

[Cite as *State v. Edwards*, 2016-Ohio-7848.]

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

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case No. 16CA3535
	:	16CA3536
vs.	:	
	:	
RICHARD EDWARDS,	:	DECISION AND JUDGMENT ENTRY
	:	
Defendant-Appellant.	:	

APPEARANCES:

Aaron McHenry, Chillicothe, Ohio, for Appellant.¹

CRIMINAL CASE FROM COMMON PLEAS COURT
DATE JOURNALIZED: 11-9-16
ABELE, J.

{¶ 1} Richard Edwards appeals his Ross County Common Pleas Court judgment of conviction and sentence. 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, we agree with counsel's assessment and conclude that this appeal is wholly frivolous. Furthermore, we grant counsel's motion for leave to withdraw and we affirm the trial court's judgment.

¹ Appellee State of Ohio did not file a brief in this case.

{¶ 2} On October 8, 2013, after a jury trial, the trial court sentenced appellant in two related cases.² In Case No. 12CR140, the trial court ordered appellant to serve (1) two years in prison for tampering with evidence and ten months on each count of aggravated possession of drugs, with those sentences to be served consecutively to one another. In Case No. 12CR374, after the trial court determined that Counts One and Two were allied offenses of similar import, as were counts Two and Three, the prosecution elected to sentence appellant on Count Two (illegal manufacture of drugs) and the court ordered appellant to serve seven years in prison. Additionally, the trial court ordered the sentence in Case No. 12CR374 be served consecutively to the sentences imposed in Case No. 12CR140 for a total prison sentence of nine years. No appeal was taken from these judgments, but on February 20, 2014 this court granted appellant's motion to file a delayed appeal in each case.

{¶ 3} In appellant's direct appeal (*State v. Edwards*, Ross App. No. 14CA3424 and 3425, 2015-Ohio-2140), appellant raised two assignments of error. One assignment of error argued that the trial court erred by denying appellant's Crim.R. 29 motion for judgment of acquittal on the tampering with evidence charge. Appellant's second assignment of error asserted that the trial court improperly imposed "consecutive sentences without satisfying the statutory mandates that authorize consecutive sentences."

{¶ 4} In our disposition of appellant's assignments of error, we found no merit in his first assignment of error. However, in appellant's second assignment of error we determined that the trial court did not adequately make the required R.C. 2929.14(C)(4) findings for the imposition of

²In the first case, (Case No. 12CR140), the jury found appellant guilty of (1) two counts of aggravated possession of drugs in violation of R.C. 2925.11 and (2) tampering with evidence in violation of R.C. 2921.12. In the second case, (Case No. 12CR374), the jury found appellant guilty of (1) illegal possession of chemicals for the manufacture of drugs in violation of R.C. 2925.041, (2) illegal manufacture of drugs in violation of R.C. 2925.04, and (3) aggravated possession of drugs in violation of R.C. 2925.11.

consecutive sentences (the court did not find that the consecutive sentences are not disproportionate to the seriousness of appellant's conduct or any of the three factors in R.C. 2929.14(C)(4)(a), (b) and (c) and did not make the required findings during the sentencing hearings. Consequently, we reversed, albeit reluctantly, that portion of the sentence and remanded the matter for re-sentencing.

{¶ 5} In the case sub judice, appellate counsel filed an *Anders* brief and a motion for leave to withdraw. In *State v. Lester*, 4th 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.*

{¶ 6} Appellant's counsel notes that on remand, the trial court conducted a new sentencing hearing and, after satisfying the pertinent statutory requirements, the court imposed the same sentence that appellant received prior to his direct appeal. Counsel further adds that he has reviewed the court file, the transcript of the proceedings, including the trial court's re-sentence after remand, and that he can find no error prejudicial to appellant's rights and that this appeal is frivolous.

{¶ 7} After our review of the record, we agree with appellate counsel's assessment concerning the lack of a meritorious claim for appeal.

{¶ 8} Therefore, because counsel raises no potential assignment of error, and having independently discovered no arguably meritorious issues for appeal, we conclude that 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 Ross 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. & McFarland, 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.