

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

State of Ohio

Court of Appeals No. L-08-1307

Appellee

Trial Court No. CR0200703548

v.

Jimmy Dean Reed

DECISION AND JUDGMENT

Appellant

Decided: September 30, 2009

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
J. Christopher Anderson, Assistant Prosecuting Attorney, for appellee.

Amy M. Logan, for appellant.

* * * * *

HANDWORK, P.J.

{¶ 1} This case is before the court on appeal from the judgment of the Lucas County Court of Common Pleas, journalized on April 21, 2008, which, following a no contest plea, found appellant, Jimmy Dean Reed, guilty of burglary, in violation of R.C.

2911.12(A)(3), a felony of the third degree, and sentenced him to two years of incarceration. Appellant was granted leave to file a delayed appeal.

{¶ 2} On March 17, 2009, appellant's counsel filed a request to withdraw pursuant to *Anders v. California* (1967), 386 U.S. 738. *Anders* and *State v. Duncan* (1978), 57 Ohio App.2d 93, 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 it may proceed to a decision on the merits if state law so requires. *Id.*

{¶ 3} In this case, appointed counsel for appellant has satisfied the requirements set forth in *Anders*, supra. Although notified, appellant never raised any matters for our consideration. In support of her request, counsel for appellant states that, after reviewing the record of proceedings in the trial court, and after researching the applicable law, she

found the record devoid of error for any appellate issue that was not frivolous. Although counsel found no meritorious issue to present on appellant's behalf on appeal, counsel addressed the potential for raising assignments of error regarding sentencing, the trial court's finding of guilt, and whether the trial court properly advised appellant of his rights before accepting his plea.

{¶ 4} Upon review of the record, the plea hearing and sentencing, we find no meritorious issues for appeal. We find that the trial court advised appellant of his rights and complied with all the requirements set forth in Crim.R. 11(C)(2) when accepting appellant's plea of no contest. With respect to the trial court's finding of guilt, we find that the indictment and the facts set forth by the prosecutor during the plea hearing were sufficient to establish that appellant knowingly trespassed in an occupied structure with purpose to commit in the structure a criminal offense, in this case, theft of money and/or prescription drugs. Additionally, because appellant was found guilty of R.C. 2911.12(A)(3), which was not the offense at issue in *State v. Colon*, 118 Ohio St.3d 26, 2008-Ohio-1624 ("*Colon I*"), we find that *Colon I* and *State v. Colon*, 119 Ohio St.3d 204, 2008-Ohio-3749 ("*Colon II*"), are inapplicable to this matter. See *State v. Hill*, 6th Dist. No. Wd-07-022, 2008-Ohio-5798, ¶ 21; and *State v. Walker*, 6th Dist. No. L-07-1156, 2008-Ohio-4614, ¶ 72. Finally, we find that appellant was fully advised regarding his potential sentence and received a sentence within the statutory amount.

{¶ 5} Upon our own independent review of the record, we find no other grounds for a meritorious appeal. This appeal is, therefore, found to be without merit and is

wholly frivolous. Appellant's counsel's motion to withdraw, therefore, is found well-taken and is ordered granted. The judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal 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.

Peter M. Handwork, P.J.

JUDGE

Mark L. Pietrykowski, 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>.