

[Cite as *State v. Williamson*, 2009-Ohio-3357.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No. 24195

Appellee

v.

JONATHAN L. WILLIAMSON

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 05 12 4537(A)

Appellant

DECISION AND JOURNAL ENTRY

Dated: July 8, 2009

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} Jonathan Williamson pleaded guilty to aggravated murder and aggravated robbery. The trial court sentenced him to life in prison with the possibility of parole after twenty-four years. Two years later, this Court granted Mr. Williamson a delayed appeal. The lawyer that has been appointed to represent Mr. Williamson has submitted a brief under *Anders v. California*, 386 U.S. 738 (1967), alleging that no arguable issues exist for appeal. He also has moved to withdraw as counsel for Mr. Williamson. Having reviewed the entire record, and concluding that the trial court’s proceedings were proper, this Court grants the motion to withdraw and affirms Mr. Williamson’s conviction and sentence.

ANDERS BRIEF

{¶2} In *Anders v. California*, 386 U.S. 738 (1967), the United States Supreme Court indicated that, if a court-appointed lawyer conducts “a conscientious examination” of the record

and concludes that an appeal would be “wholly frivolous,” “he should so advise the court and request permission to withdraw.” *Id.* at 744. His request, however, must be accompanied by a brief “referring to anything in the record that might arguably support the appeal.” *Id.* A proper *Anders* brief “serves the dual purpose of assisting the court in determining both that counsel has in fact conducted a review of the record and that the case may be decided without an adversary presentation.” *State v. Lowe*, 9th Dist. No. 97CA006758, 1998 WL 161274 at *1 (Apr. 8, 1998).

{¶3} After this Court receives an *Anders* brief, “it must then itself conduct ‘a full examination of all the proceeding[s] to decide whether the case is wholly frivolous.’” *Penson v. Ohio*, 488 U.S. 75, 80 (1988) (quoting *Anders v. California*, 386 U.S. 738, 744 (1967)). “Only after this separate inquiry, and only after [this Court] finds no nonfrivolous issue for appeal, may [it] proceed to consider the appeal on the merits without the assistance of counsel.” *Id.* If this Court “disagrees with counsel . . . and concludes that there are nonfrivolous issues for appeal, ‘it must, prior to decision, afford the indigent the assistance of counsel to argue the appeal.’” *Id.* (quoting *Anders*, 386 U.S. at 744).

CRIMINAL RULE 11

{¶4} Although arguing that there are no meritorious claims to raise on Mr. Williamson’s behalf, his lawyer, in the submitted brief, has advised this Court that Mr. Williamson could argue that the trial court did not comply with Rule 11(C)(2)(c) of the Ohio Rules of Criminal Procedure at the plea hearing. Criminal Rule 11(C)(2)(c) provides that a court “shall not accept a plea of guilty . . . without . . . [i]nforming the defendant and determining that [he] understands that by the plea [he] is waiving the rights to jury trial, to confront witnesses against him . . . , to have compulsory process for obtaining witnesses in [his] favor, and to

require the state to prove [his] guilt beyond a reasonable doubt at a trial at which [he] cannot be compelled to testify against himself”

{¶5} The Ohio Supreme Court has held that a trial court “must strictly comply” with Criminal Rule 11(C)(2)(c). *State v. Veney*, 120 Ohio St. 3d 176, 2008-Ohio-5200, at syllabus. “[If] a trial court fails to strictly comply with this duty, the defendant’s plea is invalid.” *Id.* “[T]he best method of informing a defendant of his constitutional rights is to use the language contained in Crim.R. 11(C), stopping after each right and asking the defendant whether he understands the right and knows that he is waiving it by pleading guilty.” *State v. Ballard*, 66 Ohio St. 2d 473, 479 (1981). Failure to use the exact language contained in Criminal Rule 11, however, “is not grounds for vacating a plea as long as the record shows that the trial court explained [the defendant’s] rights in a manner reasonably intelligible to that defendant.” *Id.* at paragraph two of the syllabus. “The underlying purpose, from the defendant’s perspective, of Crim.R. 11(C) is to convey to [him] certain information so that he can make a voluntary and intelligent decision whether to plead guilty.” *Id.* at 480.

{¶6} Mr. Williamson’s lawyer has noted that the trial court did not use the exact language of Criminal Rule 11(C)(2)(c) when it advised Mr. Williamson of his rights under that rule. Instead of telling Mr. Williamson that he could not “be compelled to testify against himself” at trial, it told him that, “[i]f the case went to trial, . . . [y]ou could choose whether or not you wished to take the witness stand.” Crim. R. 11(C)(2)(c). Although the court’s statement did not contain a rote recitation of Criminal Rule 11(C)(2)(c), it meaningfully informed Mr. Williamson that he would not be compelled to testify if his case went to trial. Mr. Williamson’s lawyer, therefore, correctly concluded that raising that claim on appeal would be frivolous.

{¶7} This Court has fully reviewed the record and proceedings and has not identified any nonfrivolous issues for appeal. Mr. Williamson has also been given the opportunity to submit a brief raising any points he believes are necessary, but has not submitted anything in support of his appeal. Accordingly, having independently reviewed the entire record and concluding that all the proceedings were proper, Mr. Williamson's conviction and sentence are affirmed.

CONCLUSION

{¶8} Mr. Williamson's lawyer's motion to withdraw as counsel is granted. The judgment of the Summit County Common Pleas Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellant.

CLAIR E. DICKINSON
FOR THE COURT

CARR, J.
BELFANCE, J.
CONCUR

APPEARANCES:

KIRK A. MIGDAL, attorney at law, for appellant.

SHERRI BEVAN WALSH, prosecuting attorney, THOMAS J. KROLL, and HEAVEN R. DIMARTINO, assistant prosecuting attorneys, for appellee.