

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

State of Ohio

Court of Appeals No. L-08-1128

Appellee

Trial Court No. CR06-3083

v.

Antonio R. Ulis

DECISION AND JUDGMENT

Appellant

Decided: June 19, 2009

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Bruce J. Sorg, Assistant Prosecuting Attorney, for appellee.

Brad F. Hubbell, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant appeals the order of the Lucas County Court of Court of Common Pleas, revoking his community control and imposing a one year term of incarceration.

{¶ 2} On Dec. 4, 2006, appellant, Antonio R. Ullis, entered a no contest plea to amended charges of possession of crack cocaine and attempted possession of crack cocaine. The court accepted the plea, found appellant guilty and sentenced him to community control for three years, the first six months of which were to be served in a correctional treatment facility. Appellant's community control was conditioned on the periodic submission of urinalysis with negative results.

{¶ 3} Following his release from the correctional treatment facility, appellant tested positive for both marijuana and cocaine. On Feb. 20, 2008, appellant was before the court for a community control violation hearing. On that day, the court appointed appellant counsel. Following consultation with appointed counsel, appellant waived the violation hearing and admitted to violating the terms of his community control.

{¶ 4} The trial court accepted appellant's admission, found him in violation and revoked his community control. The court then imposed a concurrent 12 month period of incarceration for each count with a time served credit of 113 days. This appeal followed.

{¶ 5} Appellant's appointed counsel has filed a motion to withdraw, pursuant to *Anders v. California* (1967), 386 U.S. 738. Counsel states that he has thoroughly reviewed the record and is unable to identify any arguably meritorious issue for appeal. In conformity with *Anders*, counsel has filed a brief in which he discusses two areas of potential error that he has considered, yet rejected as unsupported in the record. A copy of appellant's brief has been provided to appellant, along with correspondence advising him of his right to submit his own brief. Appellant has failed to file his own brief.

{¶ 6} Counsel first questions whether appellant received ineffective assistance of counsel when he admitted violation and waived a hearing on counsel's assurances that he would receive a sentence of probation.

{¶ 7} Second, counsel asks whether appellant's admission of violation was voluntary when he relied on the promises of both his counsel and his probation officer that he would receive a sentence of probation.

{¶ 8} Both of appellate counsel's potential areas of error are premised on appellant's assertion that, prior to admitting a violation of the terms of his community control, he received assurances from both his probation officer and his appointed counsel that a violation finding would result in no more than a continued period of probation. As appellate counsel points out, however, the record is wholly devoid of any evidence that such a promise was ever made. In fact, the record belies such an assertion as it clearly shows that the court expressly inquired of appellant during his admission colloquy whether his decision to waive the hearing and enter an admission was voluntary and not the result of any promises by anyone. Under oath, appellant responded that the admission was voluntary and not the result of any promises. This testimony undercuts appellant's assertion of irregularity.

{¶ 9} 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.

{¶ 10} On consideration whereof, the judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Lucas County.

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, J.

JUDGE

Thomas J. Osowik, 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>.