

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2005-04-099
 :
 - vs - : DECISION
 : 10/24/2005
 :
 CHRISTOPHER R. JOHNSTON, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR204-12-2117

Robin N. Piper, Butler County Prosecuting Attorney, Government Services Center, 315 High Street, 11th Fl., Hamilton, Ohio 45011, for plaintiff-appellee

Michael D. Hon, 220 S. Monument Avenue, Hamilton, Ohio 45011, for defendant-appellant

Per Curiam.

{¶1} This cause came on to be considered upon a notice of appeal, the transcript of the docket and journal entries, the transcript of proceedings and original papers from the Butler County Court of Common Pleas, and upon a brief filed by appellant's counsel, oral argument having been waived.

{¶2} Counsel for defendant-appellant, Christopher R. Johnston, has filed a brief with this court pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, which (1) indicates that a careful review of the record from the proceedings below fails to disclose any errors by the trial court prejudicial to the rights of appellant upon which an assignment of error may be predicated; (2) lists one potential error "that might arguably support the appeal," *Anders* at 744, 87 S.Ct. at 1400; (3) requests that this court review the record independently to determine whether the proceedings are free from prejudicial error and without infringement of appellant's constitutional rights; (4) requests permission to withdraw as counsel for appellant on the basis that the appeal is wholly frivolous; and (5) certifies that a copy of both the brief and motion to withdraw have been served upon appellant.

{¶3} Having allowed appellant sufficient time to respond, and no response having been received, we have accordingly examined the record and found one error in the proceedings in the trial court. The trial court sentenced appellant to five years of post-release control for a second-degree felony conviction. A second-degree felony conviction is only subject to three years of post-release control. See R.C. 2967.28(B)(2).

{¶4} In all other respects, our examination of the record discloses no other errors prejudicial to appellant's rights in the proceedings in the trial court.

{¶5} Therefore, it is the order of this court that the motion of counsel for appellant requesting to withdraw as counsel is granted, and the trial court's sentencing entry is hereby modified to reflect a three-year rather than five-year period of post-release control.

POWELL, P.J., WALSH and BRESSLER, JJ., concur.

[Cite as *State v. Johnston*, 2005-Ohio-5625.]