

[Cite as *State v. Dobson*, 2019-Ohio-368.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107721

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

BILL W. DOBSON

DEFENDANT-APPELLANT

JUDGMENT:
DISMISSED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-571055-A

BEFORE: Boyle, P.J., S. Gallagher, J., and Sheehan, J.

RELEASED AND JOURNALIZED: January 31, 2019

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MARY J. BOYLE, P.J.:

{¶1} Defendant-appellant, Bill Dobson, appeals from a judgment resentencing him to eight years in prison. Dobson's counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), seeking leave to withdraw because there are no meritorious, nonfrivolous issues for this court to review. We agree. Therefore, we dismiss Dobson's appeal and grant appointed counsel's motion to withdraw.

I. *Anders* Standard and Potential Issues for Review

{¶2} 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. *Id.* at 744. This

request, however, 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.* In this case, appointed counsel fully complied with the requirements of *Anders*.

{¶3} Once the appellant’s counsel satisfies these requirements, this court must fully examine the proceedings below to determine if any arguably meritorious issues exist. *Id.*; Loc.App.R. 16(C).¹ If we determine 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. *Anders* at 744; Loc.App.R. 16(C).

{¶4} On November 7, 2018, this court ordered appointed counsel’s motion be held in abeyance pending our independent review of the case. We further notified Dobson that he had until August 31, 2018, to file his own appellate brief, but he did not do so.

{¶5} Dobson’s counsel has fully complied with the requirements of *Anders* and Loc.App.R. 16(C). Dobson’s counsel states in his *Anders* brief that he thoroughly reviewed the record and concluded that there are no meritorious arguments that he could make on Dobson’s behalf. Dobson’s counsel further states, “counsel has searched for possible assignments of error for the court’s consideration or for further argument by defendant, but counsel cannot assert in good faith that there are any potential assignments of error which are meritorious.”

{¶6} After conducting an independent review of Dobson’s case, we dismiss his appeal and grant appointed counsel’s motion to withdraw.

¹ Effective February 1, 2019, Loc.App.R. 16 will be amended, eliminating subsection (C), which pertains to the filing of *Anders* briefs.

II. Procedural and Factual Background

{¶7} In February 2013, a Cuyahoga County Grand Jury indicted Dobson on one count each of rape, felonious assault, domestic violence with a specification of a prior offense, and two counts kidnapping (one relating to the alleged rape and one relating to the alleged domestic violence), both with sexual motivation specifications. The grand jury also indicted Dobson on one count of menacing by stalking and one count of intimidation of a crime victim or witness. Dobson waived his right to a jury trial on the domestic violence count, and it was tried to the bench. The remaining counts were tried to a jury.

{¶8} The jury found Dobson guilty of rape, one count of kidnapping without the sexual motivation specification and one count of kidnapping with the sexual motivation specification, attempted felonious assault, and menacing by stalking. The jury found Dobson not guilty of intimidation of a crime victim or witness. The trial court found Dobson guilty of domestic violence.

{¶9} At the sentencing hearing in August 2013, the trial court merged the rape and kidnapping related to the rape, and the state elected to have Dobson sentenced on rape. The trial court imposed a prison sentence of eight years for rape. The trial court merged attempted felonious assault, domestic violence, and kidnapping related to the domestic violence, and the state elected to have Dobson sentenced on the kidnapping. The trial court imposed a prison sentence of eight years for kidnapping. In addition, the trial court imposed a prison sentence of one year for menacing by stalking. The trial court ordered Dobson to serve the prison terms concurrently and notified Dobson that he was classified as a Tier III sex offender.

{¶10} Dobson appealed, arguing that his rape, kidnapping, and domestic violence convictions lacked sufficient evidence. *State v. Dobson*, 8th Dist. Cuyahoga No. 100418,

2014-Ohio-3710, ¶ 1. This court agreed with respect to the rape and kidnapping that was associated with the rape, but we affirmed Dobson's domestic violence conviction. *Id.* at ¶ 23, 26, and 33. We therefore affirmed in part, reversed in part, and remanded for the trial court to vacate the rape and kidnapping count associated with the rape. *Id.* at ¶ 34.

{¶11} On July 3, 2018, Dobson filed a motion to reactivate the case and order that he be released from prison immediately pursuant to this court's decision in his direct appeal.

{¶12} The trial court held a hearing on Dobson's motion on August 28, 2018. At the hearing, the trial court discussed this court's opinion and reviewed Dobson's original sentence.

The court stated:

The sentence imposed by [the original judge] was eight years. Counts 1 and 4 merged for purposes of sentencing, and the state elected to sentence on Count 1. That sentence was eight years. Counts 2, 3, and 5 merged for the purpose of sentencing, and the state elected to sentence on Count 5. The judge sentenced to eight years. And Count 6 the judge sentenced to one year. All those counts ran concurrent to each other, and the defendant received jail time credit. If we do, in fact, vacate Counts 1 and 4, as instructed by the Court of Appeals, the eight-year sentence will be vacated on Count 1. And since Count 1 and Count 4 merged, it would be only that eight-year sentence. That would leave Count 5's eight-year sentence and Count 6's one-year sentence, and those counts running concurrent to each other.

{¶13} The state responded that all the court needed to do was issue a new judgment entry that vacated the rape and kidnapping counts and removed Dobson's Tier III sex offender classification. The state argued that the court did not have jurisdiction to resentence Dobson on the remaining counts, which left Dobson's remaining aggregate sentence of eight years on Counts 2, 3, 5, and 6. Defense counsel argued that the court did have jurisdiction to resentence Dobson on the remaining counts.

{¶14} The trial court stated that it was going to "follow the mandates of the court of appeals and vacate * * * Counts 1 and 4." The trial court also vacated the Tier III sex offender

classification, appointed counsel for Dobson to appeal, and ended the hearing. The trial court indicated that Dobson's eight-year sentence on the unaffected counts remained "as is."

{¶15} After review, we agree with Dobson's counsel that there are no meritorious, nonfrivolous issues for our review with respect to Dobson's sentence. Accordingly, we conclude that this appeal is wholly frivolous and grant counsel's motion to withdraw.

{¶16} Appeal dismissed.

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

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

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

MARY J. BOYLE, PRESIDING JUDGE

SEAN C. GALLAGHER, J., and
MICHELLE J. SHEEHAN, J., CONCUR