

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

State of Ohio

Court of Appeals No. L-05-1076

Appellee

Trial Court No. CR-2004-2593

v.

Lamar Sledge

**DECISION AND JUDGMENT ENTRY**

Appellant

Decided: December 9, 2005

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
Michael Narges, Assistant Prosecuting Attorney, for appellee.

Stephen D. Long, for appellant.

\* \* \* \* \*

PARISH, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas that found appellant guilty of one count of possession of crack cocaine. For the following reasons, this court affirms the judgment of the trial court.

{¶ 2} Appointed counsel Stephen D. Long has submitted a request to withdraw pursuant to *Anders v. California* (1967), 386 U.S. 738. In support of his request, counsel for appellant states that, after reviewing the record of proceedings in the trial court, he was unable to find any appealable issues. Counsel for appellant does, however, set forth the following proposed assignments of error:

{¶ 3} "First 'Arguable' Assignment of Error

{¶ 4} "The appellant's counsel was ineffective and thus deprived the appellant of his constitutional rights under the Sixth and Fourteenth Amendments to the U.S. Constitution and Article I, Section X of the Ohio Constitution.

{¶ 5} "Second 'Arguable' Assignment of Error

{¶ 6} "The Trial Court failed to strictly comply with Criminal Rule 11 thus invalidating Mr. Sledge's plea."

{¶ 7} A review of the record reveals the following relevant facts. On August 11, 2004, appellant was indicted on one count of possession of crack cocaine in violation of R.C. 2925.11(A) and (C)(4)(b) and one count of trafficking in cocaine in violation of R.C. 2925.03(A)(2) and (C)(4)(c). Appellant entered pleas of not guilty and the matter was set for trial. On October 5, 2004, appellant withdrew his plea of not guilty to the first count and entered a plea of no contest. The trial court accepted the plea and found appellant guilty. At sentencing, the state moved for a nolle prosequi as to the second count of the indictment. Appellant was sentenced on November 16, 2004, to three years community control with conditions that included six months substance abuse treatment.

{¶ 8} *Anders*, supra, and *State v. Duncan* (1978), 57 Ohio App. 2d 93, set forth the procedure to be followed by appointed counsel who desires to withdraw for want of a meritorious, appealable issue. In *Anders*, the United States Supreme Court held that if counsel, after a conscientious examination of the case, determines it to be wholly frivolous he should so advise the court and request permission to withdraw. *Id.* at 744. This request, however, must be accompanied by a brief identifying anything in the record

that could arguably support the appeal. *Id.* Counsel must also furnish his client with a copy of the brief and request to withdraw and allow the client sufficient time to raise any matters that he chooses. *Id.* Once these requirements have been satisfied, the appellate court must then conduct a full examination of the proceedings held below to determine if the appeal is indeed frivolous. If the appellate court determines that the appeal is 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.*

{¶ 9} In the case before us, appointed counsel for appellant has satisfied the requirements set forth in *Anders*, *supra*. This court notes further that appellant was notified by counsel of his right to file an appellate brief on his own behalf; however, no such brief was filed. Accordingly, this court shall proceed with an examination of the potential assignments of error set forth by counsel for appellant and the entire record below to determine if this appeal lacks merit and is, therefore, wholly frivolous.

{¶ 10} As his first proposed assignment of error, counsel for appellant suggests that trial counsel was ineffective. Counsel does not support this claim with any references to the record.

{¶ 11} To prevail on a claim of ineffective assistance of counsel, appellant must show that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. This standard requires appellant to satisfy a two-part test. First, appellant must show that counsel's representation fell below an objective standard of reasonableness. Second,

appellant must show a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different when considering the totality of the evidence that was before the court. *Strickland v. Washington* (1984), 466 U.S. 668. This test is applied in the context of Ohio law that states that a properly licensed attorney is presumed competent. *State v. Hamblin* (1988), 37 Ohio St.3d 153.

{¶ 12} Based on our thorough review of the record in this case, we find that counsel's representation did not fall below an objective standard of reasonableness at any time and, accordingly, appellant's first proposed assignment of error is without merit.

{¶ 13} As his second proposed assignment of error, counsel asserts appellant's plea is invalid because the trial court failed to strictly comply with the requirements of Crim.R. 11. In support, counsel states the trial court may have failed to adequately determine whether appellant understood the nature of the charges of which he was convicted and his rights under the United States and Ohio Constitutions.

{¶ 14} Crim.R. 11(C)(2) requires that in felony cases the court shall not accept a plea of guilty or no contest without first addressing the defendant personally and determining that he is making the plea voluntarily and understands the nature of the charges against him and the maximum penalty involved. The trial court must also inform the defendant of the effect of the plea and determine that he understands the same, and inform him that the court, upon acceptance of the plea, may proceed with judgment and sentence. Finally, the court must inform the defendant of, and determine that he understands, the constitutional rights he is waiving by the plea.

{¶ 15} This court has thoroughly reviewed the transcript of appellant's plea hearing. It is clear that the trial court addressed appellant personally and meticulously followed the dictates of Crim. R. 11(C)(2) as outlined above. After determining that appellant speaks English, the court explained the plea outlined by his attorney. Appellant indicated he understood the plea and the possible penalty as well as the state's recommendation of community control. Appellant also indicated he understood that the offense carries with it a presumption in favor of incarceration and that it is the function of the court to make the actual determination as to what type of sentence is imposed. The trial court advised appellant as to his constitutional right to a trial by jury and informed him of each of the rights he would waive by his plea. Appellant indicated he understood. Finally, the court explained that a plea of no contest effectively waives any right to appeal.

{¶ 16} Based on the foregoing, there is no basis whatsoever for a claim that the trial court failed to comply with Crim.R. 11. Accordingly, appellant's second potential assignment of error is without merit.

{¶ 17} Upon our own independent review of the record, we find no other grounds for a meritorious appeal. Accordingly, this appeal is found to be without merit and is wholly frivolous. Appellant's counsel's motion to withdraw is found well-taken and is hereby granted. The decision 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.

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.

Dennis M. Parish, J.  
CONCUR.

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JUDGE

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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>.