

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

State of Ohio

Court of Appeals No. H-10-017

Appellee

Trial Court No. 10CRB00959

v.

Harry Watkins

DECISION AND JUDGMENT

Appellant

Decided: January 13, 2012

* * * * *

Beverly Newell Hancock, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is a delayed appeal from a judgment of the Norwalk Municipal Court that found appellant guilty of one count of disorderly conduct in violation of R.C. 2917.11(A)(1), a minor misdemeanor, after a plea of no contest. For the reasons that follow, the judgment of the trial court is affirmed.

{¶ 2} Appointed counsel, Beverly Newell-Hancock, has submitted a request to withdraw pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). In her brief filed on appellant's behalf, appointed counsel sets forth several "issues of possible merit." 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*, 57 Ohio App.2d 93, 385 N.E.2d 323 (8th Dist.1978), 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.*

{¶ 4} In the case before us, appointed counsel has satisfied the requirements set forth in *Anders, supra*. This court further finds that appellant was notified by counsel of his right to file an appellate brief on his own behalf but has not done so. Accordingly, this court shall proceed with an examination of the potential assignments 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.

{¶ 5} On June 21, 2010, appellant was charged with persistent disorderly conduct, a fourth-degree misdemeanor, in violation of R.C. 2917.11(A)(1) and (E)(3)(a). That same day, appellant appeared before the Norwalk Municipal Court and entered a plea of not guilty. The matter was set for trial on June 29, 2010, on which date appellant appeared with counsel and entered a plea of no contest to an amended charge of disorderly conduct in violation of R.C. 2917.11(A)(1), a minor misdemeanor. Appellant was found guilty and ordered to pay a fine of \$150 and court costs of \$130.20. The proceedings were not recorded.

{¶ 6} Counsel for appellant presents the following six “issues of possible merit”:

{¶ 7} “A. Validity of the Guilty Plea

{¶ 8} “B. Validity of Statute

{¶ 9} “C. Sentence

{¶ 10} “D. Ineffective Representation of Counsel

{¶ 11} “E. Failure to record the proceedings

{¶ 12} “F. Failure to hold a hearing on Appellant’s ability to pay fines and costs.”

{¶ 13} The judgment entry dated June 29, 2010, reflects that the amendment of the charge to disorderly conduct, the no contest plea, the fine and the court costs were “approved” by appellant, as evidenced by his signature on the entry. Without a transcript of the plea hearing, there is no basis for a claim that the plea was not valid. Any suggestion that R.C. 2917.11(A)(1) is not valid is not supported by the minimal record before this court.

{¶ 14} As to the sentence, the fact that appellant “approved” the judgment entry by adding his signature thereto essentially constituted a waiver of any argument that he was prejudiced by the fine and court costs.

{¶ 15} There is no basis on which to conclude that appellant was not provided effective assistance of counsel merely because the proceedings were not recorded, as appointed counsel suggests. In Ohio, a properly licensed attorney is presumed competent and the burden is on the appellant to show counsel’s ineffectiveness. *State v. Lytle*, 48 Ohio St.2d 391, 358 N.E.2d 623 (1978). There is no support in the record before us for a finding that appellant was denied effective assistance of counsel. Any argument that appellant was prejudiced by the failure to record the proceedings is negated by appellant’s signature on the judgment entry. There is no evidence in the record that either party requested that the hearing be recorded.

{¶ 16} The record reflects that appellant submitted an affidavit of indigency prior to his hearing. Although it would have been preferable for the trial court to have indicated on the record that it had considered appellant's ability to pay a fine and court costs, there is no indication that appellant raised the issue of his ability to pay the fine and court costs prior to signing the judgment entry.

{¶ 17} On consideration of the foregoing, we find that appointed counsel's proposed arguments are without merit.

{¶ 18} In conclusion, upon our own independent review of the record, we find no grounds for a meritorious appeal. Appointed counsel's motion to withdraw is found well-taken and is granted.

{¶ 19} The judgment of the Norwalk Municipal Court is affirmed. Costs of this appeal are assessed to appellant.

{¶ 20} The clerk is ordered to serve all parties, including the defendant if he or she has filed a brief, with notice of this decision.

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, P.J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE