

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

State of Ohio

Court of Appeals No. L-12-1174

Appellee

Trial Court No. CR0201201962

v.

Paul H. Butler

DECISION AND JUDGMENT

Appellant

Decided: May 3, 2013

* * * * *

Laurel A. Kendall, for appellant.

* * * * *

YARBROUGH, J.

I. Introduction

{¶ 1} This is an *Anders* appeal. Appellant, Paul H. Butler, appeals from the judgment of the Lucas County Court of Common Pleas, convicting him of failure to comply with an order or a signal of a police officer and receiving stolen property. We affirm.

A. Facts and Procedural Background

{¶ 2} Appellant's convictions arose from an incident where he was leaving a gas station in a car that he knew was stolen. An officer who happened to be at the gas station attempted to block appellant's exit. Appellant drove around the officer. Subsequently, another officer spotted appellant, and activated the lights and sirens on the cruiser in an attempt to initiate a stop. A chase ensued. Appellant travelled at a high rate of speed down a busy roadway, and through a couple of intersections, finally stopping in a trailer park. The chasing officer momentarily lost sight of appellant's vehicle, but ultimately located and arrested him in the trailer park.

{¶ 3} At his arraignment, appellant pleaded guilty to the offenses of failure to comply with the order or signal of a police officer in violation of R.C. 2921.331(B) and (C)(5)(a)(ii), a felony of the third degree, and receiving stolen property in violation of R.C. 2913.51, a felony of the fourth degree. Following an extensive and thorough colloquy in which appellant was informed of all of his constitutional rights, the trial court accepted appellant's guilty plea and ordered a presentence investigation report.

{¶ 4} At the sentencing hearing, the trial court heard statements in mitigation from appellant and his attorney. The court also reviewed the presentence investigation report, and noted that appellant had nine previous felony convictions and 36 prior misdemeanor convictions. The trial court then, considering the principles and purposes of sentencing in R.C. 2929.11 and 2929.12, and making the requisite findings for imposing

non-minimum and consecutive sentences,¹ sentenced appellant to 36 months in prison on the failure to comply offense, and 17 months in prison on the receiving stolen property offense. The trial court ordered the sentences to be served consecutively for a total prison term of 53 months. Appellant also was notified of the imposition of three years of mandatory postrelease control and the consequences for violation thereof. Additionally, the trial court imposed a lifetime suspension of appellant's driving license.

{¶ 5} Appellant has timely appealed.

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.*

¹ R.C. 2921.331(D) also requires appellant's sentences to be served consecutively: "If an offender is sentenced pursuant to division (C)(4) or (5) of this section for a violation of division (B) of this section, and if the offender is sentenced to a prison term for that violation, the offender shall serve the prison term consecutively to any other prison term or mandatory prison term imposed upon the offender."

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 her brief, counsel asserts two potential assignments of error:

1. The trial court committed plain error when it included, or appeared to include, Appellant's prior out-of-state convictions for fleeing and/or attempting to elude police in its consideration of sentencing factors.
(Emphasis sic.)

2. The trial court committed plain error when it did not address the administrative aspects of Appellant's driver's license suspension at the sentencing hearing, including the starting date.

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

II. Analysis

{¶ 9} Under the first potential assignment of error, counsel raises the argument that the trial court erred by considering appellant's Florida convictions when it imposed a lifetime suspension of appellant's driver's license under R.C. 2921.331. R.C. 2921.331(E) provides, "If the offender previously has been found guilty of an offense under this section, in addition to any other sanction imposed for the offense, the court shall impose a class one suspension as described in division (A)(1) of [section 4510.02 of the Revised Code]." A class one suspension is for "a definite period for the life of the person subject to the suspension." R.C. 4510.02(A)(1). Counsel argues that the phrase "under this section" precludes the trial court from considering appellant's conviction

under an analogous Florida statute. However, we need not address this issue because, as counsel acknowledges, appellant has a previous Ohio conviction from 1994 for failure to comply under R.C. 2921.331. Thus, any consideration of the Florida violations is superfluous.

{¶ 10} Accordingly, the first proposed assignment of error is without merit.

{¶ 11} Under the second potential assignment of error, counsel proposes that the trial court erred by not specifying the start date for the license suspension. Counsel argues that the suspension can begin at any of three postconviction junctures:

1. Concurrent with the start of the term of incarceration, as a concurrent second sentence; or
2. At the time of release from incarceration, and the start of any period of post-release control; or
3. At the end of any discretionary post-release control period, when the offender is released back into the community.

Counsel contends that without a starting date, the ending date cannot be known, thereby “transfer[ring] the responsibility for the determination of the ending date to the Bureau of Motor Vehicles, which is inconsistent with the statute.”

{¶ 12} We disagree with the proposition that there is no starting date to the suspension. The judgment entry states, “Defendant’s driver’s license is Ordered suspended for life.” Because it is a lifetime suspension and not a suspension for a term,

there is no reason for the trial court to delay the start of the suspension until after appellant is released from prison. Thus, we conclude that it is to begin immediately.

{¶ 13} Accordingly, the second proposed assignment of error is without merit.

III. Conclusion

{¶ 14} 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.

{¶ 15} 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 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

<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>
