

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

State of Ohio

Court of Appeals No. L-10-1081

Appellee

Trial Court No. CR0200903426

v.

Jason Cone

**DECISION AND JUDGMENT**

Appellant

Decided: February 25, 2011

\* \* \* \* \*

Tim A. Dugan, for appellant.

\* \* \* \* \*

SINGER, J.

{¶ 1} Appellant appeals his conviction for robbery, entered on a no contest plea in the Lucas County Court of Common Pleas. Counsel for appellant has filed a brief and motion to withdraw pursuant to *Anders v. California* (1967), 386 U.S. 738.

{¶ 2} On November 28, 2009, a man entered an Oregon, Ohio gift shop and demanded money from one of the owners. When she refused, the man produced an eight inch knife, held it to her throat and forced her to open the cash register. The woman suffered a cut in the struggle. The robbery was interrupted when two customers entered the store. The robber fled, but witnesses obtained the license number from his car. The car was registered to appellant, Jason Cone. Fingerprints at the scene also matched appellant's.

{¶ 3} Appellant was arrested and charged with one count of aggravated robbery, a first degree felony. Appellant initially pled not guilty, but following negotiations agreed to enter a no contest plea to robbery, a second degree felony. Following a plea colloquy, the trial court accepted the plea, found appellant guilty and sentenced him to a six year term of imprisonment. It is from this judgment of conviction that appellant now brings this appeal.

{¶ 4} Pursuant to *Anders*, supra, appellant's counsel has filed a motion to withdraw, stating that he has reviewed the record in this matter and has been unable to discern anything that would support a meritorious appeal.

{¶ 5} The procedure to be followed by appointed counsel who desires to withdraw for want of a meritorious, appealable issue is set forth in *Anders*, supra and *State v. Duncan* (1978), 57 Ohio App.2d 93. 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. *Anders* 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. *Id.* 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 may proceed to a decision on the merits if state law so requires. *Id.*

{¶ 6} In this case, appointed counsel for appellant has satisfied the requirements set forth in *Anders*. This court notes further that appellant has not filed a pro se brief or otherwise responded to counsel's request to withdraw. Accordingly, this court shall proceed with an examination of the potential assignments of error set forth by counsel for appellant and the entire record below to determine if this appeal lacks merit and is, therefore, wholly frivolous.

{¶ 7} Counsel has set forth two potential assignments of error that he has considered and found without merit:

{¶ 8} "1) The Trial Court's sentences [sic] was contrary to law and an abuse of discretion.

{¶ 9} "2) Appellant received ineffective assistance of counsel, violation [sic] his Sixth Amendment Right to Counsel."

{¶ 10} As counsel points out, a court may in its discretion impose any sentence within the permitted statutory range. *State v. Davidson*, 6th Dist. No. L-09-1194, 2010-Ohio-3928, ¶ 19, citing *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856. Nonetheless, a sentencing court must still consider the factors affecting sentencing articulated in R.C. 2929.11 and 2929.12. *Id.*

{¶ 11} An examination of the sentencing court's statements at the sentencing hearing, and in its judgment of conviction clearly reflects a consideration of the sentencing factors and the sentence itself is within the range provided for a second degree felony in R.C. 2929.14(A)(2). Accordingly, appellant's first potential assignment of error is wholly without merit.

{¶ 12} The second potential assignment of error counsel suggests is ineffective assistance of counsel.

{¶ 13} "A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction \* \* \* has two components. First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. \* \* \* Unless a defendant makes both showings, it

cannot be said that the conviction \* \* \* resulted from a breakdown in the adversary process that renders the result unreliable." *Strickland v. Washington* (1984), 466 U.S. 668, 687. Accord, *State v. Smith* (1985), 17 Ohio St.3d 98, 100.

{¶ 14} Like appellate counsel, we have examined the record of this proceeding and fail to find anything to suggest that trial counsel's performance was deficient.

Accordingly, appellant's second potential assignment of error is without merit.

{¶ 15} Upon our own independent review of the record, we find no other grounds for meritorious appeal. Accordingly, this appeal is found to be without merit, and wholly frivolous. Counsel's motion to withdraw is found well-taken and is, hereby, granted.

{¶ 16} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

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.

Mark L. Pietrykowski, J.

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JUDGE

Arlene Singer, J.

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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>.