

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

State of Ohio

Court of Appeals No. L-09-1196

Appellee

Trial Court No. CR0200901101

v.

Scott Adams

DECISION AND JUDGMENT

Appellant

Decided: August 20, 2010

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Andrew J. Lastra, Assistant Prosecuting Attorney, for appellee.

Andrew J. Burton, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Defendant-appellant, Scott Lee Adams, appeals the July 6, 2009 judgment of the Lucas County Court of Common Pleas which, following a no contest plea, found him guilty of one count of burglary and sentenced him to the maximum term of five years of imprisonment.

{¶ 2} Appointed counsel has submitted a request to withdraw pursuant to *Anders v. California* (1967), 386 U.S. 738. In a brief filed on appellant's behalf, appointed counsel sets forth two proposed assignments of error. In support of the request to withdraw, counsel for appellant states that based on the trial court record, he was unable to find any possible errors for appeal.

{¶ 3} *Anders*, supra, and *State v. Duncan* (1978), 57 Ohio App.2d 93, set forth the procedure to be utilized by an appointed counsel who desires to withdraw based upon the lack 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 or she "should so advise the court and request permission to withdraw." *Anders* at 744. An *Anders* request must be accompanied by a brief referring to anything in the record that could arguably support an appeal. *Id.*

{¶ 4} In the course of seeking an *Anders* withdrawal, counsel must also furnish the client with a copy of the brief, the request to withdraw, and notify the client that he has the right to raise any matters that the client wishes to proffer on a pro se basis. Once these prerequisite criteria have been satisfied, the appellate court must conduct a full examination of proceedings from below in order to determine if the appeal is frivolous. If it is determined that the appeal is frivolous, then the appellate court may grant counsel's request to withdraw and dismiss the appeal without violating constitutional requirements or it may proceed to a decision based upon the merits. *Id.*

{¶ 5} In the case before us, appointed counsel for appellant has satisfied the requirements delineated in *Anders*, supra. This court further finds that appellant was properly notified by counsel of his right to file a brief; however, no pro se brief was filed.

{¶ 6} Accordingly, this court shall proceed with an examination of the potential assignments 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.

{¶ 7} Appellant's counsel raises the following two proposed assignments of error:

{¶ 8} "I. Appellant's plea should be set aside because it was not made knowingly, voluntarily, or intelligently.

{¶ 9} "II. The trial court committed an abuse of discretion in sentencing appellant to a maximum term of incarceration."

{¶ 10} The relevant facts are as follows. On January 14, 2009, appellant was indicted on ten felony charges which included six firearm specifications. The counts included: six counts of grand theft of an automobile, two counts of burglary, and two counts of theft. Appellant entered not guilty pleas to all the charges.

{¶ 11} On June 12, 2009, appellant withdrew his not guilty pleas and entered a no contest plea to one count of burglary, in violation of R.C. 2911.12(A)(3) and (C), a third degree felony. On July 6, 2009, appellant was sentenced to the maximum of five years of imprisonment. A nolle prosequi was entered as to the remaining counts in the indictment. This appeal followed.

{¶ 12} In counsel's first proposed assignment of error, counsel contends that, upon, review, he has found insufficient evidence to demonstrate that appellant's plea was not knowing and voluntary. Before accepting a plea of no contest, Crim.R. 11(C)(2) demands that the trial court inform a defendant of the constitutional rights he waives by entering the plea. In that regard, the rule provides:

{¶ 13} "In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest without first addressing the defendant personally and doing all of the following:

{¶ 14} "(a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and, if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

{¶ 15} "(b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

{¶ 16} "(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself."

{¶ 17} Upon appellate review, the trial court's acceptance of a guilty or no contest plea will be considered knowing, intelligent and voluntary so long as, before accepting the plea, the trial court substantially complies with the procedure set forth in Crim.R. 11(C). *State v. Nero* (1990), 56 Ohio St.3d 106, 108. "Substantial compliance means that under the totality of the circumstances the defendant subjectively understands the implications of his plea and the rights he is waiving." *Id.*

{¶ 18} At appellant's June 9, 2009 plea hearing, the trial court first ascertained that appellant was satisfied with his counsel and that he was not threatened or promised anything in exchange for his plea. The court then explained that the maximum prison term appellant was facing was five years with a fine of up to \$10,000. The court also stated that upon appellant's release from prison he would be subject to a three-year term of postrelease control. The court explained the consequences of a violation of postrelease control. Appellant indicated that he understood his potential prison sentence and post-prison sanctions.

{¶ 19} The court then explained the constitutional rights appellant was waving by entering a plea; such rights included: the right to a jury trial, the right to confront and cross-examine witnesses; the right to subpoena witnesses to testify on his behalf; and the requirement that the state prove his guilt beyond a reasonable doubt. The court stated that by entering a no contest plea, appellant did not object to the prosecutor making a statement as to what the evidence would have shown had the matter proceeded to trial.

{¶ 20} Based on the foregoing, we find that the trial court substantially complied with Crim.R. 11(C) in accepting appellant's no contest plea and that appellant entered his plea knowingly, intelligently and voluntarily. The first proposed assignment is not well-taken.

{¶ 21} In counsel's second proposed assignment of error, he asserts that, after a review of the record, he must conclude that the trial court did not abuse its discretion at sentencing. At appellant's July 1, 2009 sentencing hearing the court stated that it had considered the record, oral statement, victim impact statements, the presentence investigation report, as well as the principles and purposes of R.C. 2929.11 and the seriousness and recidivism factors under R.C. 2911.12. The court noted that appellant had a lengthy criminal conviction history including five felony convictions and five misdemeanor convictions.

{¶ 22} Upon review, we must conclude that the trial court did not abuse its discretion in sentencing appellant. Appellant was indicted on ten felony counts, nine of which were dismissed pursuant to the plea agreement. Further, appellant had several prior criminal convictions. The second proposed assignment of error is not well-taken.

{¶ 23} After independently reviewing the record, we find no other grounds for a meritorious appeal. Appellate counsel's motion to withdraw is found well-taken and it is hereby granted.

{¶ 24} On consideration whereof, we find that appellant was not prejudiced or prevented from having a fair proceeding and the judgment of the Lucas County Court of

Common Pleas is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

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

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, P.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>.