

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

State of Ohio

Court of Appeals No. L-10-1238

Appellee

Trial Court No. CR0200602794

v.

Garold Straus, Jr.

**DECISION AND JUDGMENT**

Appellant

Decided: May 27, 2011

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
Frank H. Spryszak, Assistant Prosecuting Attorney, for appellee.

Diana L. Bittner, for appellant.

\* \* \* \* \*

SINGER, J.

{¶ 1} Appellant appeals his resentencing after a 2006 conviction for gross sexual imposition in the Lucas County Court of Common Pleas.

{¶ 2} In 2006, appellant, Garold Straus, Jr., entered a plea pursuant to *North Carolina v. Alford* (1970), 400 U.S. 25, to gross sexual imposition, a third degree felony. The trial court accepted the plea and ordered a presentence investigation. On November 21, 2006, following a sex offender hearing, the court found that appellant was

a sexually oriented offender. The court then imposed a four-year term of incarceration and advised appellant of the mandatory five-year period of postrelease control. The court failed, however, to incorporate postrelease control in its judgment entry. See *Woods v. Telb* (2000), 89 Ohio St.3d 504, 512-513. On July 8, 2010, appellant was resentenced at a hearing brought pursuant to *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, ¶ 25. The sentence imposed was identical to the original, save the inclusion of postrelease control included in the judgment entry. It is from this judgment that appellant appeals.

{¶ 3} Appellant's counsel has filed a brief pursuant to *Anders v. California* (1967), 386 U.S. 738, in which she states that following a complete review of the record she has been unable to ascertain a potentially meritorious issue for appeal. Appellate counsel seeks leave to withdraw.

{¶ 4} In conformity with *Anders*, appellate counsel has set forth three potential assignments of error which she states she has considered and rejected as wholly frivolous:

{¶ 5} 1. "Defendant-appellant was denied effective assistance of counsel."

{¶ 6} 2. "Defendant-appellant's resentencing was improper and contrary to law."

{¶ 7} 3. "The post-release control sentence was excessive and prejudicial to defendant-appellant."

{¶ 8} 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 or she 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 or her client with a copy of the brief and request to withdraw and allow the client sufficient time to raise any matters that appellant 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.*

{¶ 9} In this case, appointed counsel for appellant has satisfied the requirements set forth in *Anders*, *supra*. 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.

{¶ 10} As the state points out in its responsive brief, the Supreme Court of Ohio has recently clarified the nature of a postrelease control resentencing hearing. In *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, at paragraphs two and three of the syllabus,

the court held that a postrelease resentencing hearing is limited to that issue alone and " \* \* \* res judicata still applies to other aspects of the merits of a conviction, including the determination of guilt and the lawful elements of the ensuing sentence." As a result, "[t]he scope of an appeal from a resentencing hearing in which a mandatory term of postrelease control is imposed is limited to issues arising at the resentencing hearing." *Id.* at paragraph four of the syllabus.

{¶ 11} Like appellate counsel, we find nothing in the record to suggest that trial counsel's performance at the resentencing hearing was deficient. See *Strickland v. Washington* (1984), 466 U.S. 668, 686. Accordingly, appellant's first potential assignment of error is without merit.

{¶ 12} There is nothing in the record to suggest that appellant's postrelease control was contrary to law or procedurally deficient. Accordingly, appellant's second potential assignment of error is meritless.

{¶ 13} Postrelease control is mandatory for an offender convicted of a felony sex offense. R.C. 2967.28(B). As a result, appellant's third potential assignment of error is without merit.

{¶ 14} Our own careful examination of the record reveals no other point of arguable merit. Accordingly, appellant's appeal is wholly frivolous. Appellate counsel's motion to withdraw is found well-taken and is, hereby, granted.

{¶ 15} On consideration, the judgment of the Lucas County Court of Common Pleas is affirmed. It is ordered that appellant pay the court costs of this appeal pursuant to App.R. 24.

{¶ 16} The clerk is ordered to serve, by regular mail, all parties, including Garold Straus, Jr., 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.

Mark L. Pietrykowski, J. \_\_\_\_\_

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JUDGE

Arlene Singer, J. \_\_\_\_\_

Stephen A. Yarbrough, J. \_\_\_\_\_  
CONCUR.

\_\_\_\_\_  
JUDGE

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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:  
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