

COURT OF APPEALS
COSHOCTON COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon: Sheila G. Farmer, P.J.
	:	Hon: W. Scott Gwin, J.
Plaintiff-Appellee	:	Hon: William B. Hoffman, J.
	:	
-VS-	:	
	:	Case No. 09-CA-0013
BRANDON STURTZ	:	
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING:	Appeal from the Coshocton County Municipal Court, Case No. CRB0900171
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JUDGMENT:	Affirmed
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DATE OF JUDGMENT ENTRY:	October 16, 2009
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APPEARANCES:

For Plaintiff-Appellee

ROBERT SKELTON
ASSISTANT LAW DIRECTOR
760 Chestnut Street
Coshocton, OH 43812

For Defendant-Appellant

JEFFREY A. MULLEN
Coshocton County Public Defender
239 N. Fourth Street
Coshocton, OH 43812

Gwin, J.

{¶1} Appellant was charged with one count of Aggravated Menacing, a misdemeanor of the first degree in violation of R.C. 2903.21(A), one count of Telecommunications Harassment, a misdemeanor of the first degree in violation of R.C. 2917.21(A)(1), and one count of Criminal Damaging a misdemeanor of the second degree in violation of R.C. 2909.06(A)(1). On the day of trial, Appellant entered no contest pleas to all three counts waiving presentation of evidence and stipulating to the trial court's finding of guilt. Appellant was found guilty of each of the charges by the trial court. The trial court imposed an aggregate sentence of 180 days in jail with all but 45 days in jail suspended upon the condition Appellant comply with the terms of supervised probation.

{¶2} Counsel for Appellant has filed a Motion to Withdraw and a brief pursuant to *Anders v. California* (1967), 386 U.S. 738, rehearing den. (1967), 388 U.S. 924, indicating that the within appeal was wholly frivolous. Appellant did not file a pro se brief alleging any Assignments of Error.

I.

{¶3} The charges in this case arose from the allegations the Appellant threw a brick through the victim's car window and sent the victim threatening voice mails and text messages. At least one voice mail message referenced how well a brick goes through glass. The messages further threatened physical harm upon the victim.

{¶4} In *Anders*, the United States Supreme Court held if, after a conscientious examination of the record, a defendant's counsel concludes the case is wholly frivolous, then he should so advise the court and request permission to withdraw. *Id.* at 744.

Counsel must accompany his request with a brief identifying anything in the record that could arguably support his client's appeal. *Id.* Counsel also must: (1) furnish his client with a copy of the brief and request to withdraw; and, (2) allow his client sufficient time to raise any matters that the client chooses. *Id.* Once the defendant's counsel satisfies these requirements, the appellate court must fully examine the proceedings below to determine if any arguably meritorious issues exist. If the appellate court also determines that the appeal is wholly frivolous, it may grant counsel's request to withdraw and dismiss the appeal without violating constitutional requirements, or may proceed to a decision on the merits if state law so requires. *Id.*

{¶5} Counsel in this matter has followed the procedure in *Anders v. California* (1967), 386 U.S. 738, we find the appeal to be wholly frivolous and grant counsel's motion to withdraw.

{¶6} After independently reviewing the record, we agree with counsel's conclusion that no arguably meritorious claims exist upon which to base an appeal. Hence, we find the appeal to be wholly frivolous under *Anders*, grant counsel's request to withdraw, and affirm the judgment of the Coshocton Municipal Court.

By Gwin, J.,

Farmer, P.J., and

Hoffman, J., concur

HON. W. SCOTT GWIN

HON. SHEILA G. FARMER

HON. WILLIAM B. HOFFMAN

IN THE COURT OF APPEALS FOR COSHOCTON COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-VS-

BRANDON STURTZ

Defendant-Appellant

JUDGMENT ENTRY

CASE NO. 09-CA-0013

For the reasons stated in our accompanying Memorandum-Opinion, we find the appeal to be wholly frivolous under *Anders*, grant counsel's request to withdraw, and affirm the judgment of the Coshocton Municipal Court. Costs to appellant.

HON. W. SCOTT GWIN

HON. SHEILA G. FARMER

HON. WILLIAM B. HOFFMAN