

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

In re C.D.

Court of Appeals No. L-12-1200

Trial Court No. 12224752

DECISION AND JUDGMENT

Decided: November 1, 2013

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Tim A. Dugan, for appellant.

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OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, Juvenile Division, that found appellant C.D. delinquent in violation of R.C. 2903.11(A)(2), felonious assault, with an attached firearm specification. For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} Appointed counsel has submitted a request to withdraw pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). In his brief filed on appellant's behalf, appointed counsel sets forth one proposed assignment of error. In support of his request to withdraw, counsel for appellant states that, after reviewing the record of proceedings in the trial court, he was unable to identify any appealable issues.

{¶ 3} *Anders, supra*, and *State v. Duncan*, 57 Ohio App.2d 93, 385 N.E.2d 323 (1978), set forth the procedure to be followed by appointed counsel who desires to withdraw for want of a meritorious, appealable issue. In *Anders*, the United States Supreme Court held that if counsel, after a conscientious examination of the case, determines it to be wholly frivolous he should so advise the court and request permission to withdraw. *Id.* at 744. This request, however, must be accompanied by a brief identifying anything in the record that could arguably support the appeal. *Id.* Counsel must also furnish his client with a copy of the brief and request to withdraw and allow the client sufficient time to raise any matters that he chooses. *Id.* Once these requirements have been satisfied, 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.*

{¶ 4} In the case before us, appointed counsel has satisfied the requirements set forth in *Anders, supra*. This court further finds that appellant was notified by counsel of

his right to file an appellate brief on his own behalf but has not done so. Accordingly, this court shall proceed with an examination of the potential assignment of error proposed by counsel for appellant and the record from below in order to determine if this appeal lacks merit and is, therefore, wholly frivolous.

{¶ 5} The record reflects that on June 18, 2012, appellant, who was then 17 years old, was charged with committing an act that would constitute felonious assault in violation of R.C. 2903.11(A)(2), a felony of the second degree, if committed by an adult, with an attached firearm specification under R.C. 2941.145. The complaint charged that on June 15, 2012, appellant climbed on top of a parked car and used a handgun to fire several shots at some individuals gathered in a north Toledo neighborhood. One bullet hit a parked car, one passed through the wall of a nearby home before it came to rest in a bathtub, and another struck a minor female. The victim did not know who appellant was or why he shot her. Several witnesses spoke to police and provided detailed descriptions of the shooter and other males involved in the incident, which apparently arose from an argument between several youth with gang affiliations. One individual provided police with a video of the disturbance which she recorded on her cell phone just before the shooting. Appellant was apprehended and taken into custody later that night.

{¶ 6} The trial court entered a denial to the charge on appellant's behalf, ordered that he be detained until the next hearing, and appointed counsel for him. The case was set for trial on July 3, 2012, but on that date appellant entered an admission to the complaint as charged. After advising appellant of his constitutional rights and the

maximum possible penalties he faced by entering the admission, the trial court found that appellant had freely, intelligently and voluntarily waived his rights. The trial court accepted appellant's admission to the charge of felonious assault and the attached firearm specification and found him delinquent of the charges. The trial court then set the matter for disposition following an updated report from appellant's probation officer. On July 17, 2012, the trial court imposed a three-year commitment to the Ohio Department of Youth Services for the gun specification to be followed by a term of one year to the age of 21 for felonious assault.

{¶ 7} Counsel for appellant sets forth the following proposed assignment of error:

1) The Court abused its discretion when it committed Appellant to the Department of Youth Services for a maximum term of three years for a gun specification under R.C. § 2942.145.

{¶ 8} The purposes of delinquent juvenile disposition are articulated in R.C. 2152.01. These are "to provide for the care, protection, and mental and physical development of children subject to this chapter, protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and rehabilitate the offender. These purposes shall be achieved by a system of graduated sanctions and services."

{¶ 9} A juvenile court has broad discretion in fashioning a dispositional order to achieve these purposes, and will not be reversed absent an abuse of that discretion. *In re D.S.*, 111 Ohio St.3d 361, 363, 2006-Ohio-5851, 856 N.E.2d 921, ¶ 6. An abuse of

discretion is more than an error in judgment or a mistake of law; the term connotes that the court's attitude is arbitrary, unreasonable or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

{¶ 10} R.C. 2152.16(A)(1)(d) expressly provides that a child adjudicated a delinquent child for committing an act that would be a felony of the second degree if committed by an adult, as occurred in the case before us, may be committed to the legal custody of the department of youth services for secure confinement for an indefinite term of a minimum of one year and a maximum period not to exceed the child's attainment of twenty-one years of age. Further, if the court determines that the child would be guilty of a specification of the type set forth in R.C. 2941.145, as in this case, the court shall commit the child to the department of youth services for a definite period of not less than one and not more than three years, and shall also commit the child to the department for the underlying delinquent act. R.C. 2152.17(A)(2).

{¶ 11} Based on all of the foregoing, we find that the trial court's decision regarding appellant's disposition is supported by the law and was not an abuse of discretion. Appointed counsel's sole proposed assignment of error is without merit.

{¶ 12} Accordingly, upon our own independent review of the record, we find no grounds for a meritorious appeal. Appellant's counsel's motion to withdraw is found well-taken and it is granted.

{¶ 13} On consideration whereof, the judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Costs of this appeal are assessed to appellant pursuant to App.R. 24.

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.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

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