

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

State of Ohio

Court of Appeals No. L-12-1221

Appellee

Trial Court No. CR0200603585

v.

Chad Bork

DECISION AND JUDGMENT

Appellant

Decided: September 13, 2013

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Brenda J. Majdalani, Assistant Prosecuting Attorney, for appellee.

Tim A. Dugan, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Defendant-appellant, Chad Bork, appeals the July 24, 2012 judgment of the Lucas County Court of Common Pleas which denied his pro se motion for resentencing.

For the reasons that follow, we affirm.

{¶ 2} In 2007, following no contest pleas to rape and abduction and the court's findings of guilt, appellant was sentenced to a total of 15 years of imprisonment and classified as a sexual predator. On direct appeal, this court rejected appellant's arguments that his nonminimum, consecutive sentences were in violation of his constitutional rights, that he was improperly classified as a sexual predator, and that the court erred by ordering him to pay various costs. *See State v. Bork*, 6th Dist. Lucas No. L-07-1080, 2008-Ohio-1556.

{¶ 3} On April 3, 2012, appellant filed a motion to resentence pursuant to R.C. 2941.25, the allied offense statute. Appellant argued that, using the Supreme Court of Ohio's new allied offenses analysis, because the rape and abduction counts arose from the same conduct, they were committed with a single animus and, thus, the counts were subject to merger at sentencing. *See State v. Johnson*, 128 Ohio St.3d 153, 2010-Ohio-6314, 942 N.E.2d 1061.

{¶ 4} The court denied appellant's motion finding that at the time of sentencing, it was required to and did analyze the elements of the rape and abduction counts and found them to be of dissimilar import. The court further concluded that the two-prong test announced in *State v. Johnson*, could not be applied retroactively. This appeal followed.

{¶ 5} Pursuant to procedures announced in *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), counsel for appellant states that he is unable to find meritorious grounds for this appeal. Counsel filed an appellate brief and, pursuant to *Anders*, asserted a potential assignment of error. Counsel has requested leave of court to

withdraw as counsel for appellant. In addition, counsel mailed a copy of the appellate brief including counsel's request to withdraw as counsel to appellant and advised appellant of his right to file his own brief. Appellant has not filed his own appellate brief.

{¶ 6} Appellant's counsel's potential assignment of error asserts:

The trial court erred when it denied appellant's motion to be resentenced.

{¶ 7} We first note that appellant's motion for resentencing is properly construed as a petition for postconviction relief. *State v. Reynolds*, 79 Ohio St.3d 158, 679 N.E.2d 1131 (1997), syllabus. Thus, we review a trial court's decision granting or denying a postconviction petition for an abuse of discretion. *State v. Gondor*, 112 Ohio St.3d 377, 2006-Ohio-6679, 860 N.E.2d 77, ¶ 58. An abuse of discretion connotes that the trial court's attitude is arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 8} Reviewing counsel's potential assignment of error, we agree that the ruling in *State v. Johnson, supra*, does not apply retroactively. *See State v. Walker*, 6th Dist. Lucas No. L-12-1204, 2013-Ohio-2131, ¶ 10, citing *State v. Porter*, 6th Dist. Lucas No. L-12-1243, 2013-Ohio-1360. Accordingly, appellant's counsel's potential assignment of error lacks merit.

{¶ 9} This court, as required under *Anders, supra*, has undertaken an independent examination of the record to determine whether any meritorious issues were presented for appeal. We have found none. Accordingly, we find this appeal is without merit and

wholly frivolous. We grant the motion of appellant's counsel to withdraw as counsel in this appeal and affirm the judgment of the Lucas County Court of Common Pleas. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24. The clerk is ordered to serve all parties, including Chad Bork, with notice of this decision, if appellant notified the court of his address.

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.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, 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:
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