[Cite as *State v. Johnson*, 2004-Ohio-567.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO,	)	
	)	
PLAINTIFF-APPELLEE,	)	
	)	CASE NO. 02 CA 206
- VS -	)	
	)	OPINION
EDMUND L. JOHNSON,	)	
	)	
DEFENDANT-APPELLANT.	)	

CHARACTER OF PROCEEDINGS:	Criminal Appeal from Common Pleas Court, Case No. 02 CR 03
JUDGMENT:	Affirmed
APPEARANCES:	
For Plaintiff-Appellee:	Attorney Paul J. Gains Mahoning County Prosecutor Attorney Joseph R. Macejko Asst. County Prosecutor 21 W. Boardman St., 6th Floor Youngstown, Ohio 44503
For Defendant-Appellant:	Attorney Michael L. Gollings 4410 Market St. Youngstown, Ohio 44512

JUDGES:

Hon. Gene Donofrio
Hon. Joseph J. Vukovich

Hon. Mary DeGenaro

Dated: February 3, 2004

DONOFRIO, J.

{¶1} Defendant-appellant, Edmund L. Johnson, appeals his conviction for robbery in the Mahoning County Common Pleas Court following a jury trial.

{¶2} On January 24, 2002, a Mahoning County Grand Jury indicted appellant on one count of aggravated robbery in violation of R.C. 2911.01(A)(1)(C), a felony of the first degree. Appellant pleaded not guilty and was appointed counsel. After numerous delays, including appellant's dissatisfaction with his appointed counsel and the subsequent appointment of new counsel, the matter proceeded to a jury trial which took place on October 21 and 22, 2002. The jury found appellant guilty. On October 25, 2002, the trial court sentenced appellant to a ten year term of imprisonment.

{¶3} Appellant filed a notice of appeal and was appointed appellate counsel. On August 8, 2003, appellant's appointed appellate counsel filed a no merit brief and asked to withdraw as counsel.

{¶4} In *State v. Toney* (1970), 23 Ohio App.2d 203, 52 O.O.2d 304, 262 N.E.2d 419, this court set forth in its syllabus the procedure to be used when counsel of record determines that an indigent's appeal is frivolous:

{¶5} "3. Where a court-appointed counsel, with long and extensive experience in criminal practice, concludes that the indigent's appeal is frivolous and that there is no assignment of error which could be arguably supported on appeal, he should so advise the appointing court by brief and request that he be permitted to withdraw as counsel of record.

{¶6} "4. Court-appointed counsel's conclusions and motion to withdraw as counsel of record should be transmitted forthwith to the indigent, and the indigent should be granted time to raise any points that he chooses, *pro se*.

{¶7} "5. It is the duty of the Court of Appeals to fully examine the proceedings in the trial court, the brief of appointed counsel, the arguments *pro se* of the indigent, and then determine whether or not the appeal is wholly frivolous.

{¶8} "* * *

{¶9} "7. Where the Court of Appeals determines that an indigent's appeal is wholly frivolous, the motion of court-appointed counsel to withdraw as counsel of record should be allowed, and the judgment of the trial court should be affirmed."

{¶10} On August 15, 2003, this court granted appellant thirty days to file a brief raising any assignments of error. He did not.

{¶11} Based on a thorough review of the record and the transcript of proceedings, there appears to be no errors worthy of merit and this appeal appears wholly frivolous. The record amply supports the jury's finding of guilt. Testimony presented during appellant's trial established the following. In the early morning hours of December 20, 2001, appellant rang the buzzer to the door which led to the front desk or registration area of the Terrace Hotel. Rodney and Maxine Henthorne and Maxine's son, Jesse, caretakers for the hotel, were upstairs when the buzzer rang. Maxine went downstairs and let appellant in. As he entered appellant put what appeared to be a gun to Maxine's head and demanded money. Rodney and Jesse came downstairs soon thereafter and attempted to help Maxine. The altercation spilled out into the parking lot, with all ending up wrestling on the ground. Maxine broke free, retrieved a crucifix attached to a wooden pole, returned to the parking lot, and began to strike appellant in the head with the pole as Rodney and Jesse still struggled with him. Police arrived, broke up the fight, and arrested appellant.

{¶12} The thrust of appellant's defense was voluntary intoxication. In Ohio, prior to October, 2000, where specific intent was an element of the crime charged, voluntary intoxication could be shown to have precluded the defendant from forming the intent necessary to commit the crime. *State v. Fox* (1981), 68 Ohio St.2d 53, 55, 22 O.O.3d 259, 428 N.E.2d 410. However, pursuant to R.C. 2901.21(C), as amended effective October 27, 2000, "[v]oluntary intoxication may not be taken into consideration in determining the existence of a mental state that is an element of a criminal offense." H.B. 318. Therefore, the defense of voluntary intoxication is no longer applicable.

{¶13} Accordingly, counsel's motion to withdraw is sustained and the judgment of the trial court is hereby affirmed.

Judgment affirmed.

Vukovich and DeGenaro, JJ., concur.