

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
PREBLE COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2009-09-026
	:	<u>DECISION</u>
- vs -	:	8/30/2010
	:	
CURTIS D. SCHLEIGER,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM PREBLE COUNTY COURT OF COMMON PLEAS
Case No. 09-CR-10286

Martin P. Votel, Preble County Prosecuting Attorney, 101 East Main Street, Eaton, Ohio 45320, for plaintiff-appellee

Roger L. Hurley, 6625 Woodbriar Lane, Greenville, Ohio 45331, for defendant-appellant

Curtis D. Schleiger, #A615794, Noble Correctional Institution, 15708 McConnellsville Rd., Caldwell, Ohio 43724, defendant-appellant, pro se

Per Curiam.

{¶1} This cause came on to be considered upon a notice of appeal, the transcript of the docket and journal entries, the transcript of proceedings and original papers from the Preble County Court of Common Pleas, the brief filed by appellant's counsel and appellant's pro se brief, oral argument having been waived.

{¶2} Counsel for defendant-appellant, Curtis D. Schleiger, has filed a brief with this court pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, which

(1) indicates that a careful review of the record from the proceedings below fails to disclose any errors by the trial court prejudicial to the rights of appellant upon which an assignment of error may be predicated; (2) lists three potential errors "that might arguably support the appeal," *Anders* at 744, 87 S.Ct. at 1400; (3) requests that this court review the record independently to determine whether the proceedings are free from prejudicial error and without infringement of appellant's constitutional rights; (4) requests permission to withdraw as counsel for appellant on the basis that the appeal is wholly frivolous; and (5) certifies that a copy of both the brief and motion to withdraw have been served upon appellant.

{¶3} Appellant has filed a pro se brief raising assignments of error pertaining to dismissal of the indictment, denial of a continuance, failure to find a lesser included offense, ineffective assistance of counsel, prejudicial use of a prior offense, intoxication of the victim and new witnesses and statements regarding the incident. We have accordingly examined the record and find no error prejudicial to appellant's rights in the proceedings in the trial court except as set forth below.

{¶4} Appellant was sentenced on September 17, 2009 for one count of felonious assault, a second-degree felony. As such, appellant was subject to a mandatory three-year period of postrelease control. See R.C. 2967.28. At the sentencing hearing, the trial court informed appellant that "there will be a mandatory period of postrelease control after his release from the penitentiary of five years." The sentencing entry states that appellant is subject to mandatory postrelease control, "up to a maximum of five years." However, a second degree felony requires a mandatory term of three years postrelease control. R.C. 2967.28. Moreover, the court stated at the hearing that there were consequences for violating postrelease control, but did not explain those consequences to appellant. See R.C. 2929.19(B)(3)(e).

{¶5} Accordingly, postrelease control was not properly imposed in this case.

The Ohio Supreme Court has held that in cases where a defendant is sentenced after July 11, 2006, R.C. 2929.191 provides a mechanism for a trial court to correct the improper imposition of postrelease control. *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434.

{¶6} Therefore, it is the order of this court that the motion of counsel for appellant requesting to withdraw as counsel is granted. This cause is reversed and the matter remanded with instructions to the trial court to correct the improper imposition of postrelease control pursuant to the procedures outlined in R.C. 2929.191.

YOUNG, P.J., BRESSLER and POWELL, JJ., concur.