

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-11-1190

Appellee

Trial Court No. TRD-10-08446-0101

v.

Johnnie L. Tilman, III

DECISION AND JUDGMENT

Appellant

Decided: April 27, 2012

* * * * *

Brad F. Hubbell, for appellant.

* * * * *

SINGER, P.J.

{¶ 1} Appellant, Johnnie L. Tilman, III, appeals from a judgment of the Toledo Municipal Court denying his “motion for reimbursement of funds retained unlawfully.”

{¶ 2} Appellant's appointed counsel has requested leave to withdraw in accordance with the procedure set forth in *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). In *Anders*, the United States Supreme Court held that if counsel, after a conscientious examination of the appeal, determines it to be wholly frivolous he

should so advise the court and request permission to withdraw. *Id.* at 744. The request shall include a brief identifying anything in the record that could arguably support an appeal. *Id.* Counsel shall also furnish his client with a copy of the request to withdraw and its accompanying brief, and allow the client sufficient time to raise any matters that he chooses. *Id.* The appellate court must then conduct a full examination of the proceedings held below to determine if the appeal is indeed frivolous. If the appellate court determines that the appeal is frivolous, it may grant counsel's request to withdraw and dismiss the appeal without violating constitutional requirements or may proceed to a decision on the merits if state law so requires. *Id.*

{¶ 3} Here, appointed counsel has met the requirements set forth in *Anders*. Counsel also informed appellant of his right to file his own, additional assignments of error and appellate brief. Appellant has not filed an additional brief. Accordingly, this court shall proceed examining the potential assignment of error set forth by counsel and the entire record below to determine whether this appeal lacks merit deeming it wholly frivolous.

{¶ 4} This matter began on April 23, 2010, when appellant was arrested for driving with a suspended license. On October 20, 2010, appellant entered a no contest plea to the charge. He was sentenced to serve 60 days in jail. The court granted him a stay on his jail time until November 4, 2010.

{¶ 5} On June 7, 2011, appellant filed, in the Toledo Municipal Court, a “motion for reimbursement of funds retained unlawfully.” Appellant alleged that the police

unlawfully took between \$1,000 and \$2,000 from him when he was arrested in April 2010. On June 14, 2011, the court denied his motion.

{¶ 6} In his potential assignment of error, counsel contends that the trial court erred in denying his motion.

{¶ 7} In his motion, appellant alleged that the Toledo Municipal Court illegally seized his property. Forfeitures are governed by R.C. 2981. R.C. 2981.03 states:

A law enforcement officer may seize property that the officer has probable cause to believe is property subject to forfeiture. If a law enforcement officer seizes property that is titled or registered under law, the officer or the law enforcement agency that employs the officer shall notify the property owner of the seizure.

{¶ 8} The limited record in this case shows that appellant was charged with a misdemeanor offense, that he entered a no contest plea to the charge, that he was sentenced and that he filed the motion which is the subject of this appeal. There is not, however, any evidence in the record showing that law enforcement seized any property from appellant. While some property may have been seized from appellant, there is no evidence that the Toledo Municipal Court maintains jurisdiction over the property. To the extent appellant has a valid claim, he has clearly requested relief in the wrong trial court.

{¶ 9} We note that appellant's counsel has attached certain documents to his brief which suggest that the Lucas County Court of Common Pleas may have jurisdiction over

appellant's disputed property. The documents counsel has attached to his brief are not part of the record in this case and attaching documents to a brief do not make such documents part of the appellate record. This court is bound by the record in the trial court and cannot go beyond that record. *State v. Ishmail*, 54 Ohio St. 2d 402, 377 N.E.2d 500 (1978). Appellate counsel's potential assignment of error is found not well-taken.

{¶ 10} Upon this record, we concur with appellate counsel that appellant's appeal is without merit. Moreover, upon our own independent review of the record, we find no other grounds for meritorious appeal. Accordingly, this appeal is found to be without merit, and wholly frivolous. Counsel's motion to withdraw is found well-taken and is, hereby, granted.

{¶ 11} On consideration whereof, the judgment of the Toledo Municipal Court is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24. The clerk is ordered to serve all parties, including the defendant if he has filed a brief, with notice of this decision.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.