

[Cite as *State v. Jackson*, 2016-Ohio-2646.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103687

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

HARRISON JACKSON

DEFENDANT-APPELLANT

**JUDGMENT:
DISMISSED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-574810-A

BEFORE: Jones, A.J., Blackmon, J., and Celebrezze, J.

RELEASED AND JOURNALIZED: April 21, 2016

ATTORNEY FOR APPELLANT

Michael P. Maloney
24441 Detroit Road, Suite 200
Westlake, Ohio 44145

ALSO LISTED

Harrison Jackson
Inmate No. A650980
Lake Erie Correctional Institution
P.O. Box 8000
Conneaut, Ohio 44030

ATTORNEY FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor
The Justice Center, 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

LARRY A. JONES, SR., A.J.:

{¶1} Defendant-appellant Harrison Jackson appeals from the trial court's September 29, 2015 judgment sentencing him to a ten-year prison term and classifying him as a sexual predator. Jackson was appointed appellate counsel. Counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1997), and now seeks leave to withdraw as counsel. After a thorough review of the record, we grant counsel's motion to withdraw and dismiss this appeal.

{¶2} Jackson was charged in May 2013 for a 1993 rape; he was also charged with kidnapping. The case was tried to the court, which found Jackson guilty of both charges. The court sentenced Jackson to an indefinite 8-25 years in prison and classified him as a sexual predator.

{¶3} On appeal, this court upheld the conviction, but reversed the sexual predator classification because the trial court had labeled Jackson without a hearing, and vacated his sentencing, finding that he should have been sentenced under the provisions of H.B. 86, rather than the sentencing scheme in effect at the time the crimes were committed. *State v. Jackson*, 8th Dist. Cuyahoga No. 100877, 2014-Ohio-5137, ¶ 20, 27, 37.

{¶4} On remand to the trial court, the court sentenced Jackson to a ten-year prison term, with five years of postrelease control, and after a hearing, labeled him a sexual predator.

{¶5} Based on the belief that no prejudicial error occurred below and that any grounds for appeal would be frivolous, Jackson’s appellate counsel filed a motion to withdraw pursuant to *Anders*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, which outlines the procedure counsel must follow to withdraw due to the lack of any meritorious grounds for appeal. In *Anders*, the United States Supreme Court held that if counsel thoroughly reviews the record and concludes that the appeal is “wholly frivolous,” he or she may advise the court of that fact and request permission to withdraw from the case. *Id.* at 744. However, counsel’s request to withdraw must “be accompanied by a brief referring to anything in the record that might arguably support the [a]ppeal.” *Id.* Counsel must also furnish a copy of the brief to his or her client in sufficient time to allow the appellant to file his own brief, pro se. *Id.* Loc.R. 16(C) also governs motions to withdraw as appellate counsel based on counsel’s belief of a frivolous appeal, and sets forth the requirements enunciated in *Anders*.

{¶6} Under *Anders* and Loc.R. 16(C), we must complete an independent examination of the trial proceedings to determine if any arguably meritorious issues exist. *Anders* at 744; Loc.R. 16(C). If we determine that there are no meritorious issues, and the appeal is “wholly frivolous,” we may grant counsel’s request to withdraw and address the merits of the case without affording the appellant the assistance of counsel. *Anders* at *id.* If, however, we find the existence of a meritorious issue, we must afford the appellant assistance of counsel before deciding the merits of the case. *Id.*

{¶7} Jackson’s appointed counsel stated in his *Anders* brief that he had carefully reviewed the record and that after the review, he failed to find “any errors by the trial court prejudicial to the rights of appellant upon which an assignment of error may be predicated.” Nonetheless, pursuant to *Anders*, counsel presents one potential issue for our review, namely, whether Jackson was properly classified as a sexual predator. Counsel has represented to us that he served a copy of his brief and motion to withdraw on Jackson. Jackson has not filed a pro se brief.

{¶8} Former R.C. 2950.01 et seq., codified under H.B. 180 and popularly known as “Megan’s Law,”¹ creates three classifications for sexual offenders: sexually oriented offender, habitual sex offender, and sexual predator. The main distinctions in the classifications are the reporting requirements: sexual predators have to register their address every 90 days for life; habitual sex offenders have to register their address annually for 20 years; and sexually oriented offenders have to register their address annually for 10 years. See former R.C. 2950.04(C)(2); former 2950.06(B)(1) and (2); and former 2950.07(B)(1) and (2).

{¶9} Former R.C. 2950.01(E) defined a “sexual predator” as “a person who has been convicted of or pleaded guilty to committing a sexually oriented offense and is likely to engage in the future in one or more sexually oriented offenses.” The state had the

¹Megan’s Law was repealed by the legislature’s enactment of R.C. Chapter 2950, known as the Adam Walsh Act (“AWA”), which the Ohio Supreme Court has held may not be applied retroactively. *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, syllabus.

burden of proving by clear and convincing evidence that Jackson was a sexual predator. *State v. Hendricks*, 8th Dist. Cuyahoga No. 102365, 2015-Ohio-3035, ¶ 13.

{¶10} Former R.C. 2950.09(B)(3) provided certain factors to guide the court’s determination as to whether an offender is a sexual predator. These factors include the age of the offender and criminal record; the victim’s age; whether the offense involved multiple victims; whether the offender used drugs or alcohol to impair the victim; if the offender has previously been convicted of any criminal offense; whether the offender participated in any available program for sex offenders; whether the offender demonstrated a pattern of abuse or displayed cruelty toward the victim; any mental illness or disability of the offender; and any other behavioral characteristics that contribute to the sex offender’s conduct. *See* former R.C. 2950.09(B)(3)(a)-(j). Although the court must consider the factors set forth in former R.C. 2950.09(B), it is not required to make an individual assessment of those factors nor is one factor or any combination of factors dispositive. *State v. Caraballo*, 8th Dist. Cuyahoga No. 89757, 2008-Ohio-2046, ¶ 8.

{¶11} Sexual predator classifications under Megan’s Law are considered civil in nature, *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, syllabus, so the civil manifest weight of the evidence standard of review applies on appeal. *State v. Nelson*, 8th Dist. Cuyahoga No. 101228, 2014-Ohio-5285, ¶ 8. That standard gives “great deference” to findings of fact, so judgments supported by competent, credible evidence must be affirmed. *Wilson* at ¶ 26.

{¶12} After conducting an independent review of the record, we find that the trial court’s decision to classify Jackson as a sexual predator was supported by competent, credible evidence. The court reviewed and applied the statutory factors, and also reviewed the presentence report and psychiatric report completed on Jackson, which included a STATIC 99 test to assess his risk for re-offending.

{¶13} On this record, we find no arguable merit in the potential assignment of error proffered by Jackson’s appellate counsel and conclude that the appeal is wholly frivolous under *Anders*. We therefore grant counsel’s motion to withdraw and dismiss this appeal.

{¶14} Appeal dismissed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, SR., ADMINISTRATIVE JUDGE

PATRICIA ANN BLACKMON, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR

+