

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

STATE OF OHIO, :
 :
Plaintiff-Appellee, : Case No. 03CA2740
 :
vs. :
 :
JESSE E. BLEVINS, : DECISION AND JUDGMENT ENTRY
 :
 :
Defendant-Appellant. :

APPEARANCES:

COUNSEL FOR APPELLANT: Pamela C. Childers, P.O. Box 2073,

Chillicothe,
Ohio 45601

__CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 5-19-04

ABELE, J.

{¶1} This is an appeal from a Ross County Common Pleas Court judgment of conviction and sentence. The jury found Jesse Blevins, defendant below and appellant herein, guilty of recklessly causing serious harm to a police officer in violation of R.C. 2903.13(C)(4), a fourth degree felony.

{¶2} Appellant's appointed appellate counsel (1) has advised the court that she has reviewed the record and can discern no meritorious claims for appeal; and (2) under Anders v. California (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, requested to

withdraw from the instant case. Additionally, appellant's counsel has assigned three potential assignments of error for this court to consider:

FIRST ASSIGNMENT OF ERROR:

"THE TRIAL COURT FAILED TO COMPLY WITH THE FOURTEENTH AND SIXTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND ARTICLE 1, SECTION 10 OF THE OHIO CONSTITUTION WHEN IT FAILED TO PROVIDE THE DEFENDANT WITH EFFECTIVE ASSISTANCE OF COUNSEL."

SECOND ASSIGNMENT OF ERROR:

"THE JURY VERDICT OF FELONIOUS ASSAULT IS AGAINST THE MANIFEST WEIGHT OF EVIDENCE."

THIRD ASSIGNMENT OF ERROR:

"CLEAR AND CONVINCING EVIDENCE EXISTS TO SHOW THAT DEFENDANT'S SEVENTEEN-MONTH SENTENCE IS NOT SUPPORTED BY THE RECORD."

{¶3} After our independent review of the record, we agree with counsel's assessment that no meritorious claim exists upon which to predicate an appeal. Thus, (1) we grant counsel's request to withdraw; (2) we find the appeal in the case sub judice wholly frivolous under Anders; and (3) we affirm the trial court's judgment.

{¶4} On October 13, 2002, appellant was transported from the Ross County Jail to the Adena Regional Medical Center, a local hospital, to receive medical treatment for alcohol withdrawal. When Sheriff's Deputy Robert Lewis attempted to force appellant to lie on a gurney, appellant caused the officer to fall backwards and suffer a knee injury. Apparently, medical personnel intended to inject appellant with a hypodermic needle and appellant, while shackled and handcuffed, resisted receiving this form of medical

treatment and pushed or struck Deputy Lewis.

{¶5} The Ross County Grand Jury returned an indictment charging appellant with felonious assault on a police officer in violation of R.C. 2903.11, a first degree felony. After hearing the evidence and arguments of counsel, the jury found appellant guilty of recklessly causing serious physical harm to a police officer in violation of R.C. 2903.13(C)(4), a fourth degree felony.

Appellant filed a timely notice of appeal. Appointed counsel, as mentioned above, has filed an Anders brief and a motion to withdraw as counsel and has informed the court that she can discern no meritorious issues for appeal.

{¶6} Initially, we note that in Anders the United States Supreme Court held that if counsel determines, after a thorough and conscientious examination of the record, that the case is wholly frivolous, counsel should so advise the court and request permission to withdraw. Furthermore, counsel must accompany the request with a brief that identifies anything in the record that could arguably support the appeal. *Id.* Counsel must also furnish the appellant with a copy of the brief and allow the client sufficient time to raise any matters that the client chooses. *Id.* Once these requirements have been satisfied, the appellate court must fully examine the trial court proceedings to determine if meritorious issues exist. If the appellate court determines that the appeal is frivolous, it may either grant counsel's request to withdraw and dismiss the appeal without violating constitutional requirements, or it may proceed to a decision on the merits if

state law so requires. Id.

{¶7} In the case sub judice, appellant's appointed counsel satisfied the Anders requirements and appellant has opted to not file a pro se brief. Accordingly, we will examine appointed counsel's potential assignments of error and the entire record to determine if this appeal lacks merit.

I.

{¶8} In the first potential assignment of error, appellant's appointed counsel raises the possibility that appellant may have received ineffective assistance of counsel. In particular, counsel notes that appellant's trial counsel failed to produce expert psychological or psychiatric testimony to establish that appellant suffered from alcohol withdrawal or delirium tremens at the time of the offense.

{¶9} A reversal of a criminal conviction for the ineffective assistance of counsel requires that a defendant show that counsel's performance was deficient and that the deficient performance prejudiced the defense. State v. Smith (2000), 89 Ohio St.3d 323, 327, 731 N.E.2d 645, citing Strickland v. Washington (1984), 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674; State v. Bradley (1989), 42 Ohio St.3d 136, 142, 538 N.E.2d 373. Defense counsel's representation must fall below an objective standard of reasonableness to be deficient. Bradley. Moreover, the defendant must show that there exists a reasonable probability that, were it not for counsel's errors, the results of the trial would have been different. State v. White (1998), 82 Ohio St.3d, 16, 23, 693

N.E.2d 772. If one component of the Strickland test disposes of an ineffective of counsel claim, it is not necessary to address both components. Strickland; Bradley.

{¶10} Appellant's counsel notes that trial counsel did fully explore appellant's competency to stand trial and did request the court for a competency evaluation. Thus, counsel concedes that appellant cannot satisfy the first prong of the Strickland standard. Counsel notes that a defendant may not offer psychological or psychiatric expert testimony to vitiate particular crime's intent unless a defendant asserts an insanity defense. In State v. Taylor (2002), 98 Ohio St.3d 27, 781 N.E.2d 72 the court noted a defendant may not offer expert psychiatric testimony, unrelated to the insanity defense, to show that, due to mental illness, intoxication, or any other reason, he lacked the mental capacity to form the specific mental state required for a particular crime or degree of crime. See, also, State v. Mitts (1998), 81 Ohio St.3d 223, 228, 690 N.E.2d 522, 527; State v. Cooley (1989), 46 Ohio St.3d 20, 544 N.E.2d 895; State v. Wilcox (1982), 70 Ohio St.2d 182, 436 N.E.2d 523. Additionally, counsel notes that trial counsel did, in fact, argue that the trial court should consider appellant's condition for purposes of mitigation when determining an appropriate sentence.

{¶11} We agree with counsel that in light of the foregoing and after our review of the record, trial counsel's performance did not fall below the Strickland standard and that appellant did not suffer prejudice. Accordingly, after our review of appellant's

counsel's potential assignment of error, and after our independent review to determine whether other meritorious issues regarding ineffective assistance of counsel exist, we agree with appellant's counsel that no meritorious issues exist.

II.

{¶12} In the second potential assignment of error, appellate counsel raises the issue of whether appellant's conviction is against the manifest weight of the evidence. In particular, counsel points out that the jury may have lost its way when it found that appellant acted recklessly to cause the officer serious physical harm. Counsel notes that under R.C. 2901.22(C), a person acts recklessly when, with heedless indifference to the consequences, a person perversely disregards a known risk that the person's conduct is likely to cause a certain result or is likely to be of a certain nature. Counsel opines that appellant did not act with "heedless indifference," but rather simply resisted the officer's effort to place appellant on the gurney. Thus, counsel reasons, appellant's actions may more closely resemble negligent conduct rather than reckless conduct. Counsel, however, also acknowledges that the trier of fact is vested with the authority to decide the facts in a given case and resolves competing and conflicting claims of evidence.

{¶13} When considering an appellant's claim that a conviction is against the manifest weight of the evidence, our role is to determine whether the evidence produced at trial "attains the high degree of probative force and certainty required of a criminal

conviction." State v. Getsy (1998), 84 Ohio St.3d 180, 193, 702 N.E.2d 866. See, also, State v. Thompkins (1997), 78 Ohio St.3d 380, 678 N.E.2d 541, and Tibbs v. Florida (1982), 457 U.S. 31, 102 S.Ct. 2211, 72 L.Ed.2d 652. A reviewing court must dutifully examine the entire record, weigh the evidence and consider the credibility of witnesses, and keep in mind that credibility generally is an issue for the trier of fact to resolve. State v. Thomas (1982), 70 Ohio St.2d 79, 80, 434 N.E.2d 1356; State v. DeHass (1967), 10 Ohio St.2d 230, 227 N.E.2d 211, paragraph one of the syllabus. A reviewing court may reverse a conviction if it appears that the fact finder, in resolving evidentiary conflicts, "'clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.'" Thompkins, 78 Ohio St.3d at 387, 678 N.E.2d 541, quoting State v. Martin (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717. On the other hand, we will not reverse a conviction if the state presented substantial evidence upon which the trier of fact could reasonably conclude that all essential elements of the offense had been established beyond a reasonable doubt. State v. Eley (1978), 56 Ohio St.2d 169, 383 n.E.2d 132, syllabus.

{¶14} Appellant's counsel notes that trial witnesses offered conflicting evidence concerning appellant's actions at the hospital. Deputy Lewis testified that appellant "kicked" him. Shirley Hughes testified that appellant "pushed" Deputy Lewis. Other witnesses were less specific or did not see what exactly happened before Deputy Lewis fell to the floor. Counsel thereupon

concedes that an appellate court must defer to the trier of fact on issues of witness credibility. Thus, counsel reasons, the evidence adduced at trial does indeed support the conclusion that appellant's conviction is not against the manifest weight of the evidence.

{¶15} After our review of appellant's counsel's argument and our review of the record, we agree with counsel's assessment that competent, reliable evidence supports the conclusion that all essential elements of the offense have been established beyond a reasonable doubt.

{¶16} Accordingly, after our review of counsel's second potential assignment of error, and after our independent review, we agree with counsel that no meritorious issues exist.

III

{¶17} In the third proposed assignment of error, appellant's counsel raises the issue of whether appellant's seventeen month sentence is supported by the record. Counsel notes that R.C. 2903.13(C)(4) provides that if the victim of the assault is a police officer and if the victim suffered serious physical harm, the offense is a fourth degree felony and a court shall impose a twelve month minimum mandatory prison term. Thus, appellant's counsel notes, appellants's potential prison sentence ranged from twelve to eighteen months.

{¶18} After a review of the applicable felony sentencing components and requirements, appellant's counsel concedes that appellant cannot prevail under this assignment of error. We have

reviewed counsel's proposed assignment of error and the record in the case sub judice and we agree with counsel's assessment. Accordingly, we agree that no meritorious issues exist under this proposed assignment of error.

JUDGMENT AFFIRMED.

Kline, P.J. & Harsha, J.: Concur in Judgment & Opinion