[Cite as *State v. Engle*, 2010-Ohio-2636.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23645
v.	:	T.C. NO. 07 CR 1128
RAYMOND ENGLE	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 11th day of June, 2010.

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Defendant-Appellant

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FROELICH, J.

{¶ 1} In September of 2009, appellant entered a plea of no contest and was found guilty to the charge of burglary. The court immediately proceeded to sentencing, imposing

a two-year sentence, but releasing appellant for "time served," although he was still subject to post-release control. The appellant filed a pro se notice of appeal indicating on the docketing statement that he wished to address the issues of "coercion and lack of jurisdiction."

{¶ 2} Counsel was appointed and has filed a brief pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, indicating that he has "been unable to locate a viable issue on appeal." The appellant was advised that he was granted time in which to file a pro se brief assigning any errors for review by this court and that, absent such a brief, the appeal will be submitted for decision. No such brief has been filed. The case is now before us for our independent review of the record. *Penson v. Ohio* (1988), 488 U.S. 75, 109 S.Ct. 346, 102 L.Ed.2d 300.

{¶ 3} The court has reviewed the transcript of the plea. Not only is there no indication of any coercion, but the colloquy could almost serve as a model for Rule 11 compliance. Neither counsel nor appellant, pro se, has pointed to anything in the record that would indicate anything but an intelligent, voluntary and knowing plea.

{¶ 4} The appellant's reference in the docketing statement to "lack of jurisdiction" is confusing. The indictment charges a felony offense which occurred in Montgomery County and the case was heard by the General Division of the Common Pleas Court.

{¶ 5} At some point during the proceedings, the appellant filed a pro se motion to dismiss which could be interpreted as a claim of double jeopardy. First, the law in Ohio is clear that even if there were double jeopardy, a motion to dismiss is not the appropriate remedy; the defendant must proceed through the second trial and then assign double

jeopardy as an error. See, e.g., *State v. Tate*, Mahoning App. No. 08 MC 204, 2008-Ohio-5686, ¶28.

{¶ 6} Moreover, if the appellant is arguing that he could not be found guilty of burglary since he had been previously found guilty of that offense, this rationale is not well taken. The defendant had been convicted of burglary, but he appealed the conviction and it was reversed. *State v. Engle*, Montgomery App. No. 22455, 2009-Ohio-1944. Double jeopardy does not apply in a situation where a defendant appeals his conviction and is successful in having that conviction set aside. *United States v. Ball* (1896), 163 U.S. 662, 16 S.Ct. 1192, 41 L.Ed.300.

{¶ 7} Counsel notes that appellant disputes "the propriety of the trial court's denial of his Motion to Suppress without holding a hearing as requested." The defendant pro se filed a "Motion to Suppress Evidence" on May 28, 2009, together with three separate motions to dismiss, a motion for return of property, a motion for "severance of charges," a motion for discovery, a motion for "own recognizance," and a "written request for witnesses and documents." On June 19, the court denied the motions (except for ordering compliance with the local rules and the criminal rules), but specifically held that the court "will entertain and consider any issues raised by defendant's appointed counsel." A plea and sentencing agreement was negotiated and counsel did not file such motions.

{¶ 8} In order to satisfy the specific requirements of Crim.R. 47, a motion to suppress evidence must state the legal and factual basis upon which it rests with sufficient particularity to put the prosecutor and the trial court on notice of the issues to be decided. *Xenia v. Wallace* (1988), 37 Ohio St.3d 216, as cited in *State v. Butt* (Aug. 29, 1997),

Montgomery App. No. 16215. The appellant, pro se, summarily asked to suppress "(1) alleged confession; (2) one-on-one identification; and (3) and any all pictures taken in the case sub judice." This does not comply with *Wallace* and the motion was properly overruled.

{¶ 9} Moreover, a pro se motion to suppress need not even be considered by the court. A criminal defendant has the right to either appear pro se or by counsel, but has no corresponding right to act as co-counsel on his own behalf. *State v. Martin*, 103 Ohio St.3d 385, 2004-Ohio-5471. Therefore, the trial court had no obligation to consider the motion. See, e.g., *State v. Pilgrim*, 184 Ohio App.3d 675, 2009-Ohio-5357, at ¶59.

{¶ 10} Accordingly, finding no meritorious issues for appellate review, the judgment of the trial court will be affirmed.

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DONOVAN, P.J. and GRADY, J., concur.

Copies mailed to:

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