

[Cite as *State v. Tanker*, 2016-Ohio-7895.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104260

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DEXTER C. TANKER

DEFENDANT-APPELLANT

**JUDGMENT:
DISMISSED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-15-596464-A

BEFORE: Keough, P.J., S. Gallagher, J., and Blackmon, J.

RELEASED AND JOURNALIZED: November 23, 2016

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KATHLEEN ANN KEOUGH, P.J.:

{¶1} Defendant-appellant, Dexter C. Tanker (“Tanker”) appealed his conviction following his guilty plea to attempted murder. Tanker’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 Loc.App.R. 16(C) asserting that after reviewing the record, he could not discern any prejudicial errors, and seeking leave to withdraw. This court held counsel’s motion 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 the appeal.

I. Factual and Procedural History

{¶2} In 2015, Tanker was charged with attempted murder in violation of R.C. 2923.02/2903.02(A); felonious assault in violation of R.C. 2903.11(A)(1); and felonious assault in violation of R.C. 2903.11(A)(2). Each count contained a notice of prior conviction and a repeat violent offender specification.

{¶3} At defense counsel’s request, Tanker was referred to the court psychiatric clinic for evaluation of his competency to stand trial and sanity at the time of the act. Defense counsel subsequently stipulated to the clinic’s reports in open court, and waived the right to cross-examine the psychiatrist.

{¶4} Prior to the plea hearing, Tanker withdrew his previously filed plea of not guilty by reason of insanity. Tanker then pleaded guilty to attempted murder, and the remaining counts were nolle. The trial court sentenced him to 11 years in prison, and

advised him that he would be subject to a mandatory term of five years postrelease control. The trial court appointed appellate counsel for Tanker.

{¶5} Appellate counsel subsequently filed an *Anders* brief. Counsel moved pursuant to *Anders* and Loc.App.R. 16 for leave to withdraw as counsel on grounds that Tanker could not raise any nonfrivolous issues on appeal. This court held counsel's motion in abeyance and provided Tanker an opportunity to file a pro se brief, which he failed to do. Accordingly, we review counsel's brief and the trial court's record.

II. Law and Analysis

{¶6} In *Anders*, 386 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. 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.* See also Loc.App.R. 16(C).

{¶7} In this case, appointed counsel complied with the *Anders* requirements and those of Loc.App.R. 16(C). Counsel states in his brief that after reviewing the entire record, including the transcripts of the proceedings, and conferring with trial counsel, he could not identify any prejudicial error or non-frivolous issues to raise on direct appeal. Specifically, counsel (1) reviewed the indictment for any facial or structural defects and found none; (2) considered the issues of competency and sanity and the procedures

required by R.C. 2945.37 and found no errors in this regard; (3) reviewed the record for compliance with Crim.R. 11 relative to the requirements for a knowing, voluntary, and intelligent plea and found no deviations from the requirements of the rule; and (4) considered the sentencing proceedings and found no sentencing errors.

{¶8} Pursuant to Loc.App.R. 16(C) and *Anders*, this court has conducted an independent examination of the record to determine if there are any issues of arguable merit. *Anders* instruct that if the appellate court determines that the appeal would be “wholly frivolous” (i.e., there are no legal points of arguable merit), the court may grant counsel’s request to withdraw and dismiss the appeal. If, however, the court finds any legal points arguable on their merits, the court must afford appellant the assistance of counsel before deciding the merits of the case. *Anders*, 386 U.S. at 744.

{¶9} Upon a complete review of the record, this court agrees that no prejudicial error occurred in the lower court and any appeal on Tanker’s behalf would be frivolous. Accordingly, the motion of appointed counsel 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.

KATHLEEN ANN KEOUGH, PRESIDING JUDGE

SEAN C. GALLAGHER, J., and

PATRICIA ANN BLACKMON, J., CONCUR