

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-04-1348

Appellee

Trial Court No. CR-2002-2170

v.

Jeffrey Allan Dias

**DECISION AND JUDGMENT ENTRY**

Appellant

Decided: December 2, 2005

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
James E. Vail, Assistant Prosecuting Attorney, for appellee.

Joel J. Kirkpatrick, for appellant.

\* \* \* \* \*

PIETRYKOWSKI, J.

{¶ 1} This case is before the court on appeal from the Lucas County Court of Common Pleas, which accepted defendant-appellant Jeffrey Alan Dias' no contest plea to attempted felonious assault and sentenced him to four years of imprisonment.

Appellant's appointed counsel has submitted a request to withdraw as counsel pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493. Appellant's counsel further states that he provided appellant with a copy of the appellate brief and

request to withdraw as counsel and informed him of his right to file his own brief.

Appellant has not filed a pro se brief.

{¶ 2} Consistent with *Anders*, appellant's counsel has set forth the following "possible errors" for review:

{¶ 3} "Issue One: Whether the defendant-appellant was denied effective representation by competent counsel.

{¶ 4} "Issue Two: Whether the trial court and trial counsel denied the defendant-appellant due process when they failed to address the issue of defendant-appellant's competency to stand trial or assert an insanity defense.

{¶ 5} "Issue Three: Whether the trial court abused its discretion, when sentencing defendant."

{¶ 6} A brief recitation of the facts is as follows. On June 18, 2002, appellant was indicted on one count of felonious assault, in violation of R.C. 2903.11(A)(1). The charge stemmed from an incident on June 9, 2002, where, according to the record, appellant threw a bottle into an open car window and hit a five-year old girl, causing permanent scarring. On August 12, 2002, appellant entered a no contest plea; the plea was later vacated. Appellant failed to appear for a pretrial and was later discovered to be incarcerated in Michigan. On October 8, 2004, appellant entered a no contest plea to attempted felonious assault. The sentencing hearing was held on October 26, 2004, and appellant was sentenced to four years of imprisonment. This appeal followed.

{¶ 7} Counsel's first potential assignment of error argues that appellant's trial counsel was ineffective by failing to address his competency. Appellant's second potential assignment of error also asserts that trial counsel and the court denied appellant due process when they failed to address the issue of appellant's competency. Because both potential errors raise the issue of appellant's competency, we shall address them simultaneously.

{¶ 8} We first note that legal representation is constitutionally ineffective, and a basis for reversal or vacation of a conviction, when counsel's performance is deficient and results in prejudice to the accused. *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674. In order to prove ineffective assistance of counsel, a defendant must show (1) that his counsel's performance fell below an objective standard of reasonable representation in some particular respect or respects and (2) that he was so prejudiced by the defect or defects that there exists a reasonable probability that, but for counsel's errors, the result of the trial would have been different. *State v. Bradley* (1989), 42 Ohio St.3d 136, paragraphs two and three of the syllabus, following *Strickland*.

{¶ 9} As to the issue of competency, the Supreme Court of Ohio has held that "[t]he term 'mental illness' does not necessarily equate with the definition of legal incompetency." *State v. Berry* (1995), 72 Ohio St.3d 354, 1995-Ohio-310, syllabus. *Berry* further states:

{¶ 10} "In *Dusky v. United States* (1960), 362 U.S. 402, 80 S.Ct. 788, 789, 4 L.Ed.2d 824, 825, the United States Supreme Court set forth the test to determine

whether a defendant is competent to stand trial, stating that ' \* \* \* the "test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding--and whether he has a rational as well as factual understanding of the proceedings against him." ' \* \* \* The right to a hearing on the issue of competency rises to the level of a constitutional guarantee where the record contains 'sufficient indicia of incompetence,' such that an inquiry into the defendant's competency is necessary to ensure the defendant's right to a fair trial." (Citations omitted.) Id. at 359.

{¶ 11} In the present case, the record contains no evidence to suggest that appellant was not competent to stand trial. During the plea hearing, appellant did indicate that he was taking the antipsychotic drug, Abilify. Appellant was then questioned as follows:

{¶ 12} "The Court: Does it interfere with your ability to understand?

{¶ 13} "The Defendant: To think, no, it does not.

{¶ 14} "The Court: And so if there – so, as far as you're concerned, at the present time you're taking prescription medication but you're not under the influence of any drugs—

{¶ 15} "The Defendant: No, I am not.

{¶ 16} "The Court: -- that would make it difficult to understand the proceedings in court today?

{¶ 17} "The Defendant: No, I understand everything that's going on."

{¶ 18} Based on the foregoing, we find that neither counsel nor the court erred in failing to address the issue of appellant's competency to stand trial. Accordingly, the first and second potential assignments of error are not well-taken.

{¶ 19} Counsel's third potential assignment of error is whether the trial court abused its discretion in sentencing appellant. Appellant was convicted of attempted felonious assault, a third degree felony, for which the maximum sentence is five years; appellant received a four-year prison sentence. At the October 26, 2004 sentencing hearing, the trial court found that appellant was not amenable to community control due to his prior felony record, which included two assaultive crimes, and based upon the facts of the case. Appellant was informed about post-release control and his financial sanction. Accordingly, the third potential assignment of error is not well-taken.

{¶ 20} Upon the court's independent review of the record, we find no other arguable issues for appeal. We therefore grant appellate counsel's request to withdraw.

{¶ 21} Upon due consideration, we find that appellant was not prejudiced or prevented from having a fair trial, and the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Lucas County.

JUDGMENT AFFIRMED.

State of Ohio v. Jeffrey Allan Dias  
C.A. No. L-04-1348

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.  
See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

Mark L. Pietrykowski, J.

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JUDGE

William J. Skow, J.

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JUDGE

Dennis M. Parish, J.  
CONCUR.

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JUDGE

This decision is subject to further editing by the Supreme Court of  
Ohio's Reporter of Decisions. Parties interested in viewing the final reported  
version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.