[Cite as *State v. Bradley*, 2012-Ohio-4320.]

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

State of Ohio	Court of Appeals No. OT-11-025
Appellee	Trial Court No. 06-CR-055
v.	
Willie J. Bradley	**DECISION AND JUDGMENT**
Appellant	Decided: September 21, 2012

* * * * *

Mark E. Mulligan, Ottawa County Prosecuting Attorney, and
Andrew M. Bigler, Assistant Prosecuting Attorney, for appellee.

Emil G. Gravelle III, for appellant.

* * * * *

YARBROUGH, J.

I. Introduction

{¶ 1} This is an *Anders* appeal. Appellant, Willie J. Bradley, appeals from the nunc pro tunc judgment entry of the Ottawa County Court of Common Pleas that was entered, pursuant to Crim.R. 32(C) and *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-

3330, 893 N.E.2d 163, to specify that Bradley entered a guilty plea. We dismiss the appeal for lack of jurisdiction.

A. Facts and Procedural History

{¶ 2} In January 2006, Bradley was indicted on four counts of complicity to trafficking drugs within the vicinity of a school, violations of R.C. 2925.03(A)(1) and 2923.03(A)(2). On November 13, 2006, Bradley entered pleas of guilty to Counts 3 and 4 of the indictment, fourth and third degree felonies respectively. A sentencing hearing was held on January 12, 2007. Bradley was sentenced to serve a term of 18 months as to Count 3, and a term of four years as to Count 4, with the terms to be served consecutively. A 1993 Chevrolet was also forfeited to the state, and Bradley's driver's license was suspended for a period of three years. Bradley did not appeal from this sentence.

{¶ 3} On April 14, 2008, Bradley filed a pro se motion to withdraw his guilty plea based upon ineffective assistance of counsel. In his motion, Bradley asserted that he was improperly advised that his crime took place within a thousand feet of a school. Bradley alleged that the school was over 1100 feet from the location of the crime. The prosecution opposed the motion with affidavits of the detective, who measured the distance at 985 feet, along with a report from a professional surveyor who measured the distance at 940.15 feet. At a hearing on November 17, 2008, Bradley learned that if his pleas were withdrawn based upon ineffective assistance of counsel, he would be facing

all four counts of the original indictment. On November 21, 2008, appellant withdrew his motion to withdraw his guilty pleas.

{¶ 4} On July 1, 2011, Bradley filed a pro se "Motion for Issuance of a Final Appealable Order" because the original sentencing entry omitted Bradley's manner of conviction. Resultantly, on July 13, 2011, the trial court filed a nunc pro tunc sentencing entry pursuant to *State v. Baker*, 119 Ohio St.3d, 2008-Ohio-3330, 893 N.E.2d 163, which added that Bradley entered a plea of guilty. Bradley now appeals the July 13, 2011 nunc pro tunc judgment.

B. *Anders* Requirements

{¶ 5} 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.*

{¶ 6} In his brief, counsel asserts four proposed assignments of error:

1. The trial court erred by failing to fully comply with the requirements of Crim.R. 11(C)(2)(c) because the Appellant's guilty plea was not knowingly, intelligently, and voluntarily made.

2. The trial court erred by failing to properly advise the Appellant at his sentencing hearing about being subject to up to three years of post-release control.

3. The trial court erred by sentencing the Appellant to higher degree felonies based on the crimes taking place within one thousand feet of school because Appellant states that he was not within that zone.

4. The trial court erred by not granting the Appellant's Motion for Judicial Release.

{¶ 7} Bradley has not filed a pro se brief.

II. Analysis

{¶ 8} In his discussion of the proposed assignments of error, counsel notes that Bradley is not entitled to a new appeal under the rule announced in *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142. We agree.

{¶ 9} In *State v. Lester*, the Ohio Supreme Court held, "a nunc pro tunc judgment entry issued for the sole purpose of complying with Crim.R. 32(C) to correct a clerical omission in a final judgment entry is not a new final order from which a new appeal may be taken." *Id.* at ¶ 20. In that case, the defendant was appealing a nunc pro tunc entry

filed for the sole purpose of including the manner of the defendant's conviction, i.e., being found guilty by a jury verdict. *Id.* at ¶ 5. The *Lester* court determined that,

> if a judgment entry of conviction does not indicate how a defendant's conviction was effected, whether it was by a guilty plea, a no-contest plea upon which the court has made a finding of guilt, a finding of guilt based upon a bench trial, or a guilty verdict resulting from a jury trial, and if it is not corrected by the court sua sponte, as was done in this case, a party may obtain a correction to the judgment entry by a motion filed with the trial court * * *. Id. at ¶ 16.

However, the court concluded that this does not prevent an original order that conforms to the substantive requirements of Crim.R. 32(C) from being final. *Id.*[1] The Supreme Court of Ohio affirmed the appellate court's judgment dismissing Lester's appeal for lack of a final appealable order.

{¶ 10} Accordingly, we likewise conclude that the trial court's July 13, 2011 nunc pro tunc judgment, which added the manner of Bradley's conviction, is not a final order subject to appeal, and we dismiss this appeal for lack of jurisdiction.

[1] The Crim.R. 32(C) substantive requirements are the fact of the conviction, the sentence, the judge's signature, and the entry on the journal by the clerk. *Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, at ¶ 11.

III. Conclusion

{¶ 11} 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 counsel to withdraw.

{¶ 12} This appeal is dismissed for lack of jurisdiction. Costs are assessed to Bradley pursuant to App.R. 24. The clerk is ordered to serve all parties, including appellant if he has filed a brief, with notice of this decision.

Appeal dismissed.

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

Mark L. Pietrykowski, J. _____
JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.
JUDGE