

[Cite as *State v. Spicer*, 2016-Ohio-5332.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104081

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

LAWRENCE E. SPICER

DEFENDANT-APPELLANT

**JUDGMENT:
DISMISSED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-15-594435-A

BEFORE: S. Gallagher, J., McCormack, P.J., and Celebrezze, J.

RELEASED AND JOURNALIZED: August 11, 2016

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SEAN C. GALLAGHER, J.:

{¶1} Lawrence Spicer appeals his conviction of assault on a police officer under R.C. 2903.13(A), a felony of the fourth degree, and vandalism under R.C. 2909.05(B)(2), a felony of the fifth degree. The trial court sentenced Spicer to an aggregate term of 30 months in prison, in large part, but not entirely, based on Spicer’s extensive history of criminal conduct and Spicer’s likelihood of recidivism. Spicer was granted leave for a delayed appeal, and we appointed appellate counsel. Counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), and requested leave to withdraw, claiming any potential assigned error would be wholly frivolous. After a review of the record, we grant counsel’s motion to withdraw and dismiss this appeal._

{¶2} In *Anders*, 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. *Anders* at 744. 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.* Consistent with *Anders* and Loc.App.R. 16(C) of the Eighth District Court of Appeals, the no-merit brief must consider the possible issues that could be raised on appeal and explain why it would be wholly frivolous for counsel to raise those issues in a merit brief. *State v. Anderson*, 8th Dist. Cuyahoga No. 103490, 2016-Ohio-3323, ¶ 1, citing *State v. Taylor*, 8th Dist.

Cuyahoga No. 101368, 2015-Ohio-420, ¶ 20. Counsel must also furnish a copy of the brief to his client in sufficient time to allow the appellant to file his own brief for appellate consideration. *Id.*

{¶3} In this case, appointed counsel complied with the requirements of *Anders* and Loc.R. 16(C). This court granted Spicer additional time to file a pro se brief, but Spicer has not accepted our invitation. In the *Anders* brief, counsel presented four potential arguments for consideration: whether Spicer's plea was knowingly and voluntarily entered pursuant to Crim.R. 11; whether Spicer's trial counsel provided ineffective assistance counsel; whether the imposition of consecutive service of Spicer's prison terms complied with R.C. 2929.14(C)(4); and whether the trial court erred in denying Spicer's two postsentence motions to withdraw the guilty plea.

{¶4} All of the above potential arguments would be wholly frivolous given the facts and circumstances of the current case. We conclude that (1) Spicer entered the guilty plea knowingly, intelligently, and voluntarily and the trial court otherwise fully complied with the dictates of Crim.R. 11(C); (2) there is no colorable argument to support a claim that Spicer's trial counsel had provided ineffective assistance counsel under the standard set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); (3) the trial court made the required findings under R.C. 2929.14(C)(4), and not only are we unable to find by clear and convincing evidence that the record does not support those findings, but there is ample support for each finding in the record; and (4)

Spicer's postsentencing motions to withdraw the guilty plea were based on claims that were not supported by the record.¹ _

{¶5} We, therefore, conclude that this appeal is wholly frivolous pursuant to *Anders*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493. Counsel's request to withdraw is granted, and the appeal is dismissed.

It is ordered that appellee recover from appellant costs herein taxed. A
certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, JUDGE

TIM McCORMACK, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR

¹Spicer's motions to withdraw his guilty plea were based on claims that he was not guilty of vandalizing property, a fact contradicted by his guilty plea, and that the trial court failed to advise him of postrelease control, a fact contradicted by the sentencing transcript and the final sentencing entry.