

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

State of Ohio

Court of Appeals No. H-12-030

Appellee

Trial Court No. CRI-2012-0458

v.

Chelsey M. McCullough

**DECISION AND JUDGMENT**

Appellant

Decided: April 11, 2014

\* \* \* \* \*

John D. Allton, for appellant.

\* \* \* \* \*

**OSOWIK, J.**

{¶ 1} This is an appeal from a judgment of the Huron County Court of Common Pleas, which found appellant guilty of two counts of trafficking heroin, in violation of R.C. 2925.03(A)(1)(C)(6)(a), a felony of the fifth degree, and two counts of trafficking morphine, in violation of R.C. 2925.03(A)(1)(C)(1)(a), a felony of the fourth degree. On November 6, 2012, appellant was sentenced to 30 days of incarceration on each count, to

be served concurrently, and two years of community control. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} The following undisputed facts are relevant to this appeal. In March 2012, four controlled buys of drugs were facilitated by the Norwalk Police Department through the use of a known, reliable, confidential informant during an undercover investigation of unlawful drug activity in the area. This operation ultimately led to appellant being charged with the four underlying drug trafficking offenses.

{¶ 3} During the investigation, in collaboration with the investigating officers, the informant purchased heroin and morphine from appellant, Chelsey McCullough, on four separate occasions. To ensure the viability of the operation, audio recordings were made, currency with serial numbers was furnished prior to the transactions, the informant was briefed prior to the transactions to ensure the legitimacy of the events, and the informant was searched both before going and immediately upon return.

{¶ 4} Subsequent to these transactions, an expert was utilized to properly classify and affirm the chemical identity of both the morphine and heroin. Appellant was subsequently indicted on four counts of drug trafficking stemming from the undercover investigation and the four controlled buys.

{¶ 5} On September 18, 2012, a jury trial commenced. The record reflects that this case involved uniquely compelling and irrefutable evidence of appellant's guilt. At trial, the informant's clear and thorough testimony reflecting appellant's guilt was corroborated and bolstered by the testimony of the investigating officers, the audio

recordings of the transactions, the identification of appellant's voice from the recordings, the serial numbered currency used in the controlled buys, and the expert testimony verifying the identity of the substances sold.

{¶ 6} On September 20, 2012, the jury found appellant guilty of all four counts. On November 6, 2012, appellant was sentenced to 30 days of incarceration on each count, to be served concurrently, and two years of community control. This appeal ensued.

{¶ 7} Appointed counsel has submitted a request to withdraw pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 2094, 18 L.Ed.2d 1377 (1967). In support of his request to withdraw, counsel for appellant states that, after thoroughly reviewing the record of proceedings in the trial court, he could find no basis in support of any good faith assignments of error conceivably having arguable merit.

{¶ 8} *Anders, supra* and *State v. Duncan*, 57 Ohio App.2d 93, 385 N.E.2d 323 (8th Dist.1978), set forth the procedure to be followed by appointed counsel who desired 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. Such a request must be accompanied by a brief identifying anything in the record which could arguably support an appeal. *Id.*

{¶ 9} In the course of seeking to withdraw pursuant to *Anders*, counsel must also furnish the client with a copy of the brief, the request to withdraw, and furnish the client

sufficient time to raise any matters that the client wishes to on a pro se basis. Upon completion of these criteria, the appellate court must conduct a full examination of the proceedings from below and determine if the appeal is frivolous. 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 on the merits. *Id.*

{¶ 10} We note that in the present case, counsel for appellant thoughtfully and carefully conveyed his professional assessment that no facts supporting potential good faith assignments of error were present. Counsel for appellant emphasized that in the course of his 35 year legal career as a criminal defense attorney, he has only filed three *Anders* briefs, as he is generally able to discern facts and issues adequate to directly advance arguments on behalf of his clients. However, given the wholly adverse facts of the instant case, he determined, "I am convinced that there was no issue raised herein that I could, in good faith, advance on behalf of the appellant/defendant." In addition, counsel noted that he consulted several other area attorneys in the course of reaching this determination.

{¶ 11} Consistent with counsel's assessment of this case, we likewise find upon our review that the record is wholly devoid of facts or issues that could serve as a credible basis from which to dispute the outcome of this case.

{¶ 12} Lastly, we note that appellant was properly advised by counsel of her right to file an appellate brief on her own behalf. No pro se brief was filed.

{¶ 13} Wherefore, this appeal is found to be without merit and wholly frivolous. Counsel's motion to withdraw is found well-taken and is hereby granted.

{¶ 14} The judgment of the Huron County Court of Common Pleas is hereby affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R.24. The clerk is ordered to serve all parties with notice of this decision.

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.

Arlene Singer, J.

\_\_\_\_\_  
JUDGE

Thomas J. Osowik, J.

\_\_\_\_\_  
JUDGE

James D. Jensen, J.  
CONCUR.

\_\_\_\_\_  
JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.