[Cite as *State v. Banks*, 2014-Ohio-1000.]

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

State of Ohio	Court of Appeals No. L-13-1095
Appellee	Trial Court No. CR0201301083
v.	
Oscar Banks	**DECISION AND JUDGMENT**
Appellant	Decided: March 7, 2014

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Mark T. Herr, Assistant Prosecuting Attorney, for appellee.

Lawrence A. Gold, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} Appointed counsel has submitted a request to withdraw pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). In the brief filed on appellant's behalf, appointed counsel sets forth one proposed assignment of error. In support

of his request to withdraw, counsel for appellant states that, after reviewing the record of proceedings in the trial court, he was unable to identify any appealable issues.

{¶ 2} *Anders, supra*, and *State v. Duncan*, 57 Ohio App.2d 93, 385 N.E.2d 323 (1978), set forth the procedure to be followed by appointed counsel who desires to withdraw for want of a meritorious, appealable issue. In *Anders*, the United States Supreme Court held that if counsel, after a conscientious examination of the case, determines it to be wholly frivolous, counsel 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 may proceed to a decision on the merits if state law so requires. *Id.*

{¶ 3} In the case before us, appointed counsel has satisfied the requirements set forth in *Anders, supra*. The record reflects that counsel provided appellant with a copy of the brief and request to withdraw and notified appellant of his right to raise any matters that he might choose within 45 days. Appellant has not provided this court with a separate brief within the specified time. Accordingly, this court shall proceed with an examination of the potential

assignment of error proposed by counsel for appellant and the record from below in order to determine if this appeal lacks merit and is, therefore, wholly frivolous.

{¶ 4} In his single potential assignment of error, appellant contends that the trial court abused its discretion in sentencing him to consecutive terms on the three counts of robbery.

Facts and Procedural History

{¶ 5} On January 14, 2013, appellant was indicted by the Lucas County Grand Jury for a violation of R.C. 2911.01(A)(1), robbery, a felony of the first degree and two additional counts of violating R.C. 2911.02(A)(2), robbery, each being a felony of the second degree.

{¶ 6} On January 22, 2013, appellant appeared before the trial court. Counsel was appointed and bond was established by the trial court. Counsel filed written motions for a competency evaluation.

{¶ 7} At the February 19, 2013 competency hearing, appellant was found to be competent.

{¶ 8} On April 22, 2013, appellant entered pleas of no contest to three counts of robbery, in violation of R.C. 2911.02(A)(2), each being a felony of the second degree.

{¶ 9} On April 26, 2013, the trial court imposed a term of incarceration of five years as to Count 1 and two terms of three years as to the remaining two counts, to be served consecutively, for a cumulative prison term of eleven years.

Analysis

{¶ 10} Henceforth, we review consecutive sentences using the standard of review set forth in R.C. 2953.08. R.C. 2953.08(G)(2) provides two grounds for a reviewing court to

overturn the imposition of consecutive sentences: the sentence is "otherwise contrary to law," or the reviewing court clearly and convincingly finds that "the record does not support the sentencing court's findings" under R.C. 2929.14(C)(4).

{¶ 11} R.C. 2929.14(C)(4) now requires that a trial court engage in a three-step analysis in order to impose consecutive sentences. First, the trial court must find the sentence is necessary to protect the public from future crime or to punish the offender. Second, the trial court must find that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public. Third, the trial court must find that at least one of the following applies: (a) the offender committed one or more of the multiple offenses while awaiting trial or sentencing, while under a sanction imposed pursuant to R.C. 2929.16, 2929.17, or 2929.18, or while under postrelease control for a prior offense; (b) at least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the offenses was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct; or (c) the offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender. *Id*. at R.C. 2929.14(C)(4)(a)-(c).

{¶ 12} However, the trial court it is not required to recite any "magic" or "talismanic" words when imposing consecutive sentences provided it is "clear from the record that the trial court engaged in the appropriate analysis." *State v. Murrin*, 8th Dist. Cuyahoga No. 83714, 2004-Ohio-3962, ¶ 12.

{¶ 13} The trial court stated at the sentencing hearing:

> I do find that the consecutive nature is allowable based upon the defendant's criminal history and the nature of these offenses, and the court reflects [upon] the seriousness of the offender's conduct.

{¶ 14} The court went on to make further findings in its sentencing entry of May 1, 2013, that consecutive sentences in this case were not disproportionate to the seriousness of the offender's conduct or the danger the offender poses and further, that the defender's criminal history and the nature of the offenses required consecutive sentences.

{¶ 15} The record reflects that the trial court considered all the information conveyed to it, including the presentence report, the sentencing memorandum presented by counsel, arguments of counsel and the sentencing statutes.

{¶ 16} In the instant case, the trial court delineated each necessary finding under R.C. 2929.14(C)(4) when it imposed its sentence, and the trial court supported its findings with facts from the record. Thus, we find that the trial court made all the necessary findings prior to imposing consecutive sentences, those findings are supported by the record, and appellant's sentence is not contrary to law.

{¶ 17} The question in an *Anders* appeal is whether even raising a particular issue has arguable merit or whether it is frivolous. Given the trial court's findings and the record before us, no reasonable argument can be made that the trial court's imposition of consecutive sentences constitutes reversible error. Accordingly, the sole potential assignment of error has no arguable merit.

{¶ 18} We have performed our duty under *Anders* to conduct an independent review of the record. We thoroughly have reviewed the various filings, the transcript of the plea colloquy and the transcript of the sentencing hearing as well as the sentencing journal. We have found no non-frivolous issues with arguable merit for review. Appellant's counsel's motion to withdraw is found well-taken and is granted.

{¶ 19} The judgment of the Lucas County Court of Common Pleas is affirmed. Costs of this appeal are assessed to appellant 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, J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

Stephen A. Yarbrough, P.J. _____
CONCUR.
JUDGE