

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

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|------------------------|---|-------------------------------|
| STATE OF OHIO | : | JUDGES: |
| | : | Hon. William B. Hoffman, P.J. |
| Plaintiff-Appellee | : | Hon. Julie A. Edwards, J. |
| -vs- | : | Hon. Patricia A. Delaney, J. |
| | : | |
| JAMES HUNT FORSYTHE II | : | |
| | : | |
| Defendant-Appellant | : | CASE NO. 2007CA00226 |
| | : | |
| | : | <u>OPINION</u> |

CHARACTER OF PROCEEDING: Appeal from the Stark County Court of Common Pleas - Case Number 2007CR0734

JUDGMENT: AFFIRMED

DATE OF JUDGMENT ENTRY: 9-22-2008

APPEARANCES:

For Plaintiff-Appelle:

JOHN D. FERRERO, JR.
Stark County Prosecutor
110 Central Plaza South, Suite 510
Canton, OH 44702

For Defendant-Appellant:

KELLY MURRAY
116 Cleveland Avenue, N.W., Suite 303
Canton, OH 44714

Edwards, J.

{¶1} Defendant-Appellant was indicted on one count of Failure to Notify of Address Change, in violation of R.C. 2950.05(E)(1), a felony of the third degree.

{¶2} Counsel for Appellant has filed a Motion to Withdraw and a brief pursuant to *Anders v. California* (1967), 386 U.S. 738, rehearing den. (1967), 388 U.S. 924, indicating that the within appeal was wholly frivolous and setting forth a proposed Assignment of Error. Appellant did not file a pro se brief alleging any additional Assignments of Error. Appellee did not file a brief.

I.

{¶3} “THE TRIAL COURT’S ACCEPTANCE OF THE APPELLANT’S GUILTY PLEA AND CONVICTION WAS (sic) CONTRARY TO LAW.”

{¶4} In *Anders*, the United States Supreme Court held if, after a conscientious examination of the record, a defendant’s counsel concludes the case is wholly frivolous, then he should so advise the court and request permission to withdraw. *Id.* at 744. Counsel must accompany his request with a brief identifying anything in the record that could arguably support his client’s appeal. *Id.* Counsel also must: (1) furnish his client with a copy of the brief and request to withdraw; and, (2) allow his client sufficient time to raise any matters that the client chooses. *Id.* Once the defendant’s counsel satisfies these requirements, the appellate court must fully examine the proceedings below to determine if any arguably meritorious issues exist. If the appellate court also determines that the appeal is wholly frivolous, it may grant counsel’s request to withdraw and dismiss the appeal without violating constitutional requirements, or may proceed to a decision on the merits if state law so requires. *Id.*

{¶5} Counsel in this matter has followed the procedure in *Anders v. California* (1967), 386 U.S. 738, we find the appeal to be wholly frivolous and grant counsel's motion to withdraw.

I.

{¶6} In his potential Assignment of Error, Appellant suggests the trial court erred in accepting Appellant's guilty plea and in convicting Appellant based upon the plea of guilty.

{¶7} Crim.R. 11 sets forth the procedure which a trial court must follow in accepting a guilty plea. Crim.R.11(C)(2) states, in pertinent part, as follows:

{¶8} "In felony cases, the court may refuse to accept a plea of guilty * * * and shall not accept such plea without first addressing the defendant personally, and;

{¶9} "(a) Determining that he is making the plea voluntarily, with understanding of the nature of the charge and of the maximum penalty involved, and, if applicable, that he is not eligible for probation.

{¶10} "(b) Informing him of and determining that he understands the effect of his plea of guilty * * * and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

{¶11} "(c) Informing him and determining that he understands that, by his plea, he is waiving his rights to jury trial, to confront witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to require the State to prove his guilt beyond a reasonable doubt at a trial at which he cannot be compelled to testify against himself."

{¶12} If the record indicates that the trial court substantially complied with the above requirements of Crim.R. 11, the plea will not be set aside. *State v. Ballard* (1981), 66 Ohio St.2d 473, 423 N.E.2d 115. We have reviewed the colloquy between the trial court and Appellant at the change of plea hearing. The trial court properly addressed Appellant and advised him of his constitutional rights and the maximum penalty

involved. Appellant indicated on the record he read and discussed with his attorney the plea of guilty form which explained all of his rights. The record demonstrates the plea was entered knowingly, intelligently, and voluntarily.

{¶13} A guilty plea operates as a complete admission of a defendant's guilt, and once a guilty plea is accepted by the trial court, the trial court is required to proceed to sentence the Appellant. Crim.R. 11(B)(1) and (3). Because Appellant's guilty plea was properly accepted, the Appellant's conviction was complete. The trial court was required to proceed to sentencing, which it did do following the completion of a presentence investigation.

{¶14} Appellant's Assignment of Error is overruled.

{¶15} For these reasons, after independently reviewing the record, we agree with counsel's conclusion that no arguably meritorious claims exist upon which to base an appeal. Hence, we find the appeal to be wholly frivolous under *Anders*, grant counsel's request to withdraw, and affirm the judgment of the Stark County Court of Common Pleas.

{¶1} Counsel's Motion to Withdraw is granted. The judgment of the Stark County Court of Common Pleas is affirmed.

By: Edwards, J.
Hoffman, P.J. and
Delaney, J. concur

HON. JULIE A. EDWARDS

HON. WILLIAM B. HOFFMAN

HON. PATRICIA A. DELANEY

