

[Cite as *State v. Bradford*, 2018-Ohio-4875.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106831

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

BRADLEY L. BRADFORD

DEFENDANT-APPELLANT

JUDGMENT:
DISMISSED

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

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

RELEASED AND JOURNALIZED: December 6, 2018

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TIM McCORMACK, P.J.:

{¶1} Defendant-appellant Bradley Bradford (“Bradford”) filed an appeal from his resentencing in accordance with this court’s limited remand. Bradford’s counsel has filed a motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), asserting that following an examination of the record, there are no meritorious grounds for appeal.

{¶2} After holding the motion in abeyance to give Bradford an opportunity to file a pro se brief, and following our own independent review, this court grants counsel’s motion to withdraw, and we dismiss the appeal.

Factual and Procedural History

{¶3} In the underlying case, Bradford was charged in a 50-count indictment along with his two brothers, their mother, and another individual. Following a bench trial, Bradford was convicted of participating in a criminal gang, felonious assault, improperly handling a firearm in a motor vehicle, improperly discharging a firearm into a habitation, discharging a firearm on or near prohibited premises, and having weapons while under disability. Several of the charges also carried firearm, forfeiture, and criminal gang activity specifications.

{¶4} The trial court initially sentenced Bradford to 14 years in prison as follows: on Count 1, two years in prison concurrent to all other counts; on Count 40, improperly handling firearms in a motor vehicle, one year concurrent to all other counts on the underlying offense and three years on a firearm specification to run consecutively; on Count 41 (merged with Counts 38, 39, and 42 for sentencing), improperly discharging a firearm at or into a habitation or school, two years on the underlying offense concurrent to all other counts, and one-, three-, and five-year terms on the firearm and gang specifications, to run consecutively; on Count 44, having weapons while under disability, one year concurrent to all other counts.

{¶5} Bradford appealed his convictions, arguing (1) that his convictions were not supported by sufficient evidence; (2) that his convictions were against the manifest weight of the evidence; and (3) that the trial court erred in ordering consecutive sentences for the firearm specifications in Count 40 (improper handling of a weapon in a motor vehicle) and Count 41 (improper discharge into a habitation). This court affirmed Bradford's convictions and remanded the case for a limited resentencing, finding that the three-year firearm specification was not mandatory, as the sentencing court had believed. *State v. Bradford*, 8th Dist. Cuyahoga No. 105217, 2017-Ohio-8481. Bradford appealed this decision, and the Ohio Supreme Court declined jurisdiction. *State v. Bradford*, 152 Ohio St.3d 1446, 2018-Ohio-1600, 96 N.E.3d 300.

Bradford also applied to reopen this court’s decision, asserting that his appellate counsel was ineffective. We denied his application to reopen on the grounds that appellate counsel properly declined to raise a meritless argument. *State v. Bradford*, 8th Dist. Cuyahoga No. 105217, 2018-Ohio-1386.

{¶6} On January 25, 2018, the trial court held a resentencing hearing. The court heard from the state, Bradford, and Bradford’s counsel. The state asserted that the court should not impose the three-year firearm specification in Count 40, reducing Bradford’s total sentence from 14 years to 11 years. Bradford’s counsel indicated to the court that Bradford believed that the three- and five-year specifications in Count 41 did not have to be run consecutive to each other. Bradford then addressed the court on that issue, arguing that those specifications should “merge.”

The court resentenced Bradford to a total term of 11 years, finding that no sentence could be imposed on the three-year firearm specification in Count 40 pursuant to R.C. 2929.14(B)(1)(e).

{¶7} Bradford appealed from this resentencing.

Anders Standard and Potential Issues for Review

{¶8} In *Anders*, the United States Supreme Court held that if appointed counsel, after a conscientious examination of the case, determines the appeal to be wholly frivolous, he or she should advise the court of that fact and request permission to withdraw. *Anders*, 386 U.S. at 744, 87 S.Ct. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493. This request must be accompanied by a brief identifying anything in the record that could arguably support the appeal. *Id.* Further, counsel must also furnish the client with a copy of the brief and allow the client sufficient time to file his or her own brief. *Id.*

{¶9} Once counsel has satisfied these requirements, this court must fully examine the proceedings below to determine if any arguably meritorious arguments exist. *Id.*; Loc.App.R.

16(C). If we agree that the appeal is wholly frivolous, we may grant counsel's request to withdraw and dismiss the appeal without violating constitutional requirements, or we may proceed to a decision on the merits if state law so requires. *Id.*; Loc.App.R. 16(C).

Independent Review

{¶10} After an independent review of the record, we conclude that the trial court properly resentenced Bradford. Based on this court's remand, the resentencing was limited to Counts 40 and 41. The only change the court made to Bradford's initial sentence was to decline to impose an additional three years on the firearm specification in 40, pursuant to R.C. 2929.14(B)(1)(e). This change was proper and directly in accordance with this court's limited remand.

{¶11} Further, our review of the record makes clear that it was proper for the court to decline to run the firearm specifications in Count 41 concurrently. Even if ordering the firearm specifications to run concurrently was within the purview of the limited remand, this court addressed this issue when it denied Bradford's application to reopen his earlier appeal. This court denied Bradford's application to reopen because R.C. 2929.14(C)(1)(a) requires that the firearm specifications be served consecutively. *State v. Hooks*, 8th Dist. Cuyahoga No. 88713, 2007-Ohio-5944. We went on to note that any argument that the specifications be served concurrently was meritless.

{¶12} Accordingly, we find that there is no merit to an appeal of Bradford's resentencing. We grant counsel's motion to withdraw and dismiss this appeal.

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

TIM McCORMACK, PRESIDING JUDGE

MELODY J. STEWART, J., and
LARRY A. JONES, SR., J., CONCUR