

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Julie A. Edwards, P.J.
	:	Hon. W. Scott Gwin, J.
Plaintiff-Appellee	:	Hon. Patricia A. Delaney, J.
	:	
-vs-	:	
	:	Case No. 2010-CA-11
THOMAS HICKMAN	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Anders – Failure to comply,
Possession of Drugs

JUDGMENT: Dismissed

DATE OF JUDGMENT ENTRY: September 20, 2010

APPEARANCES:

For Plaintiff-Appellee

KENNETH OSWALT
Licking County Prosecutor
20 S. Second Street
Newark, OH 43055

For Defendant-Appellant

STEPHEN T. WOLFE
CHRISTOPHER M. COOPER CO., LPA
3055 Cleveland Avenue
Columbus, OH 43224

Gwin, J.

{¶1} A five count indictment was issued against Appellant containing one count of Failure to Comply with the Order or Signal of a Police Officer (Felony Fleeing) (Count 1), a felony of the third degree, in violation of R.C. 2921.331(B)(C)(5)(a)(ii), one count of Possession of Heroin (Count 2), a felony of the fifth degree, in violation of R.C. 2925.11(A)(C)(6)(a), one count of Possession of Cocaine (Count 3), a felony of the fifth degree, in violation of R.C. 2925.11(A)(C)(4)(a), one count of Tampering with Evidence (Count 4), a felony of the third degree, in violation of R.C. 2921.12(A), and one count of Possession of Marijuana (Count 5), a minor misdemeanor, in violation of R.C. 2925.11(A)(C)(3)(a) . A negotiated plea agreement was reached between Appellant and Appellee wherein the State agreed to dismiss the Tampering with Evidence charge in exchange for Appellant's plea of guilty or no contest to the remaining charges. Appellant entered a no contest plea on Count 1 and guilty pleas on counts 2, 3 and 5. The Court after hearing a recitation of the underlying facts of the case found the Appellant guilty of the offenses.

{¶2} Appellant was sentenced to a term of imprisonment of two years on Count 1, eleven months on Count 2, and eleven months on Count 3. In addition, Appellant was on post release control at the time the offenses in this case were committed, therefore, the Court imposed an additional prison term of 25 months. All sentences were ordered served consecutive to one another for a total term of incarceration of five years and eleven months.

{¶3} Counsel for Appellant has filed a Motion to Withdraw and a brief pursuant to *Anders v. California* (1967), 386 U.S. 738, rehearing den. (1967), 388 U.S. 924,

indicating that the within appeal was wholly frivolous and setting forth five proposed Assignments of Error. Appellee has not filed a brief in this matter. Appellant did not file a pro se response or raise any additional assignments of error. The following Assignments of Error were raised by counsel for Appellant:

{¶4} “I. IMPROPER POST RELEASE CONTROL NOTIFICATION.

{¶5} “II. VALIDITY OF THE PLEA.

{¶6} “III. VALIDITY OF THE SENTENCE.

{¶7} “IV. IMPROPER POST RELEASE CONTROL VIOLATION.

{¶8} “V. INEFFECTIVE ASSISTANCE OF COUNSEL.”

{¶9} In *Anders*, the United States Supreme Court held if, after a conscientious examination of the record, a defendant’s counsel concludes the case is wholly frivolous, then he should so advise the court and request permission to withdraw. *Id.* at 744. Counsel must accompany his request with a brief identifying anything in the record that could arguably support his client’s appeal. *Id.* Counsel also must: (1) furnish his client with a copy of the brief and request to withdraw; and, (2) allow his client sufficient time to raise any matters that the client chooses. *Id.* Once the defendant’s counsel satisfies these requirements, the appellate court must fully examine the proceedings below to determine if any arguably meritorious issues exist. If the appellate court also determines that the appeal is wholly 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.*

{¶10} Counsel in this matter has followed the procedure in *Anders v. California* (1967), 386 U.S. 738, however, we must first determine whether we have jurisdiction to hear the instant appeal.

{¶11} Although the trial court orally sentenced Appellant on Count 5, the sentencing entry does not contain the sentence on Count 5 of the indictment. For this reason, Count 5 remains pending before the trial court.

{¶12} In a case similar to the case at bar, the Eighth District held, “The trial court failed to enter any sentence with respect to the misdemeanor drug possession count. “[*State v. Baker*], 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163] requires a full resolution of those counts for which there were convictions.” *State ex rel. Davis v. Cuyahoga Cty. Court of Common Pleas*, Cuyahoga App. No. 93814, 2010-Ohio-1066.” *State v. Bonner*, 2010 WL 2541246, 3 (Ohio App. 8 Dist.). We agree with the Eighth District. Pursuant to *Baker* all counts must be resolved before this Court has jurisdiction to hear the appeal. For this reason, the instant case is dismissed for want of jurisdiction. The Motion to Withdraw as Counsel is denied as moot.

{¶13} MOTION TO WITHDRAW DENIED AS MOOT.

{¶14} APPEAL DISMISSED.

{¶15} COSTS TO APPELLANT.

By Gwin, J.,

Edwards, P.J., and

Delaney, J., concur

HON. W. SCOTT GWIN

HON. JULIE A. EDWARDS

HON. PATRICIA A. DELANEY

WSG:clw 0813

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
THOMAS HICKMAN	:	
	:	
	:	
Defendant-Appellant	:	CASE NO. 2010-CA-11

For the reasons stated in our accompanying Memorandum-Opinion, the appeal is dismissed. Costs to appellant.

HON. W. SCOTT GWIN

HON. JULIE A. EDWARDS

HON. PATRICIA A. DELANEY