.123 of the Revised Code. The court shall not impose any of the prison terms described in division (B)(1)(a) or (b) of this section upon an offender for a violation of section 2923.122 that involves a deadly weapon that is a firearm other than a dangerous ordnance, section 2923.16, or section 2923.121 of the Revised Code. The court shall not impose any of the prison terms described in division (B)(1)(a) of this section or any of the additional prison terms described in division (B)(1)(c) of this section upon an offender for a violation of section 2923.13 of the Revised Code * *

*.

{¶15} Thus, in accordance with the above-quoted statute, on remand from this court, the trial court did not resentence Black to a term on the gun specification attendant to Count 40. In all other regards, the sentence on Counts 40 and 41 remained the same, and our review demonstrates, was proper. We further note that, with the exception of the imposition of costs, Black did not raise any issues regarding his sentence in his direct appeal. The trial court therefore properly resented Black pursuant to this court’s mandate.

{¶16} Based on our independent review, we are unable to find any “nonfrivolous issues for appeal,” and we conclude that the potential issue raised by counsel in his *Anders* brief is “not meritorious.” Accordingly, we find no error in the trial court’s resentencing judgment entry.

{¶17} Appeal dismissed.

It is ordered that appellee recover of appellant costs herein taxed.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, SR., JUDGE

TIM McCORMACK, P.J., and
MELODY J. STEWART, J., CONCUR

