

FIRST DISTRICT COURT OF APPEAL OF FLORIDA

Dortch v. State of Florida

Dortch v. State of Florida · No. 1D2024-2312 · Decided December 23, 2025

OPINION

Dortch v. State of Florida

PER CURIAM.

FIRST DISTRICT COURT OF APPEAL

STATE OF FLORIDA

_____ No. 1D2024-2312 _____

JOHN SEBASTIAN DORTCH,

Appellant, v.

STATE OF FLORIDA,

Appellee. _____ On appeal from the County Court for Escambia County. Kristina Lightel, Judge. December 23, 2025 PER CURIAM. AFFIRMED. KELSEY and LONG, JJ., concur; TANENBAUM, J., dissents with opinion. _____

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331. _____ TANENBAUM, J., dissenting. The appellant did not receive the assistance of appointed appellate counsel to which he constitutionally is entitled. There also is no rendered judgment for us to review. Still, the majority proceeds with a per-curiam affirmance without further comment. In the trial court, the appellant appears to have pleaded no contest to misdemeanors under a plea agreement. The plea agreement in turn reserved for the appellant the ability to appeal the denial of his motion to suppress following an evidentiary hearing at which the arresting officer testified and his dashcam video played. What the appellant received in the way of representation was a one-page recitation of the facts and one page of legal argument. The legal argument simply noted a Fifth District opinion that says only the trial court can determine the credibility of testifying witnesses. The U.S. Supreme Court requires that “if counsel finds his case to be wholly frivolous, after a conscientious examination of it, he should so advise the court and request permission to withdraw”; but counsel must include with that request “a brief referring to anything in the record that might arguably support the appeal.” *Anders v. California*, 386 U.S. 738, 744 (1967). We then must decide, after conducting our own full examination of the proceedings, “whether the case is wholly frivolous.” *Id.* If we do, then we can grant counsel’s request. But if we do not—because we “find[] any of the legal points arguable on their merits (and therefore not frivolous)” —we “must, prior to decision, afford the indigent the assistance of counsel to argue the appeal.” *Id.* Like it or not, the supreme court requires us to go further: When an *Anders* brief is filed, we are to “assume[] the responsibility of conducting a full

and independent review of the record to discover any arguable issues apparent on the face of the record.” In *re Anders* Briefs, 581 So. 2d 149, 151 (Fla. 1991). To ensure that the reviewing court itself does not become the appellant’s advocate, however, initial responsibility rests with appointed counsel—not us—to master the record and point us to anything that “arguably support[s] the appeal.” *Anders*, 386 U.S. at 744. That is, the brief must give the court comfort that 2 appointed counsel has provided the appellant the constitutionally mandated assistance; in essence, the brief should demonstrate that counsel has done the necessary work. The *Anders* brief falls short here in two respects, and we should be ordering counsel to submit a better one—not just affirming. First, there was a dashcam video played at the suppression hearing in connection with the arresting officer’s testimony. One could review that video and conclude that the testimony stood in direct contradiction to what the video showed. See *Wiggins v. Fla. Dep’t of High. Saf. & Motor Veh.*, 209 So. 3d 1165, 1172 (Fla. 2017). As the court explained in *Wiggins*: We respect the authority and expertise of law enforcement officers, and thus rely on an officer’s memory when necessary. But we would be remiss if we failed to acknowledge that at times, an officer’s human recollection and report may be contrary to that which actually happened as evinced in the real time video. This is the reality of human imperfection; we cannot expect officers to retain information as if he or she were a computer. Therefore, a judge who has the benefit of reviewing objective and neutral video evidence along with officer testimony cannot be expected to ignore that video evidence simply because it totally contradicts the officer’s recollection. Such a standard would produce an absurd result. *Id.* The *Anders* brief does state that the “[v]ideo was shown at the hearing,” and that it did “not show the violations testified to by Officer Bell, nor any other traffic violations.” Counsel, however, does not follow this up with an explanation why an argument under *Wiggins* was not viable. Indeed, the brief does not cite *Wiggins* at all. This is not to say *Wiggins* wins the day here, but the argument plainly is not frivolous. Second, there is no final judgment of conviction signed by the judge—so there is no conclusive exercise of judicial power to be reviewed. Reproduced below is what we have in the record on appeal, purporting to be the “judgment and sentence”: 3 The first page reflects the clerk’s minutes of the proceeding. It is not a final “order,” because a judge cannot render an order via minutes. See Fla. R. App. P. 9.020(f) (defining “order” as a “decision, order, judgment, decree, or rule of a lower tribunal, excluding minutes and minute book entries” (emphasis supplied)). And there cannot be rendition without an “order” that is signed by 4 the judge. See *id.* (h). There is further evidence that we have no judgment here. The first page in no way resembles the following form judgment that must be used by all courts in every criminal case: 5 True, the form may be used with “variations” allowed. Fair to say, though, that using the clerk’s minutes we have here as a substitute is significantly beyond what could be considered a “variation.” The next reproduced page purports to be a cost order, not a sentencing order. See Fla. R. Crim. P. 3.700(a) (defining a “sentence” as the penalty imposed). Though the judge did sign this next page, the two pages are not integrated—they do not reference each other—so they cannot be considered as a single order. Moreover, a judgment and a sentence

are two separate orders. Cf. Fla. R. App. P. 9.140(b)(3) (requiring that a notice of appeal be filed “at any time between rendition of a “final judgment and 30 days following rendition of a written order imposing sentence”). The appellant purports to have appealed his judgment of conviction. Before the court affirms an exercise of judicial power, it should first confirm that there is a proper exercise of that power; or at least have counsel address the issue rather than accept a barebones Anders brief. Appointed counsel is not limited to sure-winners or slam dunks. To provide the proper appellate assistance, counsel must identify issues that are arguable. When counsel clearly has not done this, rather than let counsel off the hook anyway, we are duty bound to strike the brief and require more from counsel. I have identified two obvious issues. The bare constitutional minimum has not been done in this appeal, and we should not be affirming until that happens.

_____ Jessica J. Yeary, Public Defender, and Lori A Willner, Assistant Public Defender, Tallahassee, for Appellant. James Uthmeier, Attorney General, Tallahassee, for Appellee. 6