

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO :
Plaintiff-Appellee : C.A. CASE NO. 23873
v. : T.C. NO. 07 CR 3644
MAHDI AL-MOSAWI : (Criminal appeal from
Defendant-Appellant : Common Pleas Court)

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OPINION

Rendered on the 5th day of November, 2010.

.....
CARLEY J. INGRAM, Atty. Reg. No. 0020084, Assistant Prosecuting Attorney, 301 W.
Third Street, 5th Floor, Dayton, Ohio 45422
Attorney for Plaintiff-Appellee

CARY B. BISHOP, Atty. Reg. No. 0077369, 79 Trails East, Pataskala, Ohio 45504
Attorney for Defendant-Appellant

MAHDI AL-MOSAWI, #576833, P. O. Box 5500, Chillicothe, Ohio 45601
Defendant-Appellant

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DONOVAN, P.J.

{¶ 1} Defendant-appellant Madhi Al-Mosawi appeals, pro se, a decision of the trial court overruling his petition to vacate or set aside his sentence pursuant to R.C. 2953.21.

The petition stemmed from Al-Mosawi's conviction and sentence for two counts of attempted murder. Al-Mosawi filed his petition on March 2, 2009. On March 6, 2009, the State filed its answer to Al-Mosawi's petition. The State then filed a motion for summary judgment on March 17, 2009. Although he requested and received two extensions in which to reply to the State's motion for summary judgment, Al-Mosawi did not file a response to the motion. On January 27, 2010, the trial court issued its decision overruling Al-Mosawi's petition to set aside his conviction. Al-Mosawi filed a timely notice of appeal with this court on February 16, 2010.

I

{¶ 2} We initially note that the instant case has already been the subject of a direct appeal before this Court in *State v. Al-Mosawi*, Montgomery App. No. 22890, 2010-Ohio-111 (hereinafter "*Al-Mosawi I*"). Thus, we set forth the history of the case in *Al-Mosawi I*, and repeat it herein in pertinent part:

{¶ 3} "Al-Mosawi's victim, Sherita Wilson, was the mother of their infant son. They were not married, and the relationship that resulted in their son had, according to Wilson, ended before Al-Mosawi's assault upon her. They had contact as a result of being the parents of their son.

{¶ 4} "On September 3, 2007, Al-Mosawi called Wilson to arrange to retrieve his truck, which she had borrowed. According to the plan, Al-Mosawi would pick up Wilson and Wilson's daughter from Wilson's uncle's home, they would go to Wilson's home to retrieve the truck, and then Wilson would take her to her grandmother's house. But Al-Mosawi instead took Wilson and her daughter to his home in Dayton.

{¶ 5} “Upon entering his house, Al-Mosawi guided Wilson into the bathroom, leaving Wilson’s daughter outside the bathroom, and shut the door. Al-Mosawi began questioning Wilson about her MySpace page in the internet, and about the men she communicated with on the internet. He turned on the shower, took off his shirt, then turned around and began striking Wilson with his closed fist. He hit her repeatedly, and also put her in a choke hold and threatened to kill her.

{¶ 6} “Then Al-Mosawi picked up a tool with a hatchet on one side and a hammer on the other, which was next to the toilet. Al-Mosawi struck Wilson in the right side of the head with the hammer side of the tool, several times. Wilson wound up in the tub, in a pool of blood. She testified that she believed she was going to die.

{¶ 7} “The next thing Wilson remembered was being in the intensive care unit at Miami Valley Hospital, where she was treated for two weeks. She was treated in her home for four weeks after that. She had surgery for skull fractures.

{¶ 8} “At the time of trial, Wilson was suffering the loss of her sense of smell, short-term memory loss, and she had no feeling in her right hand. She reported poor balance, pain, headaches, and weakness along the left side of her body. She has required speech therapy, physical therapy, and psychotherapy.

{¶ 9} “Shortly after his attack, Al-Mosawi: (1) called his wife and informed her that he had ‘hurt’ Wilson; (2) called 911 and reported that he had killed Wilson with a hammer; and (3) told Wilson’s father that he had killed her.

{¶ 10} “The trial court ordered a mental examination of Al-Mosawi. At a hearing, based upon the report of the examiner, the trial court found Al-Mosawi

competent to stand trial. Al-Mosawi moved to suppress statements he had made to police, which was overruled following a hearing. Although Al-Mosawi had interposed a plea of not guilty by reason of insanity, on the morning of trial, he withdrew his not-guilty-by-reason-of-insanity pleas.

{¶ 11} “In due course, a jury was empaneled, and Al-Mosawi was tried to a jury. Before the commencement of the trial, Al-Mosawi’s trial counsel made a record of the fact that he had advised Al-Mosawi to plead no contest to the charges, which would allow him to argue the suppression issue on appeal, but that Al-Mosawi had insisted on going to trial. Al-Mosawi’s trial counsel asserted that Al-Mosawi would stand a much better chance at trial if he could obtain the suppression of his incriminating statements. Al Mosawi confirmed that he had been so advised, but had decided to go to trial.

{¶ 12} “***

{¶ 13} “Although Al-Mosawi can speak and understand English to some extent, at his competency hearing, suppression hearing, trial, plea proceeding, and sentencing, the trial court qualified an English-Arabic interpreter (not always the same at each hearing) and swore in the interpreter. The proceedings are recorded in the record as video records. In the proceedings we have watched in the video format (we have reviewed the entirety of the written transcripts of the proceedings), which includes the entire trial, plea and sentencing proceedings, the interpreter appears to be constantly interpreting the proceedings for Al-Mosawi, who does not appear to have any difficulty following the interpretation. In the plea hearing, when Al-Mosawi responds to the trial court’s questions, he does so directly, in English.

At the sentencing hearing, when the time came for Al-Mosawi to address the trial court, he did so directly, in English, in so much length that the trial court had to gently nudge him back to material matters at one point. (The trial court did not, however, cut him off at the sentencing hearing; Al-Mosawi was allowed to speak until he decided that he was done.)” Al-Mosawi was ultimately sentenced to ten years on each count of attempted murder, the sentences to run concurrently.

{¶ 14} In *Al-Mosawi I*, Al-Mosawi’s assigned appellate counsel filed a brief under the authority of *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, indicating that he was unable to find any potential assignments of error having arguable merit. After being notified that his counsel had filed an *Anders* brief, Al-Mosawi filed his own, pro se brief. Upon review, we found no potential assignments of error having arguable merit and affirmed Al-Mosawi’s conviction and sentence.

{¶ 15} In regards to the instant appeal, Al-Mosawi filed his petition for post-conviction relief on March 2, 2009, in which he alleged he received ineffective assistance of counsel when his trial attorney “allowed him to withdraw his plea of not guilty by reason of insanity and enter a plea of guilty” to two counts of attempted murder. The trial court subsequently overruled Al-Mosawi’s petition in a written decision issued on January 27, 2010.

{¶ 16} It is from this judgment that Al-Mosawi now appeals.

II

{¶ 17} Initially, we note that Al-Mosawi’s appointed counsel filed a brief pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d

493, in which he asserted that he could locate no arguable issues for review on appeal. Pursuant to *Anders*, we granted Al-Mosawi sixty days from our order filed on July 13, 2010, in which to file a brief for our review. On August 30, 2010, Al-Mosawi filed a pro se motion to dismiss his appeal because he was unable to prepare and file a brief within the sixty day time frame ordered by this Court.

{¶ 18} In a decision and entry issued on September 29, 2010, we overruled Al-Masawi's pro se motion, holding that "the absence of Appellant's brief does not require dismissal of this matter." We further stated that pursuant to *Anders*, we must make an independent review of the record in order to determine whether the appeal is frivolous. A brief from Al-Masawi was not necessary to make that independent determination.

III

{¶ 19} We have conducted an independent review of the record and have found no error having arguable merit. Accordingly, Al-Masawi's appeal is without merit, and the judgment of the trial court is affirmed.

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BROGAN, J. and FAIN, J., concur.

Copies mailed to:

Carley J. Ingram
Cary B. Bishop
Mahdi Al-Mosawi
Hon. Mary Katherine Huffman