

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

State of Ohio

Court of Appeals No. L-10-1297

Appellee

Trial Court No. CR0200902754

v.

James C. Hughes

DECISION AND JUDGMENT

Appellant

Decided: October 28, 2011

* * * * *

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

Patricia Horner, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This is an appeal from the September 13, 2010 judgment of the Lucas County Court of Common Pleas which, after resentencing appellant pursuant to the Supreme Court of Ohio's decisions in *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462 and *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, resentenced appellant to three years of imprisonment following his no contest plea to robbery, R.C.

2911.02(A)(3), a third degree felony. For the reasons set forth herein, we affirm the trial court's judgment.

{¶ 2} We first note that appointed counsel has submitted a request to withdraw pursuant to *Anders v. California* (1967), 386 U.S. 738. In a brief filed on appellant's behalf, appointed counsel sets forth one proposed assignment of error. In support of the request to withdraw, counsel for appellant states that based on the trial court record, she was unable to find any possible errors for appeal.

{¶ 3} *Anders*, supra, and *State v. Duncan* (1978), 57 Ohio App.2d 93, set forth the procedure to be utilized by an appointed counsel who desires to withdraw based upon the lack 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 or she "should so advise the court and request permission to withdraw." *Anders* at 744. An *Anders* request must be accompanied by a brief referring to anything in the record that could arguably support an appeal. *Id.*

{¶ 4} In the course of seeking an *Anders* withdrawal, counsel must also furnish the client with a copy of the brief, the request to withdraw, and notify the client that he has the right to raise any matters that the client wishes to proffer on a pro se basis. Once these prerequisite criteria have been satisfied, the appellate court must conduct a full examination of proceedings from below in order to determine if the appeal is frivolous. If it is determined that the appeal is frivolous, then the appellate court may grant counsel's request to withdraw and dismiss the appeal without violating constitutional requirements or it may proceed to a decision based upon the merits. *Id.*

{¶ 5} In the case before us, appointed counsel for appellant has satisfied the requirements delineated in *Anders*, supra. This court further finds that appellant was properly notified by counsel of his right to file a brief; however, no pro se brief was filed.

{¶ 6} Accordingly, this court shall proceed with an examination of the sole potential assignment of error proposed by counsel for appellant and the record from below in order to determine if this appeal lacks merit and is, therefore, wholly frivolous.

{¶ 7} Counsel for appellant sets forth the following proposed assignment of error:

{¶ 8} "The trial court abused its discretion in resentencing defendant."

{¶ 9} The relevant facts of this case are as follows. On September 11, 2009, appellant was indicted on one count of robbery, in violation of R.C. 2911.02(A)(2). Ultimately, appellant entered a no contest plea to the lesser included offense of robbery, R.C. 2911.02(A)(3). On October 21, 2009, appellant was sentenced to three years of imprisonment. Thereafter, sua sponte, on September 13, 2010, following a resentencing hearing conducted to include the mandatory postrelease control notification, appellant was again sentenced to three years of imprisonment. This appeal followed.

{¶ 10} In counsel's sole proposed assignment of error, she presents the argument that, due to the court's failure to properly advise appellant of his postrelease control obligations, the sentence was void and that the case should be remanded for resentencing.

{¶ 11} As counsel correctly points out, the Supreme Court of Ohio, in *State v. Singleton*, supra, explained that the state legislature's enactment of R.C. 2929.191 provided a procedural remedy for sentences imposed after its July 11, 2006 effective date, which failed to properly impose postrelease control. *Id.* at paragraph two of the

syllabus. The court was permitted to, after conducting a hearing, correct the original judgment entry. *Id.* at ¶ 23. This is what occurred in the instant case. Accordingly, we find that counsel's proposed assignment of error is not well-taken.

{¶ 12} Under our own independent review of the record, we find no other grounds for a meritorious appeal. Appellate counsel's motion to withdraw is found well-taken and is hereby granted.

{¶ 13} On consideration whereof, we find that appellant was not prevented or prejudiced from having a fair proceeding and the judgment of the Lucas County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

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.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Stephen A. Yarbrough, 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.
