

RENDERED: OCTOBER 3, 2014; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-000526-MR

JOHN JORDAN

APPELLANT

v. APPEAL FROM HENDERSON CIRCUIT COURT
HONORABLE KAREN L. WILSON, JUDGE
ACTION NO. 2012-CR-00248

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AFFIRMING
AND ORDER GRANTING COUNSEL'S MOTION
TO WITHDRAW

** ** * ** * ** *

BEFORE: MAZE, NICKELL AND STUMBO, JUDGES.

NICKELL, JUDGE: John Jordan appeals from the March 8, 2013, judgment and sentence of the Henderson Circuit Court. That judgment found Jordan guilty of kidnapping and second-degree persistent felony offender (“PFO”) status, and sentenced him to ten years’ incarceration. We affirm.

Jordan was indicted for kidnapping and first-degree PFO as a result of events that occurred during a domestic dispute with his wife on September 9, 2012. In addition to the criminal indictment, Jordan was also issued a domestic violence order (“DVO”). Following the indictment, Jordan filed a *pro se* motion to dismiss, in which he argued that the doctrines of double jeopardy and *res judicata* prohibited re-litigation in a criminal court of those facts and issues that had previously been adjudicated in family court. Jordan’s motion was denied. Jordan then entered into a conditional guilty plea to kidnapping and second-degree PFO, in which he reserved his right to appeal the issues contained in his motion to dismiss. This appeal followed.

Upon the filing of Jordan’s notice of appeal, the Department of Public Advocacy (“DPA”) was appointed to represent Jordan during the duration of his appeal. On October 14, 2013, DPA counsel Shannon Dupree filed a motion to withdraw and requested that Jordan be given an additional thirty days in which to file a *pro se* brief, on the grounds that the appeal is “wholly frivolous.” Contemporaneous with the motion, counsel filed an *Anders* brief referring to everything in the record that might arguably support the appeal. *Anders v. State of California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967). This Court ultimately passed Dupree’s motion to this Panel and ordered the *Anders* brief filed. In addition, Jordan was granted leave to proceed *pro se* and file a supplemental brief within sixty days. No supplemental brief was filed.

We have reviewed the record and the *Anders* brief and conclude that the trial court did not err when it denied Jordan's motion to dismiss. In short, "[d]ouble jeopardy principles protect an accused from being prosecuted or sentenced multiple times for the same offense." *Fagan v. Commonwealth*, 374 S.W.3d 274, 277 (Ky. 2012). However, criminal prosecution which follows the imposition of civil sanctions does not violate the double jeopardy clause. *Burnett v. Commonwealth*, 3 S.W.3d 359, 361 (Ky. App. 1999). It is well established that "[a] DVO proceeding is a civil matter." *Rankin v. Criswell*, 277 S.W.3d 621, 624 (Ky. App. 2008). The assignment of a DVO is governed by Kentucky Revised Statutes (KRS) 403.750, the domestic relations code utilized by the Commonwealth's family courts. A DVO proceeding involves two private parties and serves to protect the party seeking implementation of the DVO. Kidnapping, on the other hand, is governed by KRS 509.040, found within the Commonwealth's penal code. A criminal proceeding involves the Commonwealth as a representative of the public, and serves to both punish previous criminal conduct and prevent future criminal conduct. In addition, the two proceedings enjoy distinct evidentiary standards. "The [preponderance of the evidence] standard of persuasion in a DVO is not the heightened criminal standard of beyond a reasonable doubt." *Rankin*, 277 S.W.3d 621 at 626. Therefore, we hold that a party who faces both DVO proceedings and criminal proceedings which arise from the same set of circumstances is not entitled to double jeopardy protection.

For the foregoing reasons, the March 8, 2013, judgment and sentence of the Henderson Circuit Court is affirmed. It is further ORDERED that counsel Dupree's motion to withdraw is GRANTED.

ALL CONCUR.

DATE: _____

JUDGE, COURT OF APPEALS

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