

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

State of Ohio

Court of Appeals No. E-09-035

Appellee

Trial Court No. 2007-CR-542

v.

Wayne M. Schnee

**DECISION AND JUDGMENT**

Appellant

Decided: April 16, 2010

\* \* \* \* \*

Sarah A. Nation, for appellant.

\* \* \* \* \*

OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Erie County Court of Common Pleas that found appellant guilty of two counts of disseminating matter harmful to a juvenile in violation of R.C. 2907.31(A)(1) following appellant's pleas of guilty to each count. For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} Appointed counsel Sarah Nation has submitted a request to withdraw pursuant to *Anders v. California* (1967), 386 U.S. 738. In her brief filed on appellant's behalf, appointed counsel sets forth three proposed assignments of error. In support of her request to withdraw, counsel for appellant states that, after reviewing the record of proceedings in the trial court, she was unable to find any appealable issues.

{¶ 3} *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 it may proceed to a decision on the merits if state law so requires. *Id.*

{¶ 4} In the case before us, appointed counsel for appellant has satisfied the requirements set forth in *Anders*, supra. This court finds further that appellant was

notified by counsel of his right to file an appellate brief on his own behalf; however, no pro se brief was filed.

{¶ 5} Accordingly, this court shall proceed with an examination of the potential assignments of error proposed by counsel for appellant and the entire record below to determine if this appeal lacks merit and is, therefore, wholly frivolous.

{¶ 6} The facts relevant to the issues raised on appeal are as follows. On September 14, 2007, appellant was indicted on four counts of disseminating matter harmful to a juvenile in violation of R.C. 2907.31(A)(1). On May 29, 2008, appellant pled guilty to two of the four counts; the other two counts were dismissed. The trial court accepted appellant's guilty pleas and found him guilty of the charges. The matter was set for sentencing on August 28, 2008. However, appellant removed his GPS monitoring device and fled before sentencing. A warrant was issued and appellant eventually was apprehended in another state. On October 16, 2008, appellant was sentenced to 12 months incarceration on each count, to be served consecutively. Because appellant was on postrelease control at the time the offenses in this case were committed, the trial court revoked appellant's postrelease control and ordered that he serve the remaining 848 days of the prior sentence, to be served consecutively to the two 12-month sentences.

{¶ 7} As his first potential assignment of error, counsel for appellant suggests that appellant's plea was not voluntarily and knowingly given.

{¶ 8} 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.

{¶ 9} 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. When the court asked appellant whether he had any questions about the plea agreement, the possible sentences or the rights he had given up, he responded that he did not. When asked if there was anything about the court proceedings he did not understand, he replied there was not. Appellant further stated that the plea was of his own choice and that he was entering it voluntarily and intelligently.

{¶ 10} Accordingly, we find that there is no basis for a claim that appellant's plea was not entered knowingly and voluntarily. Appellant's first potential assignment of error is not well-taken.

{¶ 11} As his second potential assignment of error, counsel for appellant suggests that the trial court failed to give proper consideration to the sentencing factors set forth in R.C. 2929.11 et seq. when imposing appellant's sentence.

{¶ 12} The record in this case clearly establishes that the trial court properly considered the principles and purposes of sentencing under R.C. 2929.11 and balanced the seriousness and recidivism factors pursuant to R.C. 2929.12. Accordingly, we find that the second potential assignment of error by counsel for appellant is not well-taken.

{¶ 13} As his third potential assignment of error, counsel for appellant suggests that appellant was denied effective assistance of counsel.

{¶ 14} 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 court cannot be relied upon as having produced a just result. The standard requires appellant to satisfy a two-prong 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 perceived errors, the results of the proceeding would have been different. *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.

{¶ 15} Based on the foregoing and our review of the record, we are unable to find that appellant's counsel's representation fell below an objective standard of reasonableness. Accordingly, appellant's third proposed assignment of error is not well-taken.

{¶ 16} Upon our own independent review of the record, we find no 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 judgment of the Erie County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

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.

Arlene Singer, J.

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JUDGE

Thomas J. Osowik, P.J.

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JUDGE

Keila D. Cosme, J.  
CONCUR.

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JUDGE

<p>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: <a href="http://www.sconet.state.oh.us/rod/newpdf/?source=6">http://www.sconet.state.oh.us/rod/newpdf/?source=6</a>.</p>
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