

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

State of Ohio

Court of Appeals No. F-14-006

Appellee

Trial Court No. 14CR29

v.

Pacio P. Champada

**DECISION AND JUDGMENT**

Appellant

Decided: July 10, 2015

\* \* \* \* \*

Scott A. Haselman, Fulton County Prosecuting Attorney, for appellee.

Billy D. Harmon, for appellant.

\* \* \* \* \*

**YARBROUGH, P.J.**

**I. Introduction**

{¶ 1} This is an *Anders* appeal. Appellant, Pacio Champada, appeals the judgment of the Fulton County Court of Common Pleas, sentencing him to 47 months in prison following a jury trial in which he was found guilty of one count of burglary, one count of grand theft, one count of theft, and one count of having weapons while under disability.

{¶ 2} Based upon his belief that no prejudicial error occurred below, appellant's appointed counsel has filed a motion to withdraw and a no-error brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).

{¶ 3} *Anders* 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 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, counsel should so advise the court and request permission to withdraw. *Anders* at 744. This request, however, must be accompanied by a brief identifying anything in the record that could arguably support the appeal. *Id.*

{¶ 4} 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.*

{¶ 5} Having reviewed the brief filed by appellant's counsel, we find that appellant's counsel has satisfied the requirements set forth in *Anders*. Appellant has also submitted a pro se brief. Thus, we will examine appellant's assignments of error in addition to the potential assignments of error raised by appellant's counsel.

## **A. Facts and Procedural Background**

{¶ 6} The relevant facts in this case were established at trial as follows:

{¶ 7} On the night of November 10, 2013, a Fulton County deputy, Amos Boysel, was dispatched to a home in Delta, Fulton County, Ohio, to respond to a reported burglary. Upon arrival, Boysel discussed the burglary with the owner of the residence, Clark Brown. Brown had just returned to his home from a vacation in Tennessee. According to his trial testimony, Brown locked up the house and turned off the lights prior to departing on vacation.

{¶ 8} As Boysel continued his investigation, he noticed that the home was in disarray and the door jamb surrounding the front door was broken. Upon further inquiry, Boysel determined that several items were missing from the home, including a television, gift cards, money, and Brown's gun cabinet, which contained five firearms, two hunting knives, and several boxes of ammunition. According to Brown's testimony, the gun cabinet and its contents were worth several hundred dollars, excluding the value of the firearms.

{¶ 9} Boysel proceeded to gather evidence including "a latent fingerprint from a sound bar which sat in front of the television that disappeared from the residence," along with some money envelopes, the coaxial cable that was unscrewed from the back of the television by the perpetrators, and a blood sample from a drop of blood that was left on the front door. The blood and fingerprint were sent to the Bureau of Criminal

Investigations (BCI) for testing. Upon examination, BCI determined that the blood was not human blood and the fingerprint was inconclusive.

{¶ 10} The ensuing investigation ultimately led officers to interview several individuals, including Jacob Baker and appellant's girlfriend, Danielle Figy. Baker, who described himself as appellant's "acquaintance," testified at trial pursuant to a plea agreement. Baker first met appellant while he was in high school. He was introduced to appellant through a classmate, Casey Seever, who is the mother of appellant's child.

{¶ 11} Regarding his whereabouts on the night of June 8, 2013, Baker admitted that he was involved in the burglary of Brown's residence. He explained that he was motivated to commit the burglary by the need to gather money to support his heroin addiction. On the night of the burglary, appellant and Figy met Baker at an Econo Lodge located in Toledo, where Baker was living at the time. According to Baker, the following exchange took place while the three individuals were conversing at the hotel:

I believe that I was there with [appellant] and [appellant's girlfriend,] Danielle and [appellant] had said to me, you know, let's – let's go hit a – let's make some money, pretty much. And we had went into Delta. He had a house that he had spotted out that he thought that we were going to hit. It was over on Providence Street in Delta. We had went there and we had scoped it out, and we realized that we weren't going to be able to do it, so we decided we were going to go look for another place. We had went out north of town, and that's when we had came about on County

Road 8-1. When we had went out on County Road 8-1, we had seen a house and all the lights were off. So we mutually agreed that we were going to see if could get into this house, to see if anybody was there. And we were going to get into it if no none was there.

{¶ 12} Danielle was the driver of a white Chevrolet Lumina that the group used to travel from the hotel to Brown's residence in Delta on the night of the burglary. As they approached the residence, Danielle dropped off appellant and Baker, and proceeded to a local saloon where she waited for them to complete the burglary.

{¶ 13} Upon arrival at Brown's residence, Baker and appellant walked around the perimeter to ensure nobody was present inside the home. At some point during this process, appellant decided to force his way through the locked front door using his shoulder. According to Baker's testimony, appellant made his way into the basement, where he located the gun safe. Initially, appellant attempted to pry open the safe. However, appellant and Baker eventually decided it would be more practical to steal the safe itself.

{¶ 14} Once finished scanning the home for any additional items of value, appellant and Baker removed the gun safe, along with a television, electric guitar, gift cards, and a BB gun. Baker proceeded to call Danielle to have her return to the home. Upon Danielle's arrival, appellant and Baker loaded the items into the vehicle and the group returned to the Econo Lodge, where they unloaded the vehicle. The television and two of the five firearms that were stored in the gun safe were eventually sold. However,

while attempting to sell the remaining firearms, appellant, Baker, Danielle, appellant's brother, Simon, and another friend, Jerry St. Clair, were driving through Toledo when a police officer checked the vehicle's license plates and determined that Danielle had a warrant out for her arrest. The officer pursued the vehicle, prompting the group to flee down a number of side streets. Somewhere along the way, St. Clair and Baker exited the vehicle. While the vehicle was stopped, the remaining firearms were disposed of in a nearby dumpster.

{¶ 15} Eventually, police caught the fleeing individuals and they were arrested. Thereafter, St. Clair and another individual, Chris Merrill, located the dumpster in which the firearms were disposed, retrieved the firearms, and took them back to Merrill's house. Upon her release from jail, Danielle met up with Merrill and the two of them sold the remaining firearms to an acquaintance, Chas Mull.

{¶ 16} After questioning several individuals including Baker, St. Clair, Figy, and Mull, officers were able to ascertain appellant's involvement in the burglary. Consequently, on March 17, 2014, appellant was indicted on one count of burglary in violation of R.C. 2911.12(A)(3), a felony of the third degree, one count of grand theft in violation of R.C. 2913.02(A)(1), a felony of the third degree, one count of theft in violation of R.C. 2913.02(A)(1), a felony of the fifth degree, and one count of having weapons while under disability in violation of R.C. 2923.13(A)(2), a felony of the third degree.

{¶ 17} Appellant entered a plea of not guilty to the above-referenced charges, and a jury trial ensued. Following trial, the jury found appellant guilty of all charges, and the matter was continued for sentencing. On August 7, 2014, appellant's sentencing hearing was held, at which the trial court sentenced him to a prison term of 11 months for the theft count and 12 months for each of the remaining counts, to be served consecutively for a total term of 47 months. It is from this judgment that appellant now appeals.

### **B. Assignments of Error**

{¶ 18} In his *Anders* brief, appellant's counsel raises the following potential assignments of error:

1. Whether Appellant was denied due process because the State of Ohio failed to provide legally sufficient evidence to sustain Appellant's convictions.
2. Whether Appellant's convictions were against the manifest weight of the evidence.
3. Whether the trial court's sentence is contrary to law because it imposes consecutive sentences without first making the requisite findings and stating the reasons upon which it based those findings.

{¶ 19} Additionally, in appellant's pro se brief, he assigns the following errors for our review:

1. The trial court abused its discretion when it charged, tried and convicted Mr. Champada with allied offenses of the theft (F5) and grand theft (F3). These charges are both under the same animus.

2. [Mr. Champada received ineffective assistance of counsel.]

{¶ 20} Because we find issues of arguable merit exist under appellant's first assignment of error, we need not address the remaining assignments of error.

## **II. Analysis**

{¶ 21} In appellant's first assignment of error, he argues that the trial court erred in failing to merge his convictions for theft and grand theft because they are allied offenses of similar import.

{¶ 22} Concerning appellant's argument, R.C. 2941.25 provides:

(A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.

(B) Where the defendant's conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.



{¶ 23} As set forth in *State v. Johnson*, 128 Ohio St.3d 153, 2010-Ohio-6314, 942 N.E.2d 1061, the test for whether offenses are allied offenses of similar import under R.C. 2941.25 is two-fold. First, the court must determine “whether it is possible to commit one offense and commit the other with the same conduct.” *Id.* at ¶ 48. Second, the court must determine “whether the offenses were committed by the same conduct, i.e., ‘a single act, committed with a single state of mind.’” *Id.* at ¶ 49, quoting *State v. Brown*, 119 Ohio St.3d 447, 2008-Ohio-4569, 895 N.E.2d 149, ¶ 50 (Lanzinger, J., dissenting). “If the answer to both questions is yes, then the offenses are allied offenses of similar import and will be merged.” *Id.* at ¶ 50.

{¶ 24} Recently, the Supreme Court of Ohio expounded upon its holding in *Johnson*, stating:

As a practical matter, when determining whether offenses are allied offenses of similar import within the meaning of R.C. 2941.25, courts must ask three questions when a defendant’s conduct supports multiple offenses: (1) Were the offenses dissimilar in import or significance? (2) Were they committed separately? and (3) Were they committed with separate animus or motivation? An affirmative answer to any of the above will permit separate convictions. The conduct, the animus, and the import must all be considered. *State v. Ruff*, --- Ohio St.3d ----, 2015–Ohio–995, --- N.E.2d ---, ¶ 31.

{¶ 25} At the outset, we find that the offenses of theft and grand theft may be committed with the same conduct, i.e., the theft of any firearm valued at over one thousand dollars could constitute both theft and grand theft. Moreover, we find that the question of whether the offenses in this case were committed separately or with a separate animus is arguable. Indeed, the stolen items that gave rise to the theft charge included the gun safe, a B.B. gun, ammunition, an antique hunting knife, a 47-inch television, gift cards, and money. All of these items, with the exception of the gift cards, money, and 47-inch television, were contained inside the gun safe where the firearms were located. The value of these items in the aggregate, being greater than \$1,000, was sufficient to sustain the conviction for theft as set forth in the indictment. However, the record demonstrates that the value of the gift cards, money, and television did not exceed \$1,000 in the aggregate. Thus, the state's case regarding the theft charge was only proven *after* taking into account the value of the items contained in the gun safe, which was removed from the house at the same time as the firearms contained therein. Consequently, we find that issues of arguable merit exist for this appeal on whether the trial court erred in failing to merge the theft and grand theft convictions at sentencing.

{¶ 26} Generally, under *Anders, supra*, if any potential error has merit, we are to afford appellant new counsel and an opportunity to argue the appeal. Therefore, having concluded that arguable issues for appeal exist in this case, we appoint counsel to pursue the appeal on appellant's behalf and direct new counsel to prepare an appropriate appellate brief.

{¶ 27} Accordingly, appellate counsel’s motion to withdraw is found well-taken and is hereby granted. We appoint Spiros Cocoves, 610 Adams Street, 2nd Floor, Toledo, Ohio, 43604, as appellate counsel in this matter, and direct him to prepare an appellate brief discussing the arguable issues identified in this decision, and any further arguable issues that may be found in the record within 30 days of the date of this decision and judgment.

{¶ 28} The clerk is ordered to serve all parties, including Pacio P. Champada, with notice of this decision. Service upon Champada shall be by ordinary U.S. mail to Pacio P. Champada, #A708258, North Central Correctional Complex, P.O. Box 1812, Marion, Ohio, 43302 or at another more current address.

Arlene Singer, J.

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JUDGE

Thomas J. Osowik, J.

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JUDGE

Stephen A. Yarbrough, P.J.  
CONCUR.

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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>.