

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

State of Ohio

Court of Appeals No. L-11-1077

Appellee

Trial Court No. CR 97-2581

v.

Ronald S. Allen, Jr.

DECISION AND JUDGMENT

Appellant

Decided: August 3, 2012

* * * * *

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

Clayton M. Gerbitz, for appellant.

Ronald S. Allen, Jr., pro se.

* * * * *

HANDWORK, J.

{¶ 1} This is an appeal from a judgment entry issued by the Lucas County Court of Common Pleas, to make corrections to appellant's original sentencing judgment entry, pursuant to *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163.

Counsel appointed to pursue appellant's appeal has filed a brief and motion requesting withdrawal as appellate counsel, pursuant to the guidelines established in *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). Counsel states that, after careful review of the record and legal research, he cannot discern any "arguable, non-frivolous issue for appeal." *Anders, supra*, at 744. Counsel further states that he has advised appellant of his right to file a brief on his own behalf, and that a copy of both the brief and motion to withdraw have been served upon appellant. Appellant has filed a document entitled "Opposition to the Anders Brief and Motion to Withdraw as Counsel."

We are required, pursuant to *Anders, supra*, to thoroughly and independently review the record to determine that counsel has made a diligent effort and that the proceedings below were free from prejudicial error and conducted without infringement of appellant's constitutional rights.

Upon consideration, we conclude that counsel's brief is consistent with the requirements set forth in *Anders, supra*, and *Penson v. Ohio* (1988), 488 U.S. 75, 109 S.Ct. 346, 102 L.Ed.2d 300 (1988). Because of the nature of the case and recent Ohio law, counsel for appellant states that he has been unable to find any meritorious argument that can in good faith be made. Appellant, in his own one page response to the *Anders* brief filed by counsel, appears to be arguing errors that occurred in his original sentencing in 1997, specifically related to postrelease control.

In 2008, the Supreme Court of Ohio determined that some judgments of conviction in criminal cases did not comply with Crim.R. 32(C), and required trial courts to correct them to include: “(1) the guilty plea, the jury verdict, or the finding of the court upon which the conviction is based; (2) the sentence; (3) the signature of the judge; and (4) entry on the journal by the clerk of court.” *Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, syllabus. More recently, the Supreme Court of Ohio explained Crim.R. 32(C) and modified *Baker*, stating that a “judgment of conviction is a final order subject to appeal under R.C. 2505.02 when it sets forth (1) the fact of the conviction, (2) the sentence, (3) the judge's signature, and (4) the time stamp indicating the entry upon the journal by the clerk.” *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, paragraph one of the syllabus. The court further held that a “*nunc pro tunc* judgment entry issued for the sole purpose of complying with Crim.R. 32(C) to correct a clerical omission in a final judgment entry is not a new final order from which a new appeal may be taken.” *Id.*, at paragraph two of the syllabus. In other words, a *nunc pro tunc* judgment issued to correct Crim.R. 32(C) errors does not resurrect appeal rights from the original judgment entry, since no substantive changes have been made to that conviction.

In this case, appellant was initially convicted by a jury and sentenced in 1997. A direct appeal was taken from that judgment, which was affirmed by this court in 1999. *See State v. Allen*, 6th Dist. No. L-97-1444, 1999 WL 550230 (1999). In March 2011, the trial court granted, in part, a postconviction motion filed by appellant in February

2011, agreeing that the language in the initial judgment entry related to postrelease control was superfluous. Since it did not apply to or affect appellant's conviction, however, appellant was not prejudiced. The court also attempted to comply with *Baker* requirements.

Appellant filed an appeal in April 2011 from that judgment, but this court found, pursuant to Ohio law at that time, that the March 2011 judgment entry still did not comply with *Baker*, and, thus, was not final and appealable. We briefly remanded the case to the trial court to make further corrections to the judgment entry, which it did, issuing its August 11, 2011 nunc pro tunc judgment entry. Considering together both the March and the August 2011 judgment entries, we find no meritorious issues for appeal. The errors corrected by the trial court were either wholly non-prejudicial or clerical. Appellant is not entitled to a new appeal based upon the postrelease control language or the nunc pro tunc judgment entry. Therefore, after conducting our own independent and thorough review of the record to determine whether the trial court proceedings were free from prejudicial error and conducted without infringement of appellant's constitutional rights, we find no such error.

We conclude, therefore, that this case presents no arguable issues meriting review; we further determine this appeal to be without merit and wholly frivolous. Appellate counsel's motion to withdraw is well-taken and granted.

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, P.J.

JUDGE

Thomas J. Osowik, 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>.