

[Cite as *State v. Wolfe*, 2005-Ohio-1048.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

SHANE A. WOLFE

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. William B. Hoffman, J.

Hon. John W. Wise, J.

Case No. 03CA025

OPINION

CHARACTER OF PROCEEDING: Appeal from the Fairfield County Court,
Case No. 01CR317

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: March 3, 2005

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellee

GREGG MARX
323 E. Main Street
Lancaster, Ohio 43130

R.C. STOUGHTON, SR.
121 North High Street
Lancaster, Ohio 43130

Hoffman, J.

{¶1} Defendant-appellant Shane A. Wolfe appeals the March 25, 2003 Judgment Entry of the Fairfield County Court of Common Pleas revoking his community control due to his violation of the terms of his judicial release. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On January 4, 2002, appellant plead guilty to one count of burglary and four counts of grand theft auto. On January 5, 2002, the trial court sentenced appellant to four years on the burglary count and one year for each of the four counts of grand theft auto. All counts were ordered to be served consecutively.

{¶3} On September 6, 2002, the trial court granted appellant's motion for judicial release. Appellant was placed on community control for a period of five years and ordered, as part of his community control sanctions, to attend the SEPTA program.

{¶4} On October 24, 2002, the state filed a motion to revoke appellant's community control due to appellant's violation of the terms of his community control by escaping from the SEPTA program, a new felony.

{¶5} On March 21, 2003, the trial court conducted a hearing, at which appellant stipulated he violated the terms of his judicial release by being convicted of felony escape while on community control. Based upon appellant's stipulation, the trial court found probable cause appellant violated the terms of his community control. The state requested the trial court sentence appellant consecutively with the felony conviction, and requested the trial court revoke appellant's community control only as to the burglary count. Accordingly, via a March 25, 2003 Judgment Entry, the trial court revoked appellant's community control as to the burglary count only, and ordered appellant serve the sentence

consecutively with the sentence imposed by the Athens County Court of Common Pleas on the new felony escape conviction.

{¶6} Appellant did not object to the trial court's orders.

{¶7} On April 9, 2003, appellant filed a notice of appeal. On December 19, 2003, this Court dismissed the appeal for failure to prosecute. On March 16, 2004, appellant, pro se, filed a motion to reinstate his appeal, which this Court granted on April 26, 2004. On May 21, 2004, Attorney Steve Zigan was appointed to prosecute the appeal. The record was filed on June 14, 2004. On June 24, 2004, Attorney Zigan filed a motion to withdraw as counsel, which motion was granted by the trial court on June 28, 2004. Subsequently, on July 9, 2004, this Court, set aside the trial court's order for lack of jurisdiction. Thereafter, on July 27, 2004, the trial court appointed Attorney R.C. Stoughton as appellate counsel. This Court granted appellant's motion for enlargement of time on September 8, 2004.

{¶8} On September 27, 2004, appellant's counsel, Attorney Stoughton, filed a brief pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493. In said brief, appellant's counsel set forth one possible error which could be raised, but serially addressed the potential assignment of error to demonstrate there was no legal basis for same. Counsel then certified he had reviewed the entire file, including the transcript of the proceedings, and found no basis for an appeal. Counsel's brief then sought permission from the court to withdraw as counsel.

{¶9} Upon review, counsel's brief is filed in keeping with *Anders v. California* (1967), 386 U.S. 738. In a brief filed pursuant to *Anders, supra*, counsel must: (1) advise the court and request permission to withdraw if an appeal is deemed wholly frivolous, (2)

submit a brief indicating anything in the record which might arguably support an appeal, and (3) furnish a copy of the brief to the client, who then must be given time to raise any point which he chooses. *Id.*; *State v. Duncan* (1978), 57 Ohio App.2d 93, 94. Upon receiving a brief that complies with these requirements, this court must independently examine the record to determine whether the appeal is wholly frivolous, and if the court so finds, may grant the motion to withdraw and affirm the judgment of the trial court. *Anders, supra*, at 744.

{¶10} In accordance with *Anders*, this court has conducted an independent review of the entire record, counsel's brief, and all applicable authorities to determine whether this appeal is, in fact, without merit and/or frivolous. Having conducted such a review, we agree with the conclusion of appellant's counsel there are no arguably meritorious issues or errors which occurred during the proceedings of this matter to be raised or decided on appeal.

{¶11} Accordingly, we find no merit in the present appeal and affirm the March 25, 2003 Judgment Entry of the Fairfield County Court of Common Pleas revoking appellant's community control related to the burglary charge. Pursuant to *Anders*, counsel's motion to withdraw is sustained.

By: Hoffman, J.

Gwin, P.J. and

Wise, J. concur

JUDGES

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FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

SHANE A. WOLFE

Defendant-Appellant

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JUDGMENT ENTRY

Case No. 03CA025

For the reason stated in our accompanying Memorandum-Opinion, the March 25, 2003 Judgment Entry of the Fairfield County Court of Common Pleas revoking appellant's community control related is hereby affirmed.

JUDGES