

IN THE SUPREME COURT, STATE OF WYOMING

2021 WY 132

October Term, A.D. 2021

November 24, 2021

JEFFREY TODD GROSS,

**Appellant
(Defendant),**

v.

S-21-0190

THE STATE OF WYOMING,

**Appellee
(Plaintiff).**

ORDER AFFIRMING THE DISTRICT COURT’S JUDGMENT AND SENTENCE

[¶1] **This matter** came before the Court upon its own motion following notification that Appellant has not filed a *pro se* brief within the time allotted by this Court. Appellant entered a conditional guilty plea to possession of a felony amount of marijuana. Wyo. Stat. Ann. § 35-7-1031(c)(iii). The district court imposed a three to five-year sentence, which was suspended in favor of two years of probation. Appellant filed this appeal to challenge the district court’s April 6, 2021 Order of Sentence and Unsupervised Probation.

[¶2] On September 30, 2021, Appellant’s court-appointed appellate counsel e-filed a Motion to Withdraw as Counsel, pursuant to *Anders v. California*, 386 U.S. 738, 744, 87 S.Ct. 1396, 1400, 18 L.Ed.2d 493 (1967). This Court subsequently entered an Order Granting Motion for Extension of Time to File *Pro Se* Brief. This Court ordered that, on or before November 15, 2021, Appellant “may file with this Court a *pro se* brief which specifies the issues for the Court to consider in this appeal.” This Court also provided notice that, after the time for filing a *pro se* brief expired, this Court would “make its ruling on counsel’s motion to withdraw, and if appropriate, make a final decision” on this appeal. This Court notes Appellant did not file a *pro se* brief or other pleading in the time allotted.

[¶3] In considering the Motion to Withdraw as Counsel, this Court notes this matter involves a conditional guilty plea pursuant to W.R.Cr.P. 11(a)(2). In *Maier v. State*, S-11-0070, this Court ruled it would no longer accept *Anders* briefs in appeals involving

conditional guilty pleas. This Court's order in *Maier* has not been changed in that respect. See *Cook v. State*, S-14-0274. Also, appellate counsel has not requested permission to file an *Anders* brief in this case. Nevertheless, for the sake of judicial economy, this Court finds it should treat appellate counsel's Motion to Withdraw as Counsel as if it includes a request for permission to file an *Anders* brief. The Court also finds it should grant such permission. At the same time, this Court hereby provides notice that it will not consider any further *Anders* briefs filed in violation of this Court's orders regarding *Anders* briefs. Instead, appellate counsel must request permission to file an *Anders* brief where such a brief is not allowed by this Court's orders, *i.e.*, the orders entered in the two cases cited in this paragraph.

[¶4] Now, following a careful review of the record and the *Anders* brief submitted by appellate counsel, this Court finds that appellate counsel's motion to withdraw should be granted and the district court's Order of Sentence and Unsupervised Probation should be affirmed. However, this Court finds this matter should be remanded for proceedings regarding a presentence investigation report (PSI). The district court allowed Appellant to waive a PSI altogether. (Change of Plea Hearing Transcript, March 31, 2021, p. 71) However, a defendant cannot waive a PSI altogether. W.R.Cr.P. 32(a)(1) ("In felony cases the investigation and report may not be waived but, with the parties' consent, the court may permit the report to be filed after sentencing."). In *Abeyta v. State*, 2003 WY 136, ¶ 23, 78 P.3d 664, 670 (Wyo. 2003), this Court wrote:

Abeyta attempted to waive not only a pre-sentence investigation (PSI) report, but also attempted to waive his right to be present at sentencing. On the day of sentencing, Abeyta's counsel filed a document entitled "Defendant's Waiver of PSI and Right to be Present at Sentencing." However, a person charged with a felony in Wyoming may not waive the PSI report; at most, with the parties' consent, a court may permit the report to be filed after sentencing. W.R.Cr.P. 32(a)(1); *Reyna v. State*, 2001 WY 105, ¶ 16, 33 P.3d 1129, 1134 (Wyo. 2001) (PSI cannot be waived by plea agreement for any felony).

Given this, the district court erred in allowing Appellant to waive a PSI altogether. It is, therefore,

[¶5] **ORDERED** that the Wyoming Public Defender's Office, court-appointed counsel for Appellant Jeffrey Todd Gross, is hereby permitted to withdraw as counsel of record for Appellant; and it is further

[¶6] **ORDERED** that the Albany County District Court's April 6, 2021 Order of Sentence and Unsupervised Probation be, and the same hereby is, affirmed; and it is further

[¶7] **ORDERED** that this matter is remanded to the Albany County District Court for proceedings regarding a PSI.

[¶8] **DATED** this 24th day of November, 2021.

BY THE COURT:

/s/

KATE M. FOX
Chief Justice