

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

State of Ohio

Court of Appeals No. L-08-1008

Appellee

Trial Court No. CR-200301194

v.

Darek Lathan

DECISION AND JUDGMENT ENTRY

Appellant

Decided: July 18, 2008

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
David F. Cooper, Assistant Prosecuting Attorney, for appellee.

Patricia Horner, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant, Darek Lee Lathan, appeals his resentencing for aggravated robbery and kidnapping following remand.

{¶ 2} Following a 2000 jury trial, appellant and three codefendants were convicted of aggravated robbery with a gun specification and kidnapping with a gun specification, arising from the 1998 robbery of a Toledo restaurant. See *State v. Purley*,

6th Dist. No. L-01-1005, 2002-Ohio-2689. When that conviction was reversed on appeal, *State v. Lathan*, 6th Dist. No. L-01-1030, 2002-Ohio-2686, appellant was retried and again convicted on both counts, but acquitted of the firearm specifications. *State v. Lathan*, 6th Dist. No. L-03-1188, 2004-Ohio-7074. The trial court sentenced appellant to two concurrent six year terms of incarceration, but consecutive to the sentence for a prior robbery conviction. *Id.* at ¶ 32. We affirmed both appellant's conviction and his sentence. *Id.* at ¶ 35. On reconsideration in view of *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, however, we vacated appellant's sentence and remanded the matter to the trial court for re-sentencing. *State v. Lathan*, 6th Dist. No. L-03-1188, 2006-Ohio-2490.

{¶ 3} On remand, the trial court imposed the same sentence, but omitted informing appellant that he would be subject to post-release control, prompting yet another remand for re-sentencing. *State v. Lathan*, 6th Dist. No. L-06-1238, 2007-Ohio-5595, ¶ 13. On remand, the trial court again imposed the same sentence. It is from this sentencing order that appellant now brings this appeal.

{¶ 4} Appellant's appointed counsel has submitted a request to withdraw as counsel pursuant to *Anders v. California* (1967), 386 U.S. 738. Counsel asserts that, after reviewing the record and the conduct of the trial court, she can find no arguable issues for appellate review. Counsel further states that, as required by *Anders*, she provided appellant a copy of the appellate brief, request to withdraw as counsel and informed appellant of his right to file his own brief. Appellant has not filed a pro se brief.

{¶ 5} Pursuant to *Anders*, appellate counsel has set forth two potential assignments of error which she has concluded are without merit:

{¶ 6} "I. The trial court erred by imposing more-than-the-minimum sentences as it violated the due process and ex post facto clauses of the Ohio and United States Constitution. [sic]

{¶ 7} "II. The trial court erred when it sentenced him to a more-than-the-minimum, consecutive prison term contrary to the rule of lenity."

{¶ 8} The arguments contained in both of the potential errors raised by appellant have been considered and rejected by the court. *State v. Coleman*, 6th Dist. No. S-06-023, 2007-Ohio-448. Accordingly, we concur with appellate counsel that these assignments of error are without merit.

{¶ 9} Moreover, after our own independent review of the record, we find no other grounds for a meritorious appeal. Accordingly, appellant's appellate counsel properly determined that no meritorious appealable issue existed in this case, and this appeal is without merit and wholly frivolous. Appellant's counsel's motion to withdraw is found well-taken and is hereby granted.

{¶ 10} On consideration whereof, 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.

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

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

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>.