

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

State of Ohio

Court of Appeals Nos. L-10-1345
L-10-1346

Appellee

Trial Court Nos. CR0200503686
CR0200503613

v.

Dominic Jeter

DECISION AND JUDGMENT

Appellant

Decided: November 10, 2011

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Mark Herr, Assistant Prosecuting Attorney, for appellee.

Nichole Khoury, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant, Dominic Jeter, appeals a judgment from the Lucas County Court of Common Pleas convicting him on one count of burglary and one count of gross sexual imposition.

{¶ 2} Appellant's appointed counsel has requested leave to withdraw in accordance with the procedure set forth in *Anders v. California* (1967), 386 U.S. 738. In *Anders*, the United States Supreme Court held that if counsel, after a conscientious examination of the appeal, determines it to be wholly frivolous he should so advise the court and request permission to withdraw. *Id.* at 744. The request shall include a brief identifying anything in the record that could arguably support an appeal. *Id.* Counsel shall also furnish his client with a copy of the request to withdraw and its accompanying brief, and allow the client sufficient time to raise any matters that he chooses. *Id.* 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 may proceed to a decision on the merits if state law so requires. *Id.*

{¶ 3} Here, appointed counsel has met the requirements set forth in *Anders*. Counsel also informed appellant of his right to file his own, additional assignments of error and appellate brief. Appellant has not filed an additional brief. Accordingly, this court shall proceed examining the potential assignment of error set forth by counsel and the entire record below to determine whether this appeal lacks merit deeming it wholly frivolous.

{¶ 4} On December 20, 2005, appellant was indicted on one count of aggravated burglary, one count of aggravated robbery, one count of robbery, one count of kidnapping

and one count of gross sexual imposition. On March 15, 2006, he entered guilty pleas pursuant to *North Carolina v. Alford* (1970), 400 U.S. 25, to one count of burglary a violation of R.C. 2911.12(A)(2), a felony of the second degree, and one count of gross sexual imposition, a violation of R.C. 2907.05(A)(1) and a felony of the fourth degree. He was found guilty and sentenced to prison for five years.

{¶ 5} On November 19, 2010, he was resentenced pursuant to *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462 and *State v. Barnes*, 118 Ohio St.3d 1404, 2008-Ohio-2388. He was again sentenced to five years in prison and he was advised that he is subject to three years mandatory postrelease control as to the burglary charge and five years mandatory postrelease control as to the gross sexual imposition charge. He filed a notice of appeal on November 23, 2010.

{¶ 6} In her potential assignment of error, counsel argues that because the court originally sentenced appellant without informing him of the postrelease control requirements, his original sentence is void and not subject to review. This argument is without merit. The Ohio Supreme Court in *State v. Fischer*, 128 Ohio St.3d 92, 2010 - Ohio- 6238, specifically provides in its syllabus:

{¶ 7} "1. A sentence that does not include the statutorily mandated term of postrelease control is void, is not precluded from appellate review by principles of res judicata, and may be reviewed at any time, on direct appeal or by collateral attack.

{¶ 8} "2. The new sentencing hearing to which an offender is entitled under *State v. Bezak* is limited to proper imposition of postrelease control. (*State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961, syllabus, modified.)

{¶ 9} "3. Although the doctrine of res judicata does not preclude review of a void sentence, res judicata still applies to other aspects of the merits of a conviction, including the determination of guilt and the lawful elements of the ensuing sentence."

{¶ 10} Accordingly, counsel's potential assignment of error is without merit.

{¶ 11} Upon this record, we concur with appellate counsel that appellant's appeal is without merit. Moreover, upon our own independent review of the record, we find no other grounds for meritorious appeal. Accordingly, this appeal is found to be without merit, and wholly frivolous. Counsel's motion to withdraw is found well-taken and is, hereby, granted.

{¶ 12} On consideration whereof, 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, including the defendant if he or she has filed a brief, 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.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.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>.