

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

State of Ohio

Court of Appeals No. L-11-1147

Appellee

Trial Court No. CR0200701168

v.

Charles Rodriguez

DECISION AND JUDGMENT

Appellant

Decided: December 7, 2012

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Jeffrey D. Lingo, Assistant Prosecuting Attorney, for appellee.

Tim A. Dugan, for appellant.

Charles Rodrigues, pro se.

* * * * *

SINGER, P.J.

{¶ 1} Appellant, Charles Rodriguez, appeals a nunc pro tunc judgment entry from the Lucas County Court of Common Pleas, regarding his sentence for murder with a firearm specification.

{¶ 2} Appellant's appointed counsel has requested leave to withdraw in accordance with the procedure set forth in *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). In *Anders*, the United States Supreme Court held that if counsel, after a conscientious examination of the appeal, determines it to be wholly frivolous he should so advise the court and request permission to withdraw. *Id.* at 744. The request shall include a brief identifying anything in the record that could arguably support an appeal. *Id.* Counsel shall also furnish his client with a copy of the request to withdraw and its accompanying brief, and allow the client sufficient time to raise any matters that he chooses. *Id.* 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.*

{¶ 3} Here, appointed counsel has met the requirements set forth in *Anders*. Counsel also informed appellant of his right to file his own, additional assignments of error and appellate brief, which appellant has done. Accordingly, this court shall proceed examining the potential assignment of error set forth by counsel and appellant, as well as the entire record below to determine whether this appeal lacks merit deeming it wholly frivolous.

{¶ 4} On August 30, 2007, a jury convicted appellant of murder with a firearm specification. He was sentenced to 15 years to life, on the murder count, and an

additional three years, for the firearm specification, to be served consecutively, pursuant to R.C. 2929.14(D)(1), for a total term of incarceration of 18 years to life. This court affirmed his conviction in *State v. Rodriguez*, 6th Dist. No. L-07-1303, 2009-Ohio-2156.

{¶ 5} On March 7, 2011, appellant filed a “motion to correct void sentencing entry.” Citing *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, appellant argued that his conviction was not a final appealable order because the judgment entry of sentence failed to include the nature of his verdict, specifically, that he was convicted by a jury. In response to appellant’s motion, the trial court, on May 26, 2011, issued a nunc pro tunc judgment entry stating: “[T]he court finds that on August 30, 2007, the defendant was found guilty by a jury of the offense of murder * * *.”

{¶ 6} It is from this judgment that appellant seeks an appeal. Counsel for appellant has set forth the following potential assignments of error:

- I. Appellant’s right to an impartial jury was violated.
- II. The trial court improperly amended the indictment against appellant.
- III. Appellant received ineffective assistance of counsel.

{¶ 7} Appellant, in his pro se brief, sets forth the following assignment of error:

I. A sentence is unauthorized by law and void when the indictment only reflected a convicted (sic) for the least degree offense of murder per R.C. § 2945.75(A)(1) (i.e. involuntary manslaughter.

{¶ 8} If a judgment of conviction contains “(1) the fact of the conviction, (2) the sentence, (3) the judge’s signature, and (4) the time stamp indicating the entry upon the journal by the clerk,” it is a final order subject to appeal. *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, paragraph one of the syllabus, modifying *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163. In order to be in compliance with Crim.R. 32(C), the judgment should also contain the manner of conviction (jury verdict, after bench trial or on a plea). *Id.* at ¶ 9; *Baker, supra*, at ¶ 14. The lack of such information, however, is not substantive, *Lester* at ¶ 11, and may be rectified by a nunc pro tunc entry. *Id.* at paragraph two of the syllabus. The entry of a nunc pro tunc entry does not engender a new final order from which appeal may be had. *Id.*

{¶ 9} All three of counsel’s potential assignments of error as well as appellant’s pro se assignment of error are found not well-taken because they raise errors concerning appellant’s original trial. Appellant already had a direct appeal and pursuant to the above, he is not entitled to another appeal by virtue of the trial court’s nunc pro tunc entry.

{¶ 10} Upon this record, we concur with appellate counsel that appellant’s appeal is without merit. Moreover, upon our own independent review of the record, we find no

other grounds for meritorious appeal. Accordingly, this appeal is found to be without merit, and wholly frivolous. Counsel's motion to withdraw is found well-taken and is, hereby, granted.

{¶ 11} On consideration whereof, the judgment of the Lucas County Court of Common Pleas 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, 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.

Mark L. Pietrykowski, J.

Arlene Singer, P.J.
CONCUR.

JUDGE

JUDGE

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>
