

[Cite as *State v. White*, 2016-Ohio-5601.]

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

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case No. 15CA26
	:	
vs.	:	
	:	
ROBERT L. WHITE,	:	DECISION AND JUDGMENT ENTRY
	:	
Defendant-Appellant.	:	

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APPEARANCES:

Ryan Shepler, Kernen & Shepler, LLC, Logan, Ohio, for Appellant.<sup>1</sup>

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CRIMINAL CASE FROM COMMON PLEAS COURT  
DATE JOURNALIZED: 8-16-16  
ABELE, J.

{¶ 1} Robert L. White appeals his Hocking County Common Pleas Court judgment of conviction and sentence for obstructing official business after he entered a negotiated plea. Appellant's counsel has advised the Court that he has reviewed the record and can find no meritorious claim for appeal. As a result, appellant's counsel has moved to withdraw under *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967). After our independent review of the record, we agree with counsel's assessment, conclude that this appeal is wholly frivolous, grant the motion for leave to withdraw and affirm the trial court's judgment.

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<sup>1</sup>Appellee State of Ohio did not file a brief in this case.

{¶ 2} In September 2015, appellant apparently threatened children services caseworkers, law enforcement officers and courthouse employees. Appellant was charged with (1) third degree felony intimidation in violation of R.C. 2921.03(A), and (2) fifth degree felony aggravated menacing in violation of R.C. 2903.21(B). Later, after a competency evaluation, the prosecution and trial counsel stipulated to appellant's competency finding. At that point, appellant accepted the prosecution's offer and agreed to plead guilty to an amended charge of obstructing official business, a second degree misdemeanor. The trial court accepted appellant's guilty plea, sentenced him to serve 90 days in jail, gave him credit for time served (90 days), released him from incarceration and ordered him to pay court costs.

{¶ 3} In the case sub judice, appellate counsel filed an *Anders* brief and a motion for leave to withdraw. In *State v. Lester*, 4<sup>th</sup> Dist. Vinton No. 12CA689, 2013-Ohio-2485, ¶3, we discussed the pertinent *Anders* requirements:

In *Anders*, the United States Supreme Court held that if counsel determines after a conscientious examination of the record that the case is wholly frivolous, counsel should so advise the court and request permission to withdraw. Counsel must accompany the request with a brief identifying anything in the record that could arguably support the appeal. *Anders* at 744. The client should be furnished with a copy of the brief and given time to raise any matters the client chooses. *Id.* Once these requirements are met, we must fully examine the proceedings below to determine if an arguably meritorious issue exists. *Id.* If so, we must appoint new counsel and decide the merits of the appeal. *Id.* If we find the appeal frivolous, we may grant the request to withdraw and dismiss the appeal without violating federal constitutional requirements or may proceed to a decision on the merits if state law so requires. *Id.*

Counsel mentions that appellant has suggested that one potential assignment of error is that he did not voluntarily enter his negotiated guilty plea. Counsel, however, further adds that his review of the record reveals that the trial court conducted a full Crim.R. 11 colloquy.

{¶ 4} "When a defendant enters a plea in a criminal case, the plea must be made knowingly, intelligently, and voluntarily. Failure on any of those points renders enforcement of the plea unconstitutional under both the United States Constitution and the Ohio Constitution." *State v. Felts*, 4<sup>th</sup> Dist. Ross No. 13CA3407, 2014-Ohio-2378, ¶14, quoting *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, ¶7, quoting *State v. Engle*, 74 Ohio St.3d 525, 527, 660 N.E.2d 450 (1996). In determining whether a guilty or no contest plea was entered knowingly, intelligently, and voluntarily, an appellate court examines the totality of the circumstances through a de novo review of the record to ensure that the trial court complied with constitutional and procedural safeguards. *Felts, supra*; *State v. Cooper*, 4<sup>th</sup> Dist. Athens No. 11CA15, 2011-Ohio-6890, ¶35.

{¶ 5} After our review of the record, we agree with appellate counsel's assessment concerning the negotiated plea. The prosecution agreed to dismiss one felony charge and amend the other felony charge in exchange for appellant's guilty plea to a second degree misdemeanor. The trial court, pursuant to Crim.R. 11, conducted an extensive discussion with appellant and determined that his plea was knowing, intelligent and voluntary. Appellant understood that his guilty plea would result in the waiver of various Constitutional rights, that his plea would constitute a complete admission of guilt and that he had no complaint concerning trial counsel's representation. Also, appellant received no community control or any other sanction.

{¶ 6} Therefore, based upon the foregoing reasons, we hereby overrule appellant's sole potential assignment of error. Because the potential assignment of error is meritless, and having independently discovered no arguably meritorious issues for appeal, we find this appeal is wholly frivolous, grant counsel's motion to withdraw, and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment is affirmed and that appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Hocking County Common Pleas Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted by the trial court or this court, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow appellant to file with the Ohio Supreme Court an application for a stay during the pendency of the proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to the expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Harsha, J. & Hoover, J.: Concur in Judgment & Opinion

For the Court

BY: \_\_\_\_\_  
Peter B. Abele, Judge

**NOTICE TO COUNSEL**

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.