**[Cite as *State v. Midcalf*, 2010-Ohio-23.]**

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio — Court of Appeals No. L-08-1302

Appellee — Trial Court No. CR0200702868

v.

Keishon L. Midcalf — **DECISION AND JUDGMENT**

Appellant — Decided: January 8, 2010

* * * * *

Bertrand R. Puligandla, for appellant.

* * * * *

HANDWORK, J.

**{¶ 1}** This matter is before the court on the judgment of the Lucas County Court of Common Pleas wherein, on January 14, 2008, appellant, Keishon L. Midcalf, pled guilty pursuant to *North Carolina v. Alford* (1970), 400 U.S. 25, to one count of voluntary manslaughter, in violation of R.C. 2903.03, a felony of the first degree.

Appellant was sentenced on February 7, 2008,[1] to nine years in prison, to be served consecutively to the sentence in case No. CR0200702491, for a total of 13 years of incarceration.

**{¶ 2}** On January 26, 2009, appellant's counsel filed a request to withdraw pursuant to *Anders v. California* (1967), 386 U.S. 738. *Anders* and *State v. Duncan* (1978), 57 Ohio App.2d 93, set forth the procedure to be followed by appointed counsel who desires to withdraw for want of a meritorious, appealable issue. In *Anders*, the United States Supreme Court held that if counsel, after a conscientious examination of the case, determines it to be wholly frivolous he should so advise the court and request permission to withdraw. Id. at 744. This request, however, must be accompanied by a brief identifying anything in the record that could arguably support the appeal. Id. Counsel must also furnish his client with a copy of the brief and request to withdraw and allow the client sufficient time to raise any matters that he chooses. Id. Once these requirements have been satisfied, the appellate court must then conduct a full examination of the proceedings held below to determine if the appeal is indeed frivolous. If the appellate court determines that the appeal is frivolous, it may grant counsel's request to withdraw and dismiss the appeal without violating constitutional requirements or it may proceed to a decision on the merits if state law so requires. Id.

[1]Appellant's judgment entries of sentencing were originally journalized on February 7, 2008, and then again on December 21, 2009, in accordance with a remand from this court.

**{¶ 3}** In this case, appointed counsel for appellant has satisfied the requirements set forth in *Anders*, supra. Although notified, appellant never raised any matters for our consideration. In support of his request, counsel for appellant states that, after reviewing the record of proceedings in the trial court, and after researching the applicable law, he found no meritorious issue to raise on appeal and determined that any issue raised would be frivolous. Although counsel found no meritorious issue to present on appellant's behalf on appeal, counsel addressed the potential for raising assignments of error regarding whether appellant needed to be resentenced due to the trial court's failure to comply with R.C. 2929.19(B)(3)(e) and 2929.19(B)(3)(f).

**{¶ 4}** Prior to appellant's sentencing, we find that counsel reviewed with appellant the presentence investigation report, the notice of post-release control (pursuant to R.C. 2929.19(B)(3)), and the acknowledgment (pursuant to R.C. 2947.23). On the record, appellant indicated to the trial court that he understood the consequences of violating post-release control. Accordingly, we find that appellant was properly notified pursuant to R.C. 2929.19(B)(3), as evidenced by the "notice" of post-release control document signed by appellant and journalized on February 7, 2008. Because he was duly informed, there is no need for the trial court to bring him back for resentencing regarding that matter. See *State v. Lathan*, 6th Dist. No. L-09-1060, 2009-Ohio-5192, ¶ 7; and *State v. Walters*, 6th Dist. No. L-08-1238, 2009-Ohio-3198, ¶ 42.

**{¶ 5}** Furthermore, with respect to the trial court's compliance with R.C. 2929.19(B)(3)(f), we find that the trial court's failure to address drug use and random

drug testing in prison does not provide appellant with a non-frivolous issue for appellate review. *State v. Leeson*, 2d Dist. No. 21993, 2007-Ohio-3704, ¶ 5-8. See, also, *State v. Mason*, 3d Dist. No. 9-05-21, 2006-Ohio-1998, ¶ 15-18.

**{¶ 6}** Based upon the foregoing and our own independent review of the record, we find that counsel for appellant correctly determined that no meritorious issue for appeal is present in this case. This appeal, therefore, is found to be without merit and is wholly frivolous. As such, appellant's counsel's motion to withdraw is found well-taken and ordered granted. The judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J. _____
JUDGE

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
CONCUR.
JUDGE