

[Cite as *State v. Fields*, 2009-Ohio-3949.]

IN THE COURT OF APPEALS OF CHAMPAIGN COUNTY, OHIO

STATE OF OHIO	:	
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Plaintiff-Appellee	:	C.A. CASE NO. 08CA0012
vs.	:	T.C. CASE NO. 06CR224
	:	
BRYAN WAYNE FIELDS	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	

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O P I N I O N

Rendered on the 7th day of August, 2009.

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GRADY, J.:

{¶ 1} Defendant, Bryan Wayne Fields, was indicted for one count of theft of anhydrous ammonia, R.C. 2913.02(A)(1), one count of receiving stolen property, R.C. 2913.51(A), one count of illegal assembly or possession of chemicals for the manufacture of drugs, R.C. 2925.041(A), and two counts of

possession of criminal tools, R.C. 2923.24(A). Defendant filed a motion to suppress evidence recovered by police during a search of the vehicle Defendant was driving when he was arrested. The trial court overruled Defendant's motion following a hearing, finding that Defendant voluntarily consented to the search of the vehicle.

{¶ 2} Defendant entered into a plea agreement with the State.

Defendant pled guilty to count three, illegal assembly or possession of chemicals for the manufacture of drugs, a third degree felony. In exchange, the State dismissed the other pending charges. Defendant failed to appear for sentencing on February 2, 2007, and a *capias* was issued for his arrest.

{¶ 3} On April 23, 2008, Defendant appeared before the court for sentencing. The trial court sentenced Defendant to a four year prison term, to be served consecutive to a sentence Defendant is currently serving in Kentucky for criminal offenses committed in that state after Defendant entered his guilty plea in this case. The court also fined Defendant five thousand dollars and suspended his driver's license for five years.

{¶ 4} Defendant timely appealed to this court from his conviction and sentence. Defendant's appellate counsel filed an *Anders* brief, *Anders v. California* (1967), 386 U.S. 738,

87 S.Ct. 1396, 19 L.Ed.2d 493, stating that he could find no meritorious issues for appellate review. We notified Defendant of his appellate counsel's representations and afforded him ample time to file a pro se brief. None has been received. This case is now before us for our independent review of the record. *Penson v. Ohio* (1988), 488 U.S. 75, 109 S.Ct. 346, 102 L.Ed.2d 300.

{¶ 5} Defendant's appellate counsel has not identified any possible issues for appeal. He simply states: "Counsel has been unable to detect any legitimate issue to raise on appeal."

{¶ 6} Defendant's appellate counsel does state that Defendant should have been allowed to hire a new attorney of his own choosing.

{¶ 7} The court had appointed counsel to represent Defendant on a finding that he is indigent. On November 22, 2006, the court conducted a pretrial conference at which Defendant agreed to accept the State's offer and enter a guilty plea. The following colloquy took place after conversations between Defendant and his attorney, Mr. Brecount:

{¶ 8} "MR. BRECOUNT: Your Honor, I apologize. In light of what Mr. Fields has said, he's indicated he does not wish to proceed at this point. Thank you.

{¶ 9} "THE COURT: Your lawyer has stated that you do not

wish to proceed with entering a plea of guilt. Is that a fair statement, Mr. Fields?

{¶ 10} "DEFENDANT FIELDS: Yes, sir, it is.

{¶ 11} "THE COURT: And is there a reason that you changed your mind?

{¶ 12} "DEFENDANT FIELDS: Yes, sir, I would like to hire a new lawyer.

{¶ 13} "THE COURT: Did you hire Attorney Brecount?

{¶ 14} "DEFENDANT FIELDS: No, sir, I did - I would like to try to get me a paid attorney if I can.

{¶ 15} "THE COURT: How is it that you believe you can afford to hire a lawyer now when you couldn't before:

{¶ 16} "DEFENDANT FIELDS: I don't really know if I can afford to or not, but -

{¶ 17} "THE COURT: There has been no basis shown to dismiss Attorney Brecount, so at this point he remains your, what people call, court appointed lawyer." (T. 7-8).

{¶ 18} On December 11, 2006, in a proceeding in which Defendant was represented by Attorney Brecount, Defendant accepted the State's offer and entered his guilty plea. Before accepting the plea the court inquired of Defendant, "Do you have confidence in your lawyer?" Defendant replied, "Yes, sir, I do." (T. 7).

{¶ 19} It is the duty of the court to inquire whether a defendant's objection regarding his appointed counsel is "an arbitrary failure to go forward or a legitimate claim of inadequate representation." *State v. Deal* (1969), 17 Ohio St.2d 17, 20. In order to demonstrate that appointed counsel's representation is inadequate, and his removal from the appointment is justified, a defendant must demonstrate his legitimate dissatisfaction with counsel's performance and/or a breakdown in the attorney-client relationship of a magnitude sufficient to jeopardize the defendant's Sixth Amendment right to the effective assistance of counsel. *State v. Pillow*, Greene App. No. 07CA95, 2008-Ohio-6046.

{¶ 20} Defendant offered no basis to remove counsel from his appointment other than Defendant's expressed desire to "hire a new lawyer." Defendant conceded that he did not know whether he could afford to hire a lawyer. Those circumstances suggest that Defendant's request was nothing more than an arbitrary failure to go forward. *State v. Deal*.

{¶ 21} The trial court found that Defendant had failed to demonstrate good cause for removing his court-appointed lawyer. But, that did not prevent Defendant from hiring his own lawyer, if he was able to. That apparently did not come about, as

Defendant's appointed counsel appeared and represented him at the subsequent plea proceeding. At that proceeding, Defendant expressed his confidence in appointed counsel. This claim lacks arguable merit.

{¶ 22} We conducted an independent review of the trial court's proceedings in this case including the court's decision overruling Defendant's motion to suppress the evidence, the guilty plea proceeding, and the sentencing proceeding, and have found no errors having arguable merit.

{¶ 23} Accordingly, Defendant's appeal is without merit and the judgment of the trial court will be affirmed.

DONOVAN, P.J. And BROGAN, J., concur.

Copies mailed to:

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Hon. Roger B. Wilson