

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

State of Ohio

Court of Appeals No. L-09-1272

Appellee

Trial Court No. CR0200902444

v.

Darrell Vinson

**DECISION AND JUDGMENT**

Appellant

Decided: September 17, 2010

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
Timothy F. Braun, Assistant Prosecuting Attorney, for appellee.

Catherine Sheehy, for appellant.

\* \* \* \* \*

OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas. Following a jury trial, appellant was found guilty of felonious assault, in violation of R.C. 2903.11(A)(2), a felony of the second degree. Appellant was sentenced to a three

year term of incarceration. For the following reasons, this court affirms the judgment of the trial court.

{¶ 2} Appointed counsel, Catherine Sheehy, has submitted a request to withdraw pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493. In support of her request to withdraw, counsel for appellant states that after reviewing the record of the proceedings in the trial court, she was unable to find any appealable issues. In her brief filed on appellant's behalf, appointed counsel sets forth one proposed assignment of error:

{¶ 3} "Whether or not the State of Ohio presented a legally sufficient amount of evidence to establish Defendant's guilt beyond a reasonable doubt."

{¶ 4} *Anders*, supra, and *State v. Duncan* (1978), 57 Ohio App.2d 93, 385 N.E.2d 323, set forth the procedure to be followed by an appointed counsel who desires to withdraw based upon determining there is a lack of a meritorious, appealable issue. In *Anders*, the United States Supreme Court held that if counsel, after conscientious examination of the case, believes any appeal to be wholly frivolous, he should so advise the court and request permission to withdraw. *Id.* at 744.

{¶ 5} The request to withdraw must be accompanied by a brief identifying anything in the record that could arguably support an appeal. *Id.* Counsel must also furnish his client with a copy of the brief and request to withdraw. *Id.* Once these requirements have been met, the appellate court conducts a full examination of the proceedings held below to determine if the appeal is frivolous. If the appellate court

finds 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. *Id.* In the case before us, counsel for appellant has satisfied the requirements set forth in *Anders*. Accordingly, we shall proceed with an examination of the potential assignment of error offered by appellant's counsel and the record below to determine if this appeal lacks merit.

{¶ 6} The following undisputed facts are relevant to the issues raised on appeal. On July 16, 2009, the victim was stabbed three times outside of a Toledo apartment building following a verbal altercation with appellant. The victim received emergency medical treatment for stab wounds to the hand, back and chest area inflicted during the assault. Appellant was subsequently indicted for the crime. On October 14, 2009, a jury found appellant guilty of felonious assault, a felony of the second degree. On October 15, 2009, the court sentenced appellant to a three year term of incarceration.

{¶ 7} In his single assignment of error, appellant claims that appellee failed to present "a legally sufficient amount of evidence to establish...guilt beyond a reasonable doubt." Specifically, appellant argues that he "did not know where the weapon involved in this incident came from and that the victim may have injured himself."

{¶ 8} The underlying inquiry to assess the sufficiency of evidence is whether a rational trier-of-fact could have found that the state established the elements of the offense beyond all reasonable doubt. *State v. Wilson*, 8th Dist. No. 84593, 2005-Ohio-511. In determining whether a judgment was against the manifest weight of evidence, an

appellate court "weighs the evidence and all reasonable inferences, and considers the credibility of witnesses." *State v. Tompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541, 1997-Ohio-52. The court sits as a "thirteenth juror" and determines whether the factfinder lost its way, resulting in a manifest miscarriage of justice, such that the conviction must be reversed. *Id.*

{¶ 9} Based upon our review and consideration of the record in the case, we have found nothing to suggest the jury lost its way or that a manifest miscarriage of justice was created. The record reflects that both appellant and the victim admit to an altercation shortly before the stabbing at the apartment complex in Toledo where the victim lived. All witnesses testified that no one else was involved in the incident except appellant and the victim. The record shows that the security guard of the apartment complex recovered a knife blade on the ground in the lobby next to the entrance of the building and that it was not there prior to the incident. The victim's friend, who witnessed the incident, testified that he observed a knife in the hand of appellant prior to the stabbing of the victim. The detective on the case identified the wound on the victim's hand as a defensive wound meaning that a person would sustain such an injury while trying to swat away the weapon with his hand. More significantly, appellant himself testified that the victim had both of his hands locked up and conceded that the victim could not have been free to self inflict the injuries, as argued without evidentiary support by appellant. We find that the record of evidence demonstrates that the disputed felonious assault conviction was not against the weight of the evidence and was supported by sufficient

evidence. As such, we find that appellant was not prejudiced or prevented from having a fair trial. Accordingly, appellant's error of assignment is not well-taken.

{¶ 10} This court has independently reviewed the record and appellant's proposed assignment of error and determines that this appeal is without merit, and therefore, is wholly frivolous. Appellant's counsel's request to withdraw is found well-taken and is hereby granted.

{¶ 11} The judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay 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.

\_\_\_\_\_  
JUDGE

Thomas J. Osowik, P.J.

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JUDGE

Keila D. Cosme, J.  
CONCUR.

\_\_\_\_\_  
JUDGE

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| <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:<br/><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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