

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

City of Toledo

Court of Appeals No. L-14-1192

Appellee

Trial Court No. CRB-13-06355

v.

Richard Vanlandingham, III

DECISION AND JUDGMENT

Appellant

Decided: September 30, 2015

* * * * *

Steven T. Casiere, for appellant.

* * * * *

JENSEN, J.

{¶ 1} Appellant, Richard Vanlandingham, III, appeals from a judgment of conviction and sentence entered by the Toledo Municipal Court after he was found guilty of failing to abate a public nuisance in violation of Toledo Municipal Code 1726.08(a), a misdemeanor of the third degree. For the reasons that follow, we affirm the judgment of the trial court.

{¶ 2} On April 17, 2013, a complaint was filed in Toledo Municipal Court alleging Vanlandingham failed or neglected to obey or abide with an order to abate a public nuisance. Initially, Vanlandingham entered a plea of not guilty.

{¶ 3} After several continuances, a written plea agreement was entered March 19, 2014, wherein Vanlandingham entered a plea of no contest, and the court reserved its finding until July 1, 2014. The plea agreement further provides:

The finding of the Court as to guilt or innocence will be based upon the completion of Defendant's plan for rehabilitation of the premises located at 318 Buckeye Street, Toledo, Ohio, pursuant to Orders previously issued by the City of Toledo but not yet completed.

The Defendant stated that he was financially and physically able to perform the work listed below or have portions thereof legally subcontracted at Defendant's expense including obtaining all necessary permits.

The rehabilitation will include:

1. Roof * * *.
2. Front Porch * * *.
3. House Painting * * *.

If all of the above projects are completed in a workmanlike manner by July 1, 2014, then, in that event, this case shall be dismissed with costs assessed to Defendant. However, if the Defendant fails to complete all

projects, upon recommendation of the Prosecuting Attorney, a finding of Guilty will be made and the matter of sentencing will be continued to a date determined by the Court.

{¶ 4} On July 2, 2014, Vanlandingham filed a motion seeking a 30-day continuation of the sentencing date. Attached to the motion were copies of three police reports involving recent crimes committed against Vanlandingham and two medical statements regarding injuries Vanlandingham sustained in those incidents. The trial court denied Vanlandingham's motion and entered a finding of guilty, as contemplated by the written plea agreement. Thereafter, Vanlandingham filed a "Motion to Vacate Finding of Guilty." This motion was denied.

{¶ 5} Vanlandingham was sentenced to serve 30 days in jail and pay a fine of \$250, plus court costs. The jail sentence was suspended conditioned upon one year of no further housing violations not being corrected within the required time. \$150 of the \$250 fine was also suspended. Vanlandingham appealed.

{¶ 6} Appellant's appointed counsel filed a request to withdraw pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed. 493 (1967). Counsel asserted that after thoroughly reviewing the transcript of proceedings in the trial court and the applicable case law, no meritorious assignment of error could be presented. Counsel did submit, however, two potential assignments of error:

1. The trial court abused its discretion by denying appellant's motion to reschedule sentencing date filed on or about July 2, 2014.

2. The trial court improperly denied appellant's motion to vacate finding of guilt filed on or about August 12, 2014.

{¶ 7} The procedure to be followed by appointed counsel who desires to withdraw for want of a meritorious, appealable issue is set forth in *Anders*, as well as *State v. Duncan*, 57 Ohio App.2d 93, 385 N.E.2d 323 (8th Dist.1978). In *Anders*, the United States Supreme Court found 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 must be accompanied by a brief identifying anything in the record which could arguably support the appeal. *Id.* In addition, counsel must furnish the client with a copy of the brief and request to withdraw and allow the client sufficient time to raise any matters the client so chooses. *Id.* Once these requirements have been fulfilled, the appellate court must conduct a full examination of the proceedings held below to decide if the appeal is indeed frivolous. *Id.* If the appellate court determines 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 required by state law. *Id.*

{¶ 8} Here, appellant's counsel has satisfied the requirements set forth in *Anders*. We note appellant has not filed a pro se brief or otherwise responded to counsel's request to withdraw. Consequently, we shall examine the potential assignments of error set forth by appellant's counsel as well as the entire record below to determine if this appeal lacks merit and is, therefore, wholly frivolous.

{¶ 9} In the first proposed assignment of error, counsel argues that the court improperly denied Vanlandingham’s motion to reschedule sentencing date. “The grant or denial of a continuance is a matter which is entrusted to the broad, sound discretion of the trial judge. An appellate court must not reverse the denial of a continuance unless there has been an abuse of discretion.” *State v. Unger*, 67 Ohio St.2d 65, 67, 423 N.E.2d1078 (1981). We have carefully examined the record in this case and conclude that the trial court lawfully exercised its discretion in refusing to grant the continuance. The first proposed assignment of error lacks merit.

{¶ 10} In the second proposed assignment of error, counsel argues that the trial court improperly denied his motion to vacate finding of guilt filed August 12, 2014. A motion for reconsideration is not provided for in the rules of criminal procedure and it is therefore a nullity. The second proposed assignment of error lacks merit.

{¶ 11} Finding this appeal to be wholly frivolous and without merit, appointed counsel’s motion to withdraw is found well-taken and granted. The judgment of the Toledo Municipal Court is hereby 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.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, 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:
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