[Cite as *State v. Gillis*, 2015-Ohio-2293.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	Appellate Case No. 26348
	:	
v.	:	Trial Court Case No. 2013-CR-1632/2
	:	
HENRY L. GILLIS	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 12th day of June, 2015.

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MATHIAS H. HECK, JR., by CARLEY J. INGRAM, Atty. Reg. No. 0020084, Assistant Prosecuting Attorney, Montgomery County Prosecutor's Office, Appellate Division, Montgomery County Courts Building, 301 West Third Street, Dayton, Ohio 45422
Attorney for Plaintiff-Appellee

CHRISTOPHER A. DEAL, Atty. Reg. No. 0078510, 2541 Shiloh Springs Road, Dayton, Ohio 45426
Attorney for Defendant-Appellant

HENRY L. GILLIS, Inmate No. A708-540, Pickaway Correctional Institution, 11781 State Route 762, P.O. Box 209, Orient, Ohio 43146
Defendant-Appellant

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WELBAUM, J.

{¶ 1} Defendant-appellant, Henry L. Gillis, appeals from the decision of the Montgomery County Court of Common Pleas revoking his community control sanctions and sentencing him to 12 months in prison. In proceeding with the appeal, Gillis's assigned counsel filed a brief under the authority of *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), indicating that there are no issues with arguable merit to present on appeal. After conducting a review as prescribed by *Anders*, we also find no issues with arguable merit. Accordingly, the judgment of the trial court will be affirmed.

{¶ 2} On August 6, 2013, Gillis pled guilty to having a weapon while under disability in violation of R.C. 2923.13(A)(3), a felony of the first degree. Gillis was under a weapons disability due to a prior drug conviction in Montgomery County Case No. 2002 CR 2923/2. After pleading guilty to having a weapon while under disability, on August 22, 2013, the trial court sentenced Gillis to community control sanctions not to exceed five years with various specified conditions. Among those conditions were requirements that Gillis maintain verifiable employment, establish contact with the Goodwill Easter Seals employment program, and comply with any recommendations made by Goodwill. Upon being placed on community control, Gillis also signed the general conditions of his supervision provided by the probation department, which, in part, required him to work regularly at a lawful occupation and accomplish all case plan objectives set for him throughout his supervision.

{¶ 3} On July 1, 2014, the probation department filed a notice of community control sanctions revocation alleging Gillis violated various conditions of his probation, including, but not limited to, failing to work regularly at a lawful occupation and failing to accomplish

all case plan objectives. A revocation hearing was held on August 13, 2014. At the hearing, the State presented testimony from Gillis's probation officer, Donny Anderson. Anderson testified regarding all the alleged violations cited in the notice of revocation. Specifically, Anderson testified that the only employment verification he received from Gillis was a handwritten letter on notebook paper signed by a "Mr. Webb" on April 15, 2014. The letter indicated that Gillis had been hired to work at Webb's Mobile Carwash since the beginning of April 2014. However, Anderson testified that Gillis never provided him with any paystubs or W2 forms.

{¶ 4} The trial court noted on the record that prior to the revocation hearing it had also received a handwritten letter on notebook paper signed by a "Mr. Webb." The letter indicated Gillis had been employed by Webb since May 1, 2014. The court also noted that the handwriting on its letter did not match the handwriting on the letter received by Anderson. Additionally, the court noted that Webb's street address was misspelled on the envelope that contained the trial court's letter. Both letters were admitted as evidence during the hearing.

{¶ 5} Later in the proceeding, Anderson testified that it was part of Gillis's case plan objective to attend the Goodwill Easter Seals employment program three times a week if he was not employed *and* not paying his full monthly child support payments. Anderson testified that Gillis's monthly child support payment was $308.22. According to Anderson, Gillis paid a total of $310 in child support between 2013 and 2014, and was $9,054.42 in arrearages. Anderson also testified that he received an e-mail notification from Goodwill stating that Gillis had attended no classes during the last half of April 2014, all of May 2014, and only one class in June 2014. Documentation supporting

Anderson's testimony regarding the child support payments and failure to attend Goodwill were admitted as evidence by the State.

{¶ 6} At the close of the revocation hearing, the trial court found that Gillis had violated the condition of his probation that required him to attend the Goodwill Easter Seals employment program three times a week if he was not employed at a capacity to where he could pay his child support in full. The trial court also found that Gillis had failed to obtain lawful, verifiable employment given that he provided no verification of employment other than two letters on notebook paper from a "Mr. Webb" with different handwriting, which the court did not find acceptable. As a result of the foregoing findings, the trial court concluded that Gillis violated the conditions of his probation. The trial court reasoned that because Gillis failed to utilize the services available to him while on community control, he was no longer amenable to community control sanctions. Accordingly, the trial court revoked Gillis's community control sanctions and sentenced him to 12 months in prison.

{¶ 7} On August 15, 2014, Gillis's trial counsel filed a notice of appeal from the trial court's decision revoking his community control and sentencing him to 12 months in prison. Thereafter, Gillis was appointed appellate counsel, who, on January 16, 2015, filed an *Anders* brief indicating that there were no issues with arguable merit to present on appeal. On January 23, 2015, we notified Gillis that his counsel found no meritorious claim for our review and granted him 60 days to file a pro se brief assigning any errors. Gillis did not file a pro se brief.

{¶ 8} Our task in this case is to conduct an independent review of the record as prescribed by *Anders*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493. In *Anders* cases,

the appellate court must conduct a thorough examination of the proceedings to determine if the appeal is actually frivolous, and if it is, the court may "grant counsel's request to withdraw and then dismiss the appeal without violating any constitutional requirements, or the court can proceed to a decision on the merits if state law requires it." *State v. McDaniel*, 2d Dist. Champaign No. 2010 CA 13, 2011-Ohio-2186, ¶ 5, citing *Anders* at 744. "If we find that any issue presented or which an independent analysis reveals is not wholly frivolous, we must appoint different appellate counsel to represent the defendant." (Citation omitted.) *State v. Marbury,* 2d Dist. Montgomery No. 19226, 2003-Ohio-3242, ¶ 7. *"Anders* equated a frivolous appeal with one that presents issues lacking in arguable merit. An issue does not lack arguable merit merely because the prosecution can be expected to present a strong argument in reply, or because it is uncertain whether a defendant will ultimately prevail on that issue on appeal." *State v. Pullen*, 2d Dist. Montgomery No. 19232, 2002-Ohio-6788, ¶ 4. Rather, "[a]n issue lacks arguable merit if, on the facts and law involved, no responsible contention can be made that it offers a basis for reversal." *Id*.

{¶ 9} Having conducted an independent review of the record pursuant to *Anders*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, we agree with Gillis's appellate counsel that based on the facts and relevant law, there are no issues with arguable merit to present on appeal. Accordingly, the judgment of the trial court is affirmed.

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FROELICH, P.J. and HALL, J., concur.

Copies mailed to:

Mathias H. Heck, Jr.
Carley J. Ingram
Christopher A. Deal
Henry L. Gillis
Hon. Mary Katherine Huffman