

[Cite as *State v. Pullen*, 2002-Ohio-6788.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO :

Plaintiff-Appellee : C.A. CASE NO. 19232

vs. : T.C. CASE NO. 01CR2936

GARY LEE PULLEN: (Criminal Appeal from
Common Pleas Court)

Defendant-Appellant :

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DECISION AND ENTRY

Rendered on the 6th day of December, 2002.

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PER CURIAM:

{¶1} Defendant-Appellant's counsel has submitted a brief per *Anders v. California* (1967), 386 U.S. 738, 18 L.Ed.2d 493, 87 S.Ct. 1396, in which counsel states that he "has been unable to locate any viable issues on appeal." (Brief, p.4). Defendant-Appellant was notified of his counsel's submission, and has provided no response.

{¶2} Following his "no merit" representation, counsel identified six possible issues for appellate review. We are charged by *Anders* to determine whether any of these issues are "wholly frivolous." *Id.*, at p. 744. If we find that any of them involve legal points that are arguable on their merits, and therefore are not wholly frivolous, per *Anders* we must appoint other counsel to argue the appeal. *Id.*

{¶3} Of late, we have received more "Anders" briefs

presenting a number of issues that might arguably support an appeal, and which upon review appear to be arguable on their merits. In that event, an *Anders* brief is not appropriate, and new counsel must be appointed. This delays resolution of the appeal and is more costly to funding sources.

{¶4} *Anders* equated a frivolous appeal with one that presents issues lacking in arguable merit. An issue is not lacking in that regard merely because the prosecution can be expected to present a strong argument in reply. An issue lacks arguable merit if, on the facts and law involved, no responsible contention can be made that it offers a basis for reversal.

{¶5} Here, several of the issues that counsel presents have arguable merit, in particular those involving the trial court's evidentiary rulings. As to them, an *Anders* brief is not appropriate. However, we may not cull out those issues which we find are wholly frivolous, and then appoint counsel to argue the others. New counsel must be free to argue any of the issues that have merit, including any that prior counsel failed to identify.

{¶6} For the foregoing reasons, the *Anders* brief submitted on Defendant-Appellant's behalf will be stricken, and new counsel will be appointed to represent him. So Ordered.

JAMES A. BROGAN, JUDGE

THOMAS J. GRADY, JUDGE

FREDERICK N. YOUNG, JUDGE

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