

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

State of Ohio

Court of Appeals No. L-16-1069

Appellee

Trial Court No. CR0201601103

v.

Scottie Harris

DECISION AND JUDGMENT

Appellant

Decided: June 30, 2017

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Frank H. Spryszak, Assistant Prosecuting Attorney, for appellee.

Edward J. Stechschulte, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal brought by appellant from the judgment of the Lucas County Court of Common Pleas. In this case, appellant was indicted on January 19,

2016, by the Lucas County Grand Jury on one count of aggravated burglary, in violation of R.C. 2911.11(A)(1), a felony of the first degree. On February 25, 2016, pursuant to a plea agreement, appellant withdrew his prior not guilty plea and entered a plea of guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) to the offense of burglary, in violation of R.C. 2911.12(A)(3)(D), a felony of the third degree. Simultaneously, appellant waived his right to be prosecuted by way of a grand jury indictment and entered a plea of guilty to a charge of domestic violence, in violation of R.C. 2919.25 (A) (D)(2), a first degree misdemeanor.

{¶ 2} On March 10, 2016, appellant was sentenced to serve a term of 24 months in prison on the amended burglary charge and 180 days to be served at the Corrections Center of Norwest Ohio on the domestic violence charge. These sentences were ordered to be served concurrently.

{¶ 3} Counsel was appointed to represent him in pursuing an appeal from this sentence.

{¶ 4} Appointed counsel has filed a brief and requested leave to withdraw as counsel pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). Under *Anders*, if, after a conscientious examination of the case, counsel concludes the appeal to be wholly frivolous, he should so advise the court and request permission to withdraw. *Id.* at 744. This request must be accompanied by a brief identifying anything in the record that could arguably support the appeal. *Id.* In addition, counsel must provide appellant with a copy of the brief and request to withdraw, and

allow appellant sufficient time to raise any additional matters. *Id.* Once these requirements are satisfied, the appellate court is required to conduct an independent examination of the proceedings below to determine if the appeal is indeed frivolous. *Id.* If it so finds, the appellate court may grant counsel's request to withdraw, and decide the appeal without violating any constitutional requirements. *Id.*

{¶ 5} In this case, appellant's appointed counsel has satisfied the requirements set forth in *Anders, supra*. This court further notes that appellant did not file a *pro se* brief on his own behalf in this appeal. Appellee the state of Ohio, has filed a responsive brief.

{¶ 6} Accordingly, this court shall proceed with an examination of the potential assignments of error set forth by counsel.

{¶ 7} We have reviewed and considered the entire record from below including the transcript of all proceedings and journal entries from the Lucas County Court of Common Pleas as well as the briefs filed by counsel. Upon this review we will determine if this appeal lacks merit and is, therefore, wholly frivolous.

{¶ 8} Counsel refers to several possible, but ultimately indefensible assignments of error. For his first proposed assignment of error, counsel argues,

1. The trial court committed reversible error where it allowed Appellant to plead guilty to a domestic violence charge which was not presented to a grand jury.

{¶ 9} As to a charge by information, R.C. 2941.021 provides:

Any criminal offense which is not punishable by death or life imprisonment may be prosecuted by information filed in the common pleas court by the prosecuting attorney if the defendant, after he has been advised by the court of the nature of the charge against him and of his rights under the constitution, is represented by counsel or has affirmatively waived counsel by waiver in writing and in open court, waives in writing and in open court prosecution by indictment.

{¶ 10} As required under R.C. 2941.021, during appellant's February 25, 2016 plea hearing the trial court informed appellant of his right to be charged through an indictment by a grand jury; appellant indicated that he understood and that he desired to waive prosecution by indictment and consent to be prosecuted by information. Appellant's consent was memorialized in a signed document which specifically indicated his waiver of prosecution by indictment. Accordingly, we find that appellant's counsel's first potential assignment of error is not well-taken. *State v. Ringel*, 6th Dist. Lucas No. L-15-1298, 2016-Ohio-5172.

{¶ 11} Counsel's second proposed assignment of error states,

2. The trial court erred in accepting Appellant's plea as intelligently, knowingly and voluntarily given.

{¶ 12} When a defendant enters a guilty plea, his appellate issues are limited to attacking the voluntary, knowing, and intelligent nature of the plea and "may not thereafter raise independent claims relating to the deprivation of constitutional rights that

occurred prior to the entry of the guilty plea.” *State v. Barnett*, 73 Ohio App.3d 244, 596 N.E.2d 1101 (2nd Dist.1991). A guilty or no contest plea must be made knowingly, intelligently, and voluntarily to be valid under both the United States and Ohio Constitutions. *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); *State v. Engle*, 74 Ohio St.3d 525, 527, 660 N.E.2d 450 (1996). Therefore, before accepting a plea of guilty or no contest to a felony offense, Crim.R. 11(C)(2) requires that a trial court conduct a hearing with a personal colloquy with the defendant, make specific determinations and give specific warnings required by Crim.R. 11(C) (2) (a) and (b), and notify the defendant of the constitutional rights listed in Crim.R. 11(C) (2) (c) that he would be waiving. *State v. Acosta*, 6th Dist No. WD-15-066, 2016-Ohio-5698.

{¶ 13} The transcript of the February 25, 2016 plea hearing establishes that the trial court engaged in a full and complete colloquy with the appellant concerning his pleas as required by Crim.R.11(C) (2). Further, his plea was memorialized in writing in open court.

{¶ 14} Therefore, we find appellant’s second proposed assignment of error to be meritless.

{¶ 15} Counsel’s final proposed assignment of error states,

3. Appellant received ineffective assistance of counsel.

{¶ 16} It is well-established that claims of ineffective assistance of counsel are reviewed under the standard set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In order to establish ineffective assistance of counsel,

an accused must show: (1) that his trial counsel's performance was so deficient that the attorney was not functioning as the counsel guaranteed by the Sixth Amendment of the United States Constitution, and (2) that counsel's deficient performance prejudiced the defense. *Id.* at 687. Prejudice is shown where there is a reasonable probability that a different result would have occurred in the case but for the counsel's unprofessional errors. *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), paragraph three of the syllabus. The Supreme Court defines a reasonable probability as "a probability sufficient to undermine confidence in the outcome." *Strickland* at 694. *State v. Chaney*, 6th Dist. No. L-14-1161, 2015-Ohio-3293.

{¶ 17} In this case before the court, appellant was originally indicted on a count of aggravated burglary, a first degree felony. He ultimately pled guilty to a significantly reduced charge of burglary, a third degree felony as well as a first degree misdemeanor charge of domestic violence. We have thoroughly reviewed the record of the proceedings below and can find nothing to establish any deficiency in the performance of appellant's trial counsel. Therefore, this proposed assignment of error is without merit.

Conclusion

{¶ 18} We have accordingly conducted an independent examination of the record pursuant to *Anders v. California* and have further considered counsel's proposed assignments of error. The motion of counsel for appellant requesting to withdraw as counsel is granted, and this appeal is dismissed for the reason that it is wholly frivolous.

{¶ 19} 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. 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.

Mark L. Pietrykowski, 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.supremecourt.ohio.gov/ROD/docs/>.