[Cite as *State v. McCabe*, 2019-Ohio-5436.]

COURT OF APPEALS
PERRY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO Plaintiff-Appellee -vs- JOSHUA E. McCABE Defendant-Appellant	JUDGES: Hon. William B. Hoffman, P.J Hon. John W. Wise, J. Hon. Craig R. Baldwin, J. Case No. 19-CA-00007 O P I N IO N
CHARACTER OF PROCEEDINGS:	Appeal from the Perry County Court of Common Pleas, Case No. 14-CR-34
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	December 23, 2019

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
JOSEPH A. FLAUTT Perry County Prosecuting Attorney 111 North High Street P.O. Box 569 New Lexington, Ohio 43764	JAMES S. SWEENEY James Sweeney Law, LLC 285 South Liberty Street Powell, Ohio 43065

Hoffman, P.J.

{¶1} Defendant-appellant Joshua McCabe appeals the April 10, 2019 Judgment Entry entered by the Perry County Court of Common Pleas, which revoked his community control and sentenced him to a definite term of incarceration of seventeen (17) months, after he admitted he violated his community control. Plaintiff-appellee is the state of Ohio.

STATEMENT OF THE CASE[1]

{¶2} On August 29, 2014, Appellant pled guilty to one count of trafficking in cocaine, a violation of R.C. 2925.03(A)(1) and (C)(4)b), a felony of the fourth degree. The trial court sentenced Appellant to community control for a period of five years with the special requested condition he complete a community based correctional facility. The trial court also imposed a reserved sentence of eighteen months in prison.

{¶3} The state filed a motion alleging Appellant had violated conditions of his community control. On May 10, 2016, Appellant admitted he violated his community control. The trial court tolled Appellant's community control while he completed his prison term on another charge. The trial court also imposed an additional community control condition, to wit: Appellant attend and successfully complete a residential treatment program upon his release from prison. Subsequently, on July 28, 2017, the state filed another motion alleging Appellant had again violated the terms of his community control. The trial court again tolled Appellant's probation and issued a felony warrant for his arrest.

{¶4} Appellant was convicted of falsification in Zanesville Municipal Court Case No. CRB 1801526B, on November 19, 2018. Thereafter, on March 5, 2019, Appellant was convicted of two counts of possession of drugs in Muskingum County Court of

[1] A Statement of the Facts underlying Appellant's original conviction is not necessary for our disposition of this appeal.

Common Pleas Case No. CR2018-0011. On April 9, 2019, Appellant admitted to the probation violation at issue herein.

{¶5} Appellate counsel for Appellant has filed a Motion to Withdraw and a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), rehearing den., 388 U.S. 924, indicating the within appeal is wholly frivolous. Counsel for Appellant has raised one potential assignment of error, asking this Court to determine whether the trial court erred in the prison sentence imposed upon Appellant. Appellant was given an opportunity to file a brief raising additional assignments of error, but he has not filed such.

{¶6} 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 or she should so advise the court and request permission to withdraw. *Id.* at 744. Counsel must accompany the request with a brief identifying anything in the record which could arguably support the appeal. *Id.* Counsel also must: (1) furnish the client with a copy of the brief and request to withdraw; and, (2) allow the client sufficient time to raise any matters 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 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.*

{¶7} Via Judgment Entry filed September 23, 2019, this Court found Counsel had filed an *Anders* brief and had served Appellant with the brief. The judgment entry advised Appellant he “may file a pro se brief in support of the appeal on or before October 31,

2019." A copy of the judgment entry was served on Appellant via Certified U.S. Mail at Belmont Correctional Institution.

{¶8} Appellant has not filed a pro se brief.

{¶9} We find Appellant's counsel has adequately followed the procedures required by *Anders*.

I.

{¶10} Counsel advised this Court he only saw "the potential issue of whether or not the trial court could impose a prison term of more than 180 days upon Appellant as his new felony charge in Muskingum County occurred while his probation in Perry County was tolled." Brief of Appellant at 2.

{¶11} We find Counsel's potential assignment of error to be without merit.

{¶12} We review a trial court's decision to reimpose an offender's suspended sentence following a community-control violation for an abuse of discretion. *State v. Harrah*, 9th Dist. Summit No. 25449, 2011-Ohio-4065, ¶ 14.

{¶13} "When an offender violates the terms of his or her community control sanction, a trial court 'may impose a longer time under the same sanction, may impose a more restrictive sanction, or may impose a prison term on the offender * * *'." *State v. Estright*, 9th Dist. Summit No. 27598, 2016-Ohio-1194, ¶ 7, quoting R.C. 2929.19(B)(4).

{¶14} Upon review, we find the trial court's imposition of seventeen months of the original eighteen month sentence was not an abuse of discretion. The trial court was within its authority to impose such a sentence.

{¶15} Appellant's proposed assignment of error is overruled.

{¶16} After independently reviewing the record, we agree with Counsel's conclusion no arguably meritorious claims exist upon which to base an appeal. Hence, we find the appeal to be wholly frivolous under *Anders,* grant counsel's request to withdraw, and affirm the judgment of the Perry County Court of Common Pleas.

By: Hoffman, P.J.
Wise, John, J. and
Baldwin, J. concur