

**OHIO COURT OF APPEALS, TWELFTH APPELLATE DISTRICT, BUTLER
COUNTY**

State v. Flannery

2021 Ohio 37 (Ohio Ct. App. 2021) · No. CA2020-07-073 · Decided January 11, 2021

SUMMARY

The Twelfth District Court of Appeals of Ohio reviewed Gerald Flannery's criminal appeal under *Anders v. California*. The court found no prejudicial error, granted counsel's motion to withdraw, and dismissed the appeal as wholly frivolous.

CASE DETAILS

COURT	Ohio Court of Appeals, Twelfth Appellate District, Butler County
WRITING FOR THE COURT	Per Curiam; M. Powell, P.J.; S. Powell, J.; Piper, J.
JURISDICTION	Ohio
DECIDED	January 11, 2021
DOCKET	CA2020-07-073
DISPOSITION	dismissed
PROCEDURAL POSTURE	Criminal appeal in which appointed appellate counsel filed an <i>Anders</i> brief and moved to withdraw after concluding that the appeal was wholly frivolous.
STANDARD OF REVIEW	Independent review of the record for prejudicial error and infringement of the appellant's constitutional rights under <i>Anders v. California</i> .
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion
PARTIES	Gerald Flannery v. State of Ohio

TOPICS

appellate procedure criminal procedure right to counsel

PRACTICE AREAS

criminal appellate procedure appointed appellate counsel

QUESTIONS PRESENTED

1. Whether independent review of the record disclosed any prejudicial error or constitutional violation warranting appellate relief.
2. Whether appointed appellate counsel should be permitted to withdraw under *Anders v. California* when counsel determined that the appeal was wholly frivolous.

HOLDINGS

1. Independent review of the record disclosed no error prejudicial to Flannery's rights and no basis for appellate relief.
2. Counsel's motion to withdraw was granted because the appeal was wholly frivolous after independent review.

KEY QUOTATIONS

“Having allowed appellant sufficient time to respond, and no response having been received, we have accordingly examined the record and find no error prejudicial to appellant's rights in the proceedings in the trial court.” (¶3)

“The motion of counsel for appellant requesting to withdraw as counsel is granted, and this appeal is dismissed for the reason that it is wholly frivolous.” (¶3)

FACTUAL BACKGROUND

The record included the docket and journal entries, transcript of proceedings, and original papers from the trial court. Appointed appellate counsel determined that the record disclosed no prejudicial error, identified one potential issue, and sought withdrawal; Flannery did not file a response.

PROCEDURAL HISTORY

Flannery appealed from proceedings in the Hamilton Municipal Court. Appointed counsel filed an *Anders* brief identifying a potential issue, requested independent review, and moved to withdraw; after allowing Flannery time to respond and receiving no response, the court independently reviewed the record, found no prejudicial error, granted withdrawal, and dismissed the appeal.

DISPOSITION

dismissed

CASES CITED

- *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967)

OPINION

PER CURIAM.

[Cite as State v. Flannery, 2021-Ohio-37.] IN THE COURT OF APPEALS TWELFTH APPELLATE DISTRICT OF OHIO BUTLER COUNTY STATE OF OHIO,: Appellee,: CASE NO. CA2020-07-073: DECISION - vs - 1/11/2021 GERALD FLANNERY,: Appellant,: CRIMINAL APPEAL FROM HAMILTON MUNICIPAL COURT Case No. 20CRB00493 Neal D. Schuett, City of Hamilton Prosecuting Attorney, 345 High Street, 2nd Floor, Hamilton, OH 45011, for appellee Christopher P. Frederick, 300 High Street, Suite 550, Hamilton, Ohio 45011, for appellant Per Curiam. {¶1} This cause came on to be considered upon a notice of appeal filed by appellant, Gerald Flannery, the transcript of the docket and journal entries, the transcript of proceedings and original papers from the Butler County Court of Common Pleas, and upon the brief filed by appellant's counsel. {¶2} Appellant's counsel has filed a brief with this court pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct.

1396 (1967), which (1) indicates that a careful review of Butler CA2020-07-073 the record from the proceedings below fails to disclose any errors by the trial court prejudicial to the rights of appellant upon which an assignment of error may be predicated; (2) lists one potential error "that might arguably support the appeal," *Anders*, at 744, 87 S.Ct. at 1400; (3) requests that this court review the record independently to determine whether the proceedings are free from prejudicial error and without infringement of appellant's constitutional rights; (4) requests permission to withdraw as counsel for appellant on the basis that the appeal is wholly frivolous; and (5) certifies that a copy of both the brief and motion to withdraw have been served upon appellant. {¶3} Having allowed appellant sufficient time to respond, and no response having been received, we have accordingly examined the record and find no error prejudicial to appellant's rights in the proceedings in the trial court.

The motion of counsel for appellant requesting to withdraw as counsel is granted, and this appeal is dismissed for the reason that it is wholly frivolous. M. POWELL, P.J., S. POWELL and PIPER, JJ., concur.