

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

State v. Duncan

2022-Ohio-1983 (Ohio Ct. App. 2022) · No. CA2021-12-150; CA2021-12-151 · Decided June 13, 2022

SUMMARY

The Twelfth District Court of Appeals of Ohio reviewed an Anders brief in Joshua Ryan Duncan's criminal appeal. After independently examining the record and finding no prejudicial error, the court granted appointed counsel's motion to withdraw and dismissed the appeal as wholly frivolous.

CASE DETAILS

COURT	Court of Appeals of Ohio, Twelfth Appellate District, Butler County
WRITING FOR THE COURT	Per Curiam; M. Powell, P.J.; Piper, J.; Byrne, J.
JURISDICTION	Ohio
DECIDED	June 13, 2022
DOCKET	CA2021-12-150; CA2021-12-151
DISPOSITION	dismissed
PROCEDURAL POSTURE	Criminal defendant appealed from the Butler County Court of Common Pleas. Appointed appellate counsel filed an Anders brief and a motion to withdraw, asserting that the appeal was wholly frivolous and identifying potential issues for independent review.
STANDARD OF REVIEW	Independent review of the record for prejudicial error and infringement of the appellant's constitutional rights under Anders v. California.
PRECEDENTIAL VALUE	Published and precedential
PARTIES	Joshua Ryan Duncan v. State of Ohio

TOPICS

- appellate procedure
- criminal procedure

PRACTICE AREAS

- criminal appellate procedure
- Anders appeals

QUESTIONS PRESENTED

1. Whether independent review of the record disclosed any prejudicial error or constitutional violation warranting relief.
2. Whether appellate counsel should be permitted to withdraw under the Anders procedure when the appeal is wholly frivolous.
3. Whether the appeal should be dismissed as wholly frivolous.

HOLDINGS

1. Independent review of the record disclosed no error prejudicial to Duncan's rights in the trial-court proceedings.
2. Counsel's motion to withdraw was granted, and the appeal was dismissed because it was wholly frivolous.

KEY QUOTATIONS

“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 opinion concerns Duncan's criminal proceedings in the Butler County Court of Common Pleas. On appeal, appointed counsel reviewed the record, identified three potential errors that might arguably support the appeal, and concluded that no prejudicial error could be assigned. Duncan did not file a response after being given sufficient time to do so.

PROCEDURAL HISTORY

Duncan appealed from proceedings in the Butler County Court of Common Pleas, Case No. CR2020-09-1246. Counsel filed an Anders brief, requested permission to withdraw, and asked the appellate court to independently review the record for prejudicial error. After allowing Duncan time to respond and receiving no response, the court independently examined the record, found no prejudicial error, granted counsel's motion to withdraw, and dismissed the appeal as wholly frivolous.

DISPOSITION

dismissed

CASES CITED

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

OPINION

PER CURIAM.

[Cite as State v. Duncan, 2022-Ohio-1983.] IN THE COURT OF APPEALS TWELFTH APPELLATE DISTRICT OF OHIO BUTLER COUNTY STATE OF OHIO,: Appellee,: CASE NOS. CA2021-12-150 CA2021-12-151 - vs - DECISION: 6/13/2022 JOSHUA RYAN DUNCAN,: Appellant,: APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS Case No. CR2020-09-1246 Michael T. Gmoser, Butler County Prosecuting Attorney, for appellee.

Engel & Martin, LLC, and Mary K. Martin, for appellant. Per Curiam. {¶1} This cause came on to be considered upon a notice of appeal filed by appellant, Joshua Ryan Duncan, 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 CA2021-12-150 CA2021-12-151 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 three potential errors "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., PIPER and BYRNE, JJ., concur.