

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

|                      |   |                       |
|----------------------|---|-----------------------|
| STATE OF OHIO        | : |                       |
|                      | : |                       |
| Plaintiff-Appellee   | : | C.A. CASE NO. 23647   |
| v.                   | : | T.C. NO. 09 CR 1614   |
|                      | : |                       |
| JOSEPH A. RICHARDSON | : | (Criminal appeal from |
|                      | : | Common Pleas Court)   |
| Defendant-Appellant  | : |                       |

**OPINION**

Rendered on the 23<sup>rd</sup> day of July, 2010.

CARLEY J. INGRAM, Atty. Reg. No. 0020084, Assistant Prosecuting Attorney, 301 W. Third Street, 5<sup>th</sup> Floor, Dayton, Ohio 45422  
Attorney for Plaintiff-Appellee

SHA D. HINDS-GLICK, Atty. Reg. No. 0080822, 7501 Paragon Road, Dayton, Ohio 45459  
Attorney for Defendant-Appellant

JOSEPH A. RICHARDSON, c/o Montgomery County Jail, 330 W. Second Street, Dayton, Ohio 45402  
Defendant-Appellant

DONOVAN, P.J.

{¶ 1} This is an appeal from a judgment of the Montgomery County Court of Common Pleas that found Appellant guilty of violating a protection order on August 14, 2009.

{¶ 2} On or about May 10, 2010, Appellant made an attempt to contact Rosetta Garrett by telephone. Just before this incident, Appellant had been released from jail for violating a protection order. The protection order prohibited Appellant from contacting Ms. Garrett. Testimony from the preliminary hearing revealed that Appellant made a number of telephone calls to Ms. Garrett. The nature of these telephone calls was to inform Ms. Garrett that Appellant was watching her driveway and he was going to “settle a score” with her. Appellant entered a plea of no contest to the offense on August 14, 2009. An appeal was later filed, the docket statement indicates under the section “Probable issues for review” only that “Appellant wanted to appeal.”

{¶ 3} Counsel for the Appellant, Sha D. Hinds-Glick, submitted a brief under the authority of *Anders v. California* (1976), 386 U.S. 738. Appellant’s counsel states that, after reviewing the record of the trial court proceedings she could not find any issues for appeal. Counsel does set forth one potential assignment of error. This assignment of error is as follows:

{¶ 4} “THE DEFENDANT’S RIGHT TO COUNSEL UNDER THE SIXTH AMENDMENT OF THE CONSTITUTION, AS INCORPORATED TO THE STATES VIA THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT, WAS VIOLATED BY INEFFECTIVE ASSISTANCE OF COUNSEL.”

{¶ 5} *Anders v. California* sets forth the procedure appointed appellate counsel must follow when he/she wishes to withdraw for lack of any meritorious appealable issues. In *Anders*, the United States Supreme Court held that if counsel does a conscientious examination of the case and determines an appeal to

be frivolous, counsel should advise the court and then should request permission to withdraw. *Anders v. California*, 386 U.S. 744. Counsel must also give his/her client a copy of the brief along with the request to withdraw. *Id.* The attorney's client then must be given sufficient time to raise any matters he so chooses. *Id.* After those requirements are satisfied, the appellate court must conduct a thorough examination of the proceedings to determine if the appeal is actually frivolous. *Id.* If the appellate court does determine the appeal is frivolous, it may then grant counsel's request to withdraw and then dismiss the appeal without violating any constitutional requirements, or the court can proceed to a decision on the merits if state law requires it. *Id.*

{¶ 6} Appellant's appointed counsel satisfied the requirements of *Anders v. California*. We notified Appellant of his appellate counsel's representation and offered him ample time to file a pro se brief. None has been received. This court shall examine the potential assignment of error set forth by Appellant's counsel, as well as the entire record to determine if this appeal is frivolous or has merit.

{¶ 7} *Strickland v. Washington* set forth a two-part test that must be satisfied to prevail on an ineffectiveness of counsel claim. *Strickland v. Washington*, 466 U.S. 668, 687. The first step is that Appellant must show that counsel's representation fell below an objective standard of reasonableness. *Id.* Second, Appellant must show the "deficient performance prejudiced the defense." *Id.* A properly licensed attorney in Ohio is presumed to be competent. *State v. Hamblin*, (1988), 37 Ohio St.3d 153, 155-56.

{¶ 8} After a comprehensive review of the transcript, we find that

Appellant's counsel's representation of Appellant did not fall below the objective reasonableness standard during any part of the proceedings. Therefore, Appellant's assignment of error is without merit.

{¶ 9} Upon an independent review of the record, we have found no grounds for a meritorious appeal. Appellant's appeal is found to be frivolous. Accordingly, the judgment of the trial court is affirmed.

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FAIN, J. and GRADY, J., concur.

Copies mailed to:

Carley J. Ingram  
Sha D. Hinds-Glick  
Joseph A. Richardson  
Hon. Gregory F. Singer