

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

State of Ohio

Court of Appeals No. L-11-1135

Appellee

Trial Court No. CR0199607049

v.

Michael S. Carter

DECISION AND JUDGMENT

Appellant

Decided: September 21, 2012

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
David F. Cooper, Assistant Prosecuting Attorney, for appellee.

Tim A. Dugan, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} This appeal is from the May 12, 2011 judgment of the Lucas County Court of Common Pleas, which resentenced appellant, Michael S. Carter, to impose a postrelease control sanction and corrected its prior entry to add the manner of his conviction.

{¶ 2} Appellant was originally sentenced following a jury conviction of felonious assault and aggravated murder in 1997. Appellant sought an appeal from that judgment, and this court affirmed the judgment on May 21, 1999. In January 2011, appellant moved for resentencing on the grounds that the original judgment was void because it did not indicate the manner of conviction as required by Crim.R. 32(C) and *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, syllabus, and did not include the terms of appellant's postrelease control as required by *State v. Boswell*, 121 Ohio St.3d 575, 2009-Ohio-1577, 906 N.E.2d 422, ¶ 8.

{¶ 3} At the time R.C. 2929.191 had not yet been enacted, but the trial court held a resentencing hearing in April 2011, and issued a new sentencing judgment on May 12, 2011. The new sentencing judgment added the notification of appellant's postrelease control sanction. The court also included the fact that appellant had been convicted by a jury. Appellant sought an appeal from this judgment.

{¶ 4} Pursuant to the guidelines set forth in *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), appellant's court-appointed counsel filed an appellate brief and motion to withdraw as counsel. He mailed a copy of the brief and motion to appellant and informed him that he had a right to file his own brief, but he did not do so.

{¶ 5} Appellant's counsel states in his motion that he thoroughly reviewed the record in this case and concluded that the trial court did not commit any error prejudicial

to appellant. However, in compliance with the requirements of *Anders, supra*, appellant's counsel has submitted a brief setting forth the following potential assignment of error:

The Trial Court erred by not conducting a de novo sentencing hearing.

{¶ 6} Appellant believes that the addition of the manner of conviction meant that the corrected judgment is now the only final, appealable order from which he could appeal. We have already addressed this argument and have rejected it. *State v. Thomas*, 6th Dist. No. L-10-1337, 2012-Ohio-4192 and *State v. Boles*, 6th Dist. No. L-11-1020, 2012-Ohio-385, ¶ 16.

{¶ 7} Appellant's only potential argument was that the trial court erred by not conducting a de novo resentencing hearing. The trial court held a limited resentencing hearing as mandated at the time by *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 29, to properly impose a postrelease control sanction pursuant to R.C. 2943.032. Therefore, we find there is no merit to appellant's proposed assignment of error.

{¶ 8} This court also has the obligation to fully examine the record in this case to determine whether an appeal would be frivolous. *Anders, supra*, at 744. Our review of the record does not disclose any errors by the trial court which would justify a reversal of the judgment. Therefore, we find this appeal to be wholly frivolous. Counsel's request to withdraw as appellate counsel is found well-taken and is hereby granted.

{¶ 9} Having found that the trial court did not commit error prejudicial to appellant, the judgment of the Lucas County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is hereby ordered to pay the court costs incurred on appeal.

{¶ 10} 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

Mark L. Pietrykowski, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

<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: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
