

[Cite as *State v. Hale*, 2016-Ohio-5243.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103723

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CHRISTOPHER HALE

DEFENDANT-APPELLANT

**JUDGMENT:
DISMISSED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-15-594057-B

BEFORE: Celebrezze, J., Keough, P.J., and Kilbane, J.

RELEASED AND JOURNALIZED: August 4, 2016

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FRANK D. CELEBREZZE, JR., J.:

{¶1} Defendant-appellant, Christopher Hale (“Hale”), appealed the trial court’s sentence following his guilty plea to robbery and aggravated theft in Cuyahoga C.P. No. CR-15-594057-B. Hale’s appointed counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct.1396, 18 L.Ed.2d 493 (1967), and now seeks leave to withdraw as counsel. Counsel asserts that after reviewing the record, he could not discern any prejudicial errors. This court held counsel’s motion for leave to withdraw as counsel in abeyance pending our independent review of the record. After thoroughly reviewing the record, this court concurs with counsel’s assessment. Accordingly, we grant counsel’s motion to withdraw and dismiss this appeal.

I. Factual and Procedural History

{¶2} On March 24, 2015, the Cuyahoga County Grand Jury returned a seven-count indictment charging Hale with (1) aggravated robbery, in violation of R.C. 2911.02(A)(1), (2) robbery, in violation of R.C. 2911.02(A)(1), with a three-year firearm specification under R.C. 2941.145, (3)-(4) kidnapping, in violation of R.C. 2905.01(A)(2), (5) theft, in violation of R.C. 2913.02(A)(1), (6) receiving stolen property, in violation of R.C. 2913.51(A), and (7) tampering with evidence, in violation of R.C. 2921.12(A)(1).

{¶3} Hale entered into a plea agreement with the state where he pled guilty to (1) robbery, with a one-year firearm specification under R.C. 2941.141 and a forfeiture specification under R.C. 2941.1417, and (2) theft. The remaining charges were nolle. As part of the plea agreement, Hale and codefendant Deon Mays agreed to pay restitution to the victim, jointly and severally, in the amount of \$537.84.

{¶4} During sentencing and in open court, the trial court sentenced Hale to a prison term of two years on the robbery count, one year on the underlying firearm specification, and one year on the theft count. The trial court ordered Hale to serve the robbery count consecutive to the one-year firearm specification, and ordered the theft count to run concurrently, for a total of three years of imprisonment. The trial court ordered Hale to pay court costs and deferred the costs until Hale's release from prison. Furthermore, the trial court ordered Hale to pay restitution, jointly and severally, to the victim in the amount of \$537.84. The trial court appointed Hale appellate counsel.

{¶5} Hale's counsel filed an *Anders* brief on January 28, 2016. Based on the belief that no prejudicial error occurred below and that any grounds for appeal would be frivolous, Hale's appointed counsel moved for leave to withdraw as counsel pursuant to Loc.App.R. 16. This court held counsel's motion in abeyance and provided Hale with the opportunity to file a pro se brief, which he failed to do. On April 11, 2016, this court remanded the matter to the trial court to issue a nunc pro tunc journal entry to properly reflect Hale's sentence. On May 13, 2016, the trial court corrected the sentencing

journal entry. Accordingly, we will proceed to review counsel's brief and the trial court's record.

II. Law and Analysis

{¶6} In *Anders*, 368 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, the United States Supreme Court held that if counsel thoroughly reviews the record and concludes that the appeal is "wholly frivolous," counsel 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 client in sufficient time to allow the appellant to file his own brief, pro se. *Id.*

{¶7} In this case, appointed counsel complied with the requirements of *Anders* and Loc.R. 16(). This court granted Hale until March 18, 2016 to file a pro se brief. Hale did not file a pro se brief, to date.

{¶8} Hale's appointed counsel states in his *Anders* brief that he has reviewed the record, including the transcripts of the proceedings, and concluded he could find no error by the trial court that is prejudicial to Hale's rights. Counsel thoroughly explained the trial court's compliance with Crim.R. 11 and compliance with the requirements for imposing its sentence. Because this is an appeal from a plea, appointed counsel effectively addressed the issues that arise in such a case.

{¶9} As part of our independent review, this court has examined and considered the potential arguments identified in counsel’s *Anders* brief.

{¶10} Pursuant to Loc.R. 16() and *Anders*, this court has conducted an independent examination of the trial proceedings to determine if any arguably meritorious issues exist. *Id.*; *Anders*, 386 U.S. at 744, 87 S.Ct.1396, 18 L.Ed.2d 493. *Anders* instructs that if the appellate court determines that the appeal would be “wholly frivolous” (that there are no legal points of arguable merit), “it may grant counsel’s request to withdraw and dismiss the appeal insofar as federal requirements are concerned, or proceed to a decision on the merits, if state law so requires.” *Anders* at 744. If, however, the court finds any legal points arguable on their merits, it must afford the appellant assistance of counsel before deciding the merits of the case. *Id.*

{¶11} Upon a complete review of the record, this court agrees that no prejudicial error occurred in the lower court and an appeal on Hale’s behalf would be frivolous. The motion of appointed counsel to withdraw is granted.

{¶12} Accordingly, the appeal is dismissed.

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

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

FRANK D. CELEBREZZE, JR., JUDGE

KATHLEEN ANN KEOUGH, P.J., and
MARY EILEEN KILBANE, J., CONCUR