

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-10-030

Appellee

Trial Court No. 04 CR 257

v.

Eric Abrams

DECISION AND JUDGMENT

Appellant

Decided: May 20, 2011

* * * * *

Tim A. Dugan, for appellant.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Wood County Court of Common Pleas, which revoked appellant's community control and imposed a previously suspended 11 month term of incarceration in response to an ongoing string of violations of the terms of community control and other court orders. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appointed counsel, Tim Dugan, has submitted a request to withdraw pursuant to *Anders v. California* (1967), 368 U.S. 738, 87 S.Ct. 1396. In support of his request to withdraw, counsel for appellant states that, after reviewing the record of proceedings in the trial court, he was unable to find any issue of merit for appeal. Counsel simultaneously submits a brief with three proposed assignments of error.

{¶ 3} *Anders*, supra, and *State v. Duncan* (1978), 57 Ohio App.2d 93, set forth the procedure to be followed by appointed counsel who desires to withdraw for want of a meritorious, appealable issue. In *Anders*, the United States Supreme Court held that if counsel, after a conscientious examination of the case, determines it to be wholly frivolous, he should so advise the court and request permission to withdraw. *Id.* at 744. This request, however, must be accompanied by a brief identifying anything in the record that could arguably support the appeal. *Id.* Counsel must also furnish his client with a copy of the brief and request to withdraw and allow the client sufficient time to raise any matters that he chooses.

{¶ 4} Once these requirements have been satisfied, the appellate court must then conduct a full examination of the proceedings held below to determine if the appeal is indeed frivolous. If the appellate court determines that the appeal is frivolous, it may grant counsel's request to withdraw and dismiss the appeal without violating constitutional requirements or it may proceed to a decision on the merits if state law so requires. *Id.*

{¶ 5} In the instant case, appointed counsel for appellant has fully satisfied the requirements set forth in *Anders*, supra. This court further finds that appellant was properly notified of his right to file an appellate brief on his own behalf. No pro se brief was filed.

{¶ 6} Based on the forgoing, this court shall proceed with an examination of the potential assignments of error proposed by counsel for appellant and the entire record of proceedings from below to determine if this appeal lacks merit, and is, therefore, wholly frivolous.

{¶ 7} The following undisputed facts are relevant to this appeal. In June 2004, appellant was indicted for illegal drug possession, in violation of R.C. 2925.11(A), a felony of the fifth degree. On August 30, 2004, appellant entered a negotiated guilty plea in exchange for the trial court withholding a finding of guilt and placing appellant in an alternative intervention program. Appellant subsequently violated the terms of the program on multiple occasions. In response, the trial court removed appellant from the program, entered the previously withheld guilty finding and placed appellant on community control.

{¶ 8} On November 11, 2005, appellant was unsuccessfully terminated from the alternative treatment program, in violation of the terms of community control. In response, appellant was ordered to successfully complete an additional treatment program and a one year extension of community control was imposed in order to comply.

{¶ 9} On April 27, 2009, appellant again violated community control by failing to complete the required community service hours. In response, appellant received another extension of the term of community control in order to have the opportunity to comply with the community service requirements.

{¶ 10} Appellant's compliance efforts were woefully inadequate. One year later, on April 26, 2010, appellant had successfully completed just four hours of the 300 hours of community service hours ordered. Given appellant's multiple violations and failure to comply despite numerous opportunities to do so, the trial court ultimately imposed the previously suspended 11 month term of incarceration. This appeal ensued.

{¶ 11} Counsel sets forth the following three potential assignments of error in his *Anders* brief:

{¶ 12} "1) Appellant's rights under Criminal Rule 32.3 were violated.

{¶ 13} "2) The Trial Court erred by sentencing Appellant to a prison term.

{¶ 14} "3) The Trial Court abused its discretion by revoking Appellant's Community Control."

{¶ 15} Crim.R. 32.3(A) establishes, "The court shall not impose a prison term for violation of the conditions of a community control sanction or revoke probation except after a hearing at which the defendant shall be present and apprised of the grounds on which the action is proposed."

{¶ 16} The record from below unequivocally shows that appellant was properly notified by the trial court of the nature of his violations and furnished appellant multiple

additional opportunities to come into compliance prior to the imposition of the suspended sentence. As particularly relevant to the violation triggering this case, appellant was fully informed of and stipulated to his repeat failure to complete the requisite community service hours. Again, after several years of opportunities and extensions, appellant successfully completed just four hours of the 300 hours of service ordered. The record reflects that the trial court conducted a thorough hearing on the matter, including statements in mitigation. Appellant's first proposed assignment of error is not well-taken.

{¶ 17} Pursuant to R.C. 2929.19(B)(5), a term of incarceration may not be imposed for a violation of the terms of community control unless the defendant was notified at sentencing of the specific term of incarceration that could result from violations of the terms and conditions of community control. The sentencing transcript clearly reflects compliance and notification to appellant of the potential term of incarceration stemming from prospective violations. Appellant's second proposed assignment of error is not well-taken.

{¶ 18} Contrary to the notion that the trial court abused its discretion in revoking community control, the record contains an abundance of evidence demonstrating the trial court furnished numerous opportunities to appellant over a five-year period in order for appellant to comply with both an alternative treatment program in lieu of incarceration and to comply with the terms of community control following its imposition given the failure of appellant to complete alternative treatment. Despite multiple opportunities

afforded by the trial court, appellant continued to violate the terms. Appellant's third assignment of error is not well-taken.

{¶ 19} Upon our independent review of the record, we find no grounds for a meritorious appeal. As such, this appeal is found to be without merit and is, therefore, wholly frivolous. Appellant's counsel's motion to withdraw is found well-taken and is hereby granted.

{¶ 20} Wherefore, the judgment of the Wood County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24. The clerk is ordered to serve, by regular mail, all parties, including Abrams, with notice of this decision.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.