

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO :
 Plaintiff-Appellee : C.A. CASE NO. 18746
 v. : T.C. NO. 00 CRB 12570
 SHERMAN B. HOLMES :
 Defendant-Appellant :

.....

OPINION

Rendered on the 30th day of November, 2001.

.....

JONATHAN C. TURNER, Atty. Reg. No. 0064503, 335 W. Third Street, Room 372,
 Dayton, Ohio 45402
 Attorney for Plaintiff-Appellee

WILLIAM R. ARY, Atty. Reg. No. 0064339, Fifth Third Center, Suite 950, Dayton, Ohio
 45402
 Attorney for Defendant-Appellant

.....

WOLFF, P. J.

Sherman B. Holmes was found guilty after a bench trial of assault. After obtaining a presentence report, the trial court imposed no fine, court costs of \$50, which it suspended, and sixty days jail time which it suspended. After trial counsel filed a

timely notice of appeal, different counsel was appointed to prosecute an appeal on Holmes' behalf. On May 9, 2001, appointed counsel for the appellant filed an *Anders* brief pursuant to *Anders v. California* (1967), 386 U.S. 738, wherein he represented to the court that after examination of the record, he could find no arguably meritorious assignments of error to present on Holmes' behalf. On August 6, we filed a decision and entry and served a copy upon Holmes wherein we stated that counsel for Holmes had filed an *Anders* brief and afforded Holmes sixty days within which to file a *pro se* brief assigning any assignments of error for review that he deemed appropriate. We have not been favored with any *pro se* brief from Holmes.

Pursuant to our duty to independently review the record for possibly meritorious assignments of error, we have done so and agree with the assessment of appointed appellate counsel that there are no arguably meritorious issues for appeal. Essentially, this was an assault case wherein the complaining witness and two other prosecution witnesses testified to one version of the facts whereas Mr. Holmes testified to another. There were no objections raised by counsel for the parties during the trial, nor should there have been because all of the witnesses testified as to what they observed. Whom to believe was a judgment call for the trial court, and we find no basis to disturb the conviction in this case or any non-frivolous issues to present on appeal.

The judgment will be affirmed.

.....

GRADY, J. and YOUNG, J., concur.

Copies mailed to:
Jonathan C. Turner
William R. Ary
Hon. Alice O. McCollum