

COURT OF APPEALS  
PERRY COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

|                     |   |                               |
|---------------------|---|-------------------------------|
| STATE OF OHIO       | : | JUDGES:                       |
|                     | : | Hon. Patricia A. Delaney P.J. |
| Plaintiff-Appellee  | : | Hon. Craig R. Baldwin, J.     |
|                     | : | Hon. Earle E. Wise, Jr., J.   |
| -vs-                | : |                               |
|                     | : |                               |
| SHAWN MORRISON      | : | Case No. 17-CA-8              |
|                     | : |                               |
| Defendant-Appellant | : | <u>OPINION</u>                |

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas, Case No. 16-CR-46

JUDGMENT: Dismissed

DATE OF JUDGMENT: March 12, 2018

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

NO RESPONSE

JAMES SWEENEY  
341 South Third Street  
Suite 100  
Columbus, OH 43215

*Wise, Earle, J.*

{¶ 1} On March 26, 2016, members of the Perry County Sherriff's Department, assisted by other agencies, obtained a search warrant for defendant-appellant Shawn Morrison's home. The search revealed a marijuana grow operation. Officers seized 129 marijuana plants, cultivation equipment, cash, guns, and methamphetamine, in addition to property subject to forfeiture including vehicles and bank accounts.

{¶ 2} On June 21, 2016, the Perry County Grand Jury returned an indictment charging appellant with one count of illegal cultivation in the vicinity of a juvenile, with an accompanying forfeiture specification, a felony of the second degree; one count of illegal assembly or possession of chemicals for manufacture of drugs with a forfeiture specification, a felony of the second degree; possession of marijuana with a forfeiture specification; aggravated possession of drugs, a felony of the fifth degree; and having weapons under disability, with a forfeiture specification, a felony of the third degree.

{¶ 3} On January 4, 2017, appellant entered a negotiated plea of guilty to illegal cultivation with a forfeiture specification, a felony of the third degree. Appellant agreed to forfeit property seized during the search of his property and enumerated in case number Perry County Court of Common Pleas case number 16-CV-00127. In exchange, the state dismissed the remaining counts of the indictment and recommended 9 months incarceration. Appellant did not challenge his conviction or sentence.

{¶ 4} On July 28, 2017, appellant, pro se, filed a Motion for Return of Seized Property. On July 31, 2017, the trial court denied the motion finding "The seized property was forfeited in Case No. 16-CV-00127 by agreed entry of forfeiture, which was signed by the Prosecuting Attorney, the Defendant and his Attorney and filed January 4, 2017."

{¶ 5} On August 21, 2017, appellant filed a Notice of Appeal and a Motion for Appointment of Counsel. Attorney James S. Sweeney was appointed and on December 26, 2017 filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.E.2d 493 (1967), asserting he found no potential assignments of error having arguable merit. Attorney Sweeney also filed a motion to withdraw. On December 29, 2017, appellant was advised to file a pro se brief by January 30, 2018. He did not do so.

{¶ 6} This court must now determine whether Attorney Sweeney's request to withdraw should be granted and whether to dismiss the instant appeal as wholly frivolous. In *Anders* at 744, the Court established five criteria which must be met before a motion to withdraw may be granted:

- (1) A showing appellant's counsel thoroughly reviewed the transcript and record in the case before determining the appeal to be frivolous.
- (2) A showing a motion to withdraw has been filed by appellant's counsel.
- (3) The existence of a brief filed by appellant's counsel raising any potential assignments of error.
- (4) A showing appellant's counsel provided to the appellant a copy of said brief.
- (5) A showing appellant's counsel provided appellant adequate opportunity to file a pro se brief raising any additional assignments of error appellant believes the appellate court should address.

{¶ 7} We find the Attorney Sweeney has met his obligations under *Anders*, and appellant was given an opportunity to file a pro se brief. We have further performed our duty under *Anders* to review the record independently, and we also find no potential assignments of error having arguable merit. See, *State v. Parrish*, 2nd Dist. Montgomery No. 25599, 2013-Ohio-5622, ¶ 1. Accordingly, Attorney Sweeney's Motion to Withdraw is granted and the appeal is dismissed.

By Wise, Earle, J.

Delaney, P.J. and

Baldwin, J. concur.

EEW/rw