[Cite as *State v. Druckemiller*, 2010-Ohio-3070.]

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

State of Ohio — Court of Appeals No. H-09-013

Appellee — Trial Court No. CRI-2009-0232

v.

Dwight L. Druckemiller — **DECISION AND JUDGMENT**

Appellant — Decided: June 30, 2010

* * * * *

Barry W. Bova, for appellant.

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PIETRYKOWSKI, J.

{¶ 1} Defendant-appellant, Dwight L. Druckemiller, appeals the June 19, 2009 judgment of the Huron County Court of Common Pleas which, following a jury trial convicting appellant of felonious assault, sentenced appellant to seven years of

imprisonment and ordered that he pay restitution.[1] For the reasons that follow, we affirm the trial court's judgment.

{¶ 2} Appointed counsel has submitted a request to withdraw pursuant to *Anders v. California* (1967), 386 U.S. 738. In a brief filed on appellant's behalf, appointed counsel sets forth one proposed assignment of error. In support of the request to withdraw, counsel for appellant states that based on the trial court record, he was unable to find any possible errors for appeal.

{¶ 3} *Anders*, supra, and *State v. Duncan* (1978), 57 Ohio App.2d 93, set forth the procedure to be utilized by an appointed counsel who desires to withdraw based upon the lack 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 or she "should so advise the court and request permission to withdraw." *Anders* at 744. An *Anders* request must be accompanied by a brief referring to anything in the record that could arguably support an appeal. Id.

{¶ 4} In the course of seeking an *Anders* withdrawal, counsel must also furnish the client with a copy of the brief, the request to withdraw, and notify the client that he has the right to raise any matters that the client wishes to proffer on a pro se basis. Once these prerequisite criteria have been satisfied, the appellate court must conduct a full examination of proceedings from below in order to determine if the appeal is frivolous.

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[1]On July 7, 2009, a nunc pro tunc judgment entry of sentencing was filed which changed the jail time credit "as of" date to June 9, 2009, from June 12, 2009.

If it is determined that the appeal is frivolous, then the appellate court may grant counsel's request to withdraw and dismiss the appeal without violating constitutional requirements or it may proceed to a decision based upon the merits. Id.

{¶ 5} In the case before us, appointed counsel for appellant has satisfied the requirements delineated in *Anders,* supra. This court further finds that appellant was properly notified by counsel of his right to file a brief; however, no pro se brief was filed.

{¶ 6} Accordingly, this court shall proceed with an examination of the sole potential assignment of error proposed by counsel for appellant and the record from below in order to determine if this appeal lacks merit and is, therefore, wholly frivolous.

{¶ 7} Counsel for appellant sets forth the following proposed assignment of error:

{¶ 8} "The trial court erred when it permitted testimony from witnesses concerning appellant's status as a registered sex offender, when appellant did not testify and the testimony was therefore used to impeach defendant."

{¶ 9} The relevant facts are as follows. On March 13, 2009, appellant was indicted on one count of felonious assault, in violation of R.C. 2903.11(A)(1), a second degree felony. The charge stemmed from an incident on February 27, 2009, where appellant was involved in an altercation and bit the victim, causing serious physical harm. Appellant asserted that he was acting in self-defense.

{¶ 10} The matter proceeded to a jury trial. A summary of the evidence presented is as follows. On February 27, 2009, in Norwalk, Ohio, a party was being held at the home of John Cory. Many of the guests had just completed their last day of work at a

local factory that was closing. Appellant and his girlfriend, a former employee at the factory, arrived at Cory's home at approximately 2-3 p.m. The guests all brought their own beverages.

{¶ 11} At some point, appellant either passed out or fell asleep. At approximately 7 p.m., while appellant was still asleep, brothers Kenny and Kyle Mason arrived at the home. Appellant woke up and continued to drink beer. At some point a discussion began regarding a registered sex offender working at the factory. Kyle Mason stated that he did not like people like that. Apparently this offended appellant who disclosed that he was a registered sex offender. At this point, the discussion turned into a heated argument. Home owner, John Cory, requested that those involved move the dispute outside.

{¶ 12} Once outside, a physical altercation ensued. Appellant had both of the brothers on the ground. Eventually, several of the other guests removed appellant and put him up against a garage. Kenny Mason was bit on his left nipple and on his left arm. The arm wound was severe and required that he spend three days in the hospital. Appellant had some bumps on his forehead and some scrapes.

{¶ 13} Appellant did not deny that he inflicted the injuries on Kenny Mason. Appellant argued, however, that he had been attacked by several party goers and bit Mr. Mason in self-defense. The testimony from those at the party portrayed appellant as the aggressor. Appellant presented the testimony of a neighbor who stated that she "saw a whole bunch of men punching one man up against the barn." The neighbor heard someone screaming for help prior to the man being pinned up against the garage.

{¶ 14} At the conclusion of the testimony, the court instructed the jurors on self-defense and on the lesser included offense of aggravated assault. Following deliberations, the jury found appellant guilty of felonious assault and he was sentenced to seven years of imprisonment. This appeal followed.

{¶ 15} In counsel's sole proposed assignment of error, it is argued that the trial court erred when it, over objection, allowed witnesses to testify regarding appellant's statement that he is a registered sex offender. Specifically, whether the testimony was impermissibly admitted in violation of Evid.R. 404(B), the prior bad acts exclusion.

{¶ 16} Evid.R. 404(B) provides:

{¶ 17} "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

{¶ 18} The purpose of the exclusion is to prevent the jury from inferring that because the defendant was the perpetrator in a past offense, it is more likely that he committed the current offense. Although a past sex offense is not similar to a prior assault, it could cast appellant in a negative light before a jury.

{¶ 19} After review of the testimony presented at trial, it is clear that the testimony regarding appellant's statement that he is a sex offender was elicited to show a motive for the altercation. The testimony uniformly showed that appellant became angered when certain partygoers began speaking negatively about sex offenders. Thus, the testimony

fell within the exceptions under Evid.R. 404(B). The proposed assignment of error is not well-taken.

{¶ 20} Under our own independent review of the record, we find no other grounds for a meritorious appeal. Appellate counsel's motion to withdraw is found well-taken and is hereby granted.

{¶ 21} On consideration whereof, we find that appellant was not prejudiced or prevented from having a fair trial and the judgment of the Huron County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

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.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Keila D. Cosme, J. _____
CONCUR.
JUDGE