

[Cite as *State v. Demeter*, 2018-Ohio-5361.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 107252**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**JOSEPH DEMETER**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
**DISMISSED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-17-623813-A

**BEFORE:** E.A. Gallagher, A.J., Keough, J., and Laster Mays, J.

**RELEASED AND JOURNALIZED:** December 27, 2018

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EILEEN A. GALLAGHER, A.J.:

{¶1} Defendant-appellant, Joseph Demeter, appeals from his conviction for grand theft in the Cuyahoga County Court of Common Pleas. Demeter's appointed appellate counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), and requested leave to withdraw as counsel. After a review of the record, we grant counsel's motion to withdraw and dismiss this appeal.

{¶2} In *Anders*, the United States Supreme Court held that if appointed counsel, after a conscientious examination of the case, determines that the appeal is wholly frivolous, counsel may advise the court and request permission to withdraw from the case. *Anders* at 744. The

request must be accompanied by a brief identifying issues that could arguably support the appeal. *Id.* The brief must be furnished to the client, who must then be allowed sufficient time to file his or her own brief.

{¶3} Demeter's counsel filed a motion to withdraw in compliance with these requirements. This court ordered counsel's motion be held in abeyance pending our independent review of the case.

{¶4} In accordance with *Anders*, once appellant's counsel satisfied the requirements, this court then "examines the proceedings below to determine if any meritorious issues exist. If we conclude 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." *Anders*, 386 U.S. at 744, 87 S.Ct. 1396, 18 L.Ed.2d 493.

{¶5} In this case, Demeter plead guilty to one count of grand theft, a fourth-degree felony. The trial court imposed a nine-month prison term and ordered the sentence to be served consecutively to a prison term imposed upon Demeter in a separate case. The trial court also ordered Demeter to pay restitution of \$630.

{¶6} In his *Anders* brief, Demeter's counsel stated that he thoroughly reviewed the record and determined that there were no meritorious arguments he could make on Demeter's behalf. Counsel nonetheless set forth two potential arguments pursuant to *Anders*: first, whether Demeter's plea was knowingly and voluntarily entered pursuant to Crim.R. 11 because he suffers from bipolar disorder and had not taken his medication prior to the plea; and second, whether the trial court erred in ordering Demeter to pay restitution without considering his ability to pay.

{¶7} As part of the independent review of Demeter's case, this court has examined and considered the potential arguments identified in counsel's *Anders* brief. Our own review shows

that Demeter entered his guilty plea knowingly, intelligently, and voluntarily. The trial court fully complied with the dictates of Crim.R. 11(C) in accepting Demeter's plea. Although Demeter indicated to the trial court that he suffers from bipolar disorder and that he was not receiving his medication at the time of his plea, he assured the trial court that neither the condition, nor the lack of medication, was having any impact on his ability to understand the plea proceedings. Demeter stated that he was thinking clearly at the time of his plea and his trial counsel indicated that he had no concerns about the condition and that he had no trouble communicating with Demeter. We find no arguable merit to this potential assignment of error. *See, e.g., State v. Reed*, 8th Dist. Cuyahoga No. 102364, 2016-Ohio-689 (rejecting a plea competency challenge where the defendant suffered from bipolar disorder and had not received his medication in jail because the record contained no indication that the appellant's ability to enter a knowing and intelligent plea had been compromised).

{¶8} We similarly find no merit to the potential assignment of error that the trial court erred in ordering Demeter to pay restitution without considering his ability to pay. Pursuant to R.C. 2929.19(B)(5), before ordering restitution, the trial court must consider the offender's present and future ability to pay the restitution. *Id.* If there is a plea agreement, the trial court may satisfy its burden to consider a defendant's ability to pay by asking the defendant if he understands that the restitution amount is part of the sentence. *State v. Romanko*, 8th Dist. Cuyahoga No. 104158, 2017-Ohio-739, ¶ 28, quoting *State v. St. Martin*, 8th Dist. Cuyahoga No. 96834, 2012-Ohio-1633, ¶ 6-10; *State v. Myrick*, 8th Dist. Cuyahoga No. 91492, 2009-Ohio-2030, ¶ 31. In this case, Demeter affirmed during his plea colloquy that he understood that full restitution to the victim of his grand theft charge was a condition of his plea.

{¶9} Therefore, we conclude that there are no arguable legal points on the merits of this matter. This appeal is wholly frivolous pursuant to *Anders*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493. Counsel’s request to withdraw is granted, and we dismiss this appeal.

{¶10} Accordingly, the appeal is dismissed.

It is ordered that appellee recover from appellant the costs herein taxed.

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

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EILEEN A. GALLAGHER, ADMINISTRATIVE JUDGE

KATHLEEN ANN KEOUGH, J., and  
ANITA LASTER MAYS, J., CONCUR