

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

State of Ohio

Court of Appeals Nos. L-12-1196
L-12-1197

Appellee

Trial Court Nos. 11CRA008860102
11CRA008860202

v.

Darrell Reid

DECISION AND JUDGMENT

Appellant

Decided: March 22, 2013

* * * * *

Thomas P. Kurt, for appellant.

* * * * *

JENSEN, J.

{¶ 1} Appellant Darrell Reid filed two pro se notices of appeal from two decisions of the Oregon Municipal Court. The cases were consolidated, and appellate counsel was appointed for this appeal only. Appointed counsel has filed a “no merit” brief and requested leave to withdraw from the case, pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). For the following reasons, we grant

counsel's motion to withdraw and dismiss the case for want of a meritorious, appealable issue.

{¶ 2} On September 26, 2011, appellant was charged with two counts of counterfeiting in violation of R.C. 2913.31. On April 24, 2012, the trial court dismissed both charges based on the "Prosecutor's Recommendation" filed that same day. On June 18, 2012, despite the dismissal of the case, appellant filed a "Motion to Dismiss Delay in Preliminary Hearing Pursuant to 2945.73(B)." In journal entries dated June 26, 2012, the trial court ruled, as to each motion, "Defendant's motion is moot, matter was resolved by original indictment." Acting pro se, appellant filed timely notices of appeal with this court.

{¶ 3} On November, 30, 2012, appellant's counsel filed a motion to withdraw as counsel for lack of a meritorious, appealable issue under *Anders*; see also *State v. Duncan*, 57 Ohio App.2d 93, 385 N.E.2d 323 (8th Dist.1978). In *Anders*, the United States Supreme Court set forth the procedure to be followed by appointed counsel who desires to withdraw for want of a meritorious, appealable issue. The 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. *Anders* 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 it may proceed to a decision on the merits if state law so requires. *Id.*

{¶ 4} We have reviewed the record and find that appellant's counsel has satisfied the requirements set forth in *Anders, supra*. We note that appellant has not filed a pro se brief or otherwise responded to counsel's request to withdraw.

{¶ 5} Although counsel found no meritorious issue to present on appellant's behalf, counsel addressed the potential for raising the following assignment of error:

I. The Oregon Municipal Court erred in overruling appellant's
"Motion To Dismiss, Delay in Preliminary Hearing Pursuant to ORC
2945.73(B)."

{¶ 6} Next, we examine the potential assignment of error and the entire record below to determine if this appeal lacks merit and is, therefore, wholly frivolous. Appellant's counsel suggests that the trial court erred in overruling appellant's motions to dismiss. At the time appellant filed the motions, however, the cases against him had already been dismissed. We can only guess as to why appellant would challenge the dismissals with corresponding motions to dismiss. In any event, an entry of "nolle prosequi" is a formal entry on the record by the prosecuting officer declaring that the case will not be prosecuted further. *Black's Law Dictionary* (9th Ed.2009). "An entry of *nolle*

prosequi in a criminal case is not a final appealable order.” *State v. McLaughlin*, 122 Ohio App.3d 418, 420, 701 N.E.2d 1048 (10th Dist.1997), citing *State v. Eberhardt*, 56 Ohio App.2d 193, 381 N.E.2d 1357 (8th Dist.1978). Likewise, the trial court’s journal entries finding appellant’s motions “moot” were not final appealable orders. A court of appeals has no jurisdiction over orders that are not final and appealable. Ohio Constitution, Article IV, Section 3(B)(2) (“Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district * * *.”) and R.C. 2505.02 (“Final orders may be appealed * * *.”)

{¶ 7} 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.

{¶ 8} Likewise, we find the proceedings below lacked a final appealable order. Therefore, we dismiss this appeal for lack of jurisdiction. Costs are assessed to appellant pursuant to App.R. 24

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.

State v. Reid
C.A. Nos. L-12-1196
L-12-1197

Mark L. Pietrykowski, J.

JUDGE

Stephen A. Yarbrough, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

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>.