

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

State of Ohio

Appellee

v.

Brian Howard

Appellant

Court of Appeals Nos. L-14-1121

L-14-1130

L-14-1131

Trial Court Nos. CR0201302400

CR0201302919

CR0201302806

**DECISION AND JUDGMENT**

Decided: February 13, 2015

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
Kathryn J. T. Sandretto, Assistant Prosecuting Attorney,  
for appellee.

Nicole I. Khoury, for appellant.

\* \* \* \* \*

**OSOWIK, J.**

{¶ 1} This is a consolidated appeal brought by appellant, Brian Howard, from the judgment of the Lucas County Court of Common Pleas, which found him guilty in two consolidated cases. In case No. CR0201302919, appellant entered a plea of no contest

and was found guilty by the court of the offense of retaliation, a violation of R.C. 2921.05(B) and (C), a third degree felony, and attempt to commit burglary, a violation of R.C. 2923.02 and 2911.12(A)(2) and (D), a felony of the third degree. Appellant was then sentenced to serve a sentence of 2 years and 6 months (30 months) as to the retaliation charge and 2 years as to the attempt to commit burglary charge.

{¶ 2} Appellant also entered a plea of no contest and was found guilty by the court in case No. CR0201302806 of escape, a violation of R.C. 2921.34(A)(1) and (C)(2)(b), a felony of the third degree, and ordered to serve a sentence of 2 years and 6 months (30 months).

{¶ 3} The court further ordered that the sentences in these cases were to be served consecutive to each other for a total period of incarceration of seven years with the Ohio Department of Rehabilitation and Correction.

{¶ 4} 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, 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 appellant with a copy of the brief and request to withdraw, and allow 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.* If it so finds, the appellate court may grant counsel's request to withdraw, and decide the appeal without violating any constitutional requirements. *Id.*

{¶ 5} In this case, appellant's appointed counsel has satisfied the requirements set forth in *Anders, supra*. This court further notes that appellant did not file a pro se brief on his own behalf in this appeal. Appellee also filed a responsive brief.

{¶ 6} Accordingly, this court shall proceed with an examination of the potential assignment of error set forth by counsel. We have reviewed and considered the entire record from below, including the transcript of all proceedings and journal entries and original papers from the Lucas County Court of Common Pleas, as well as the brief filed by counsel. Upon this review, we will determine if this appeal lacks merit and is, therefore, wholly frivolous.

{¶ 7} Counsel refers to one possible, but ultimately untenable, issue and that would be the absence of factual findings by the court prior to the imposition of consecutive sentences.

{¶ 8} The imposition of consecutive sentences is governed by R.C. 2929.14(C)(4). Under this statute, a court may impose consecutive sentences under R.C. 2929.14(C)(4) if it makes the following findings: (1) consecutive sentences are necessary to protect the public from future crime or to punish the offender, (2) that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and (3) one of the following: (a) the offender committed

one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to R.C. 2929.16, 2929.17, or 2929.18, or was under postrelease control for a prior offense, or (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 multiple offenses so committed 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.

{¶ 9} The record establishes that the court made the findings required by R.C. 2929.14(C)(4). In the sentencing entries journalized on May 21, 2014, in both cases the court specifically found that

to fulfill the purposes of 2929.11, and not disproportionate to the seriousness of the offender's conduct or the danger the offender poses, the court further finds the defendant was under post community control when the offense was committed; the harm was great or unusual; and the defendant's criminal history requires consecutive sentences, therefore the sentences are ordered to be served consecutively.

These findings fulfill the requirements of R.C. 2929.14(C)(4).

{¶ 10} Although the court is not required to give reasons in support of those findings, in this instance, the trial court at the sentencing hearing methodically outlined appellant's prior criminal history and prior period of incarceration. The court specifically noted that appellant's criminal history included being convicted of 44 felonies and 13 misdemeanors, and that the appellant was only 42 years old. Some convictions had occurred in Portage County, Ohio, and prior periods of probation had resulted in violations of probation.

{¶ 11} Therefore, this potential assignment of error is without merit.

### **Conclusion**

{¶ 12} We have accordingly conducted an independent examination of the record pursuant to *Anders v. California* and have further considered appellant's proposed assignment and found no error prejudicial to appellant's rights in the proceedings in the trial court. The motion of counsel for appellant requesting to withdraw as counsel is granted, and this appeal is dismissed for the reason that it is wholly frivolous.

{¶ 13} 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.

State v. Howard  
C.A. Nos. L-14-1121  
L-14-1130  
L-14-1131

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.

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JUDGE

Thomas J. Osowik, J.

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JUDGE

Stephen A. Yarbrough, P.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>.