

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

In re R.H.

Court of Appeals Nos. L-11-1204
L-11-1205
L-11-1206

Trial Court Nos. 05146609 D2
08185832.01
07167233.02

DECISION AND JUDGMENT

Decided: August 3, 2012

* * * * *

James J. Popil, for appellant.

* * * * *

YARBROUGH, J.

I. Introduction

{¶ 1} This is an *Anders* appeal. Appellant, R.H., appeals from the judgment of the Lucas County Court of Common Pleas, Juvenile Division, finding him in violation of his probation, and lifting the stay on his previously imposed commitment to the Ohio Department of Youth Services (“DYS”) for six months to age 21. We affirm.

A. Facts and Procedural Background

{¶ 2} On December 29, 2005, in case No. 05146609, appellant, then eleven years old, admitted to committing acts, which if committed by an adult would constitute one count of gross sexual imposition in violation of R.C. 2907.05(A)(4), a felony of the third degree. The trial court found appellant to be delinquent, and ordered a commitment to DYS for a minimum of six months to age 21. The court suspended this sentence, and placed appellant on probation.

{¶ 3} On May 1, 2007, in case No. 07167233, appellant again admitted to acts, which if committed by an adult would constitute one count of gross sexual imposition in violation of R.C. 2907.05(A)(4), a felony of the third degree. The trial court adjudicated appellant delinquent, and ordered a suspended commitment to DYS for a minimum of six months to age 21. The prior order of probation was reaffirmed.

{¶ 4} On September 17, 2008, in case No. 08185832, appellant was found delinquent, this time after a trial, of one count of gross sexual imposition in violation of R.C. 2907.05(A)(4) and (C)(2), a felony of the third degree if committed by an adult. The trial court ordered and suspended a commitment to DYS for a minimum of six months to age 21. The prior order of probation again was reaffirmed.

{¶ 5} Since then, appellant has admitted to violating the conditions of his probation numerous times. The court found him in violation of his probation on March 13, 2009, January 14, 2010, March 24, 2011, and May 17, 2011. It is from the May 17, 2011 judgment that this appeal is taken. The transcript from that hearing reveals

that appellant admitted to becoming physically aggressive with one of the staff members of the home where he was staying, and to having possessed contraband in the form of a staff member's money clip. The court, after accepting his admission to the probation violation, ordered that the stays on the commitments to DYS be rescinded, and that appellant be committed to DYS for a minimum of six months to age 21. The court further ordered that the commitments in all three cases be served concurrently.

B. *Anders* Requirements

{¶ 6} Appointed counsel has filed a brief and requested leave to withdraw as counsel pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). Under *Anders*, if, after a conscientious examination of the case, counsel concludes the appeal to be wholly frivolous, he or she should so advise the court and request permission to withdraw. *Id.* at 744. This request must be accompanied by a brief identifying anything in the record that could arguably support the appeal. *Id.* In addition, counsel must provide the appellant with a copy of the brief and request to withdraw, and allow the appellant sufficient time to raise any additional matters. *Id.* Once these requirements are satisfied, the appellate court is required to conduct an independent examination of the proceedings below to determine if the appeal is indeed frivolous. *Id.* If it so finds, the appellate court may grant counsel's request to withdraw, and decide the appeal without violating any constitutional requirements. *Id.*

{¶ 7} In his brief, counsel asserts a single proposed assignment of error:

I. R.H.'s ADMISSION TO THE PROBATION VIOLATION WAS NOT MADE KNOWINGLY, WILLINGLY AND VOLUNTARILY WHERE THE TRIAL COURT FAILED TO ADVISE HIM OF HIS CONSTITUTIONAL RIGHTS.

{¶ 8} Appellant has not filed a pro se brief in this matter.

II. Analysis

{¶ 9} Prior to accepting an admission from a juvenile, Juv.R. 29(D) requires that the court must address the juvenile personally and determine that

(1) The party is making the admission voluntarily with understanding of the nature of the allegations and the consequences of the admission;

(2) The party understands that by entering an admission the party is waiving the right to challenge the witnesses and evidence against the party, to remain silent, and to introduce evidence at the adjudicatory hearing.

The trial court must substantially comply with Juv.R. 29(D), although strict compliance is preferred. *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177, ¶ 113.

“[S]ubstantial compliance means that in the totality of the circumstances, the juvenile subjectively understood the implications of his plea.” *Id.*

{¶ 10} Here, the court engaged in a detailed colloquy with the then 16-year-old appellant:

THE COURT: Have you received a copy of the allegation of probation violation, [appellant's counsel]?

[APPELLANT'S COUNSEL]: Yes.

THE COURT: Okay. Are we ready to proceed on that?

[APPELLANT'S COUNSEL]: Yes, and I spoke about this with [appellant], and there is a few variations on some of the details, but in essence he's admitting to the violations that were alleged.

THE COURT: Okay. All right.

[Appellant], can you stand up, please? I just want to make sure that you understand, [appellant], that you have a right to have a hearing on this allegation of probation violation; do you understand that?

THE JUVENILE: Yes, Your Honor.

THE COURT: And Ms. Sharp would have to bring witnesses in to testify against you. Do you understand that?

THE JUVENILE: Yes, Your Honor.

THE COURT: She would have to prove to me that you're delinquent of this probation violation allegation. Do you understand that?

THE JUVENILE: Yes.

THE COURT: Your attorney would have the right to question the witnesses she brings in and - - just to determine if they're telling the truth. Do you understand that?

THE JUVENILE: Yes, Your Honor.

THE COURT: And he also has the right to bring in witnesses on your behalf. And if they refuse to come to the court for any reason, he could ask me to order them to come for your benefit at trial, and I would do that. Do you understand that?

THE JUVENILE: Yes, ma'am.

THE COURT: Okay. By making this admission, you're giving up your right to remain silent. You do have the right to remain silent, and if we had a hearing on this allegation that you violated probation, you wouldn't have to take the stand. And if you didn't, I wouldn't hold that against you because you would be exercising your fifth amendment right; do you understand that?

THE JUVENILE: Yes, Your Honor.

THE COURT: If you chose to take the stand after speaking with your lawyer and your parents, of course you're permitted to do that, but it's completely up to you. Do you understand?

THE JUVENILE: Yes, Your Honor.

THE COURT: Okay. Has anyone promised you anything or pressured or threatened you to do this today?

THE JUVENILE: No.

THE COURT: And are you currently under the influence of any medications or drugs or alcohol that would affect your ability to understand what you're doing today?

THE JUVENILE: No, Your Honor.

THE COURT: I understand there is three stayed commitments at this point; is that correct?

[PROBATION OFFICER]: That is correct, Your Honor.

THE COURT: Each one carrying six months up to age 21. Do you understand that those stays could all be lifted and you could be committed to the Department of Youth Services for a total period of 18 months up to age 21?

THE JUVENILE: Yes, Your Honor.

{¶ 11} Based upon this colloquy, we hold that the trial court substantially complied with Juv.R. 29(D), and that appellant's admission to the probation violation was knowingly, intelligently, and voluntarily made. Accordingly, counsel's proposed assignment of error is without merit.

III. Conclusion

{¶ 12} This court, as required under *Anders*, has undertaken our own examination of the record to determine whether any issue of arguable merit is presented for appeal. We have found none. Accordingly, we grant the motion of appellant's counsel to withdraw.

{¶ 13} The judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24. The clerk is ordered to serve all parties, including the defendant if he 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.

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

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