

[Cite as *State v. Drane*, 2010-Ohio-5898.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23862
v.	:	T.C. NO. 09CR3145/2
JAMARIYO DRANE	:	(Criminal appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	

**OPINION**

Rendered on the 3<sup>rd</sup> day of December, 2010.

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Attorney for Defendant-Appellant

JAMARIYO DRANE, #A625-302, Madison Correctional Institute, P. O. Box 740, London, Ohio 43140  
Defendant-Appellant

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DONOVAN, P.J.

{¶ 1} This is an appeal from a judgment of the Montgomery County Court of Common Pleas that found Appellant, Jamariyo Drane, guilty of aggravated robbery on

January 20, 2010. Appellant's counsel filed an appeal pursuant to *Anders v. California* (1967), 386 U.S. 738. After a thorough review of the record before us, we find no grounds for a meritorious appeal. Accordingly, we affirm the trial court's decision.

I

{¶ 2} On June 30, 2009, Kathleen Pendley pulled into the garage of the family-owned business after running errands. She noticed a white car behind her that she thought belonged to a customer. A man exited the vehicle and pointed a gun at Pendley, demanding her purse. Connie Johnson, Pendley's daughter, also worked at the business and witnessed the man point the gun at Pendley. Drane was acting as an accomplice during the robbery with the armed man.

{¶ 3} The robbers got back into their car and drove off. A police chase ensued through several neighborhoods lasting twenty-nine minutes. After the police stopped the car with stop-sticks, Drane and the principal were apprehended at the scene.

{¶ 4} Drane, a minor at the time of the offense, subsequently appeared in Juvenile Court. An amenability hearing was set to determine if Drane should be tried as a juvenile or an adult. The juvenile court judge, after listening to testimony and weighing the factors set forth in R.C. 2152.12 (D) and (E), determined that Drane should be transferred to the General Division of the Montgomery County Court of Common Pleas.

{¶ 5} Thereafter, a jury trial took place on January 20, 2010, and Drane was found guilty of aggravated robbery, a felony of the first degree, along with a firearm specification. Drane was sentenced to four years on the aggravated robbery charge and three years on the firearm specification, to be served consecutively, for an aggregate prison term of seven years.

## II

{¶ 6} Counsel for the Appellant submitted a brief under the authority of *Anders v. California* (1967), 386 U.S. 738. Appellant's counsel averred that, after reviewing the record of the trial court proceedings, there were no arguable issues for appeal.

{¶ 7} *Anders* sets forth the procedure appointed appellate counsel must follow when he/she wishes to withdraw for lack of any meritorious appealable issues. In *Anders*, the United States Supreme Court held that if counsel does a conscientious examination of the case and determines an appeal to be frivolous, counsel should advise the court and then should request permission to withdraw. *Anders*, 386 U.S. at 744. Counsel must also give his/her client a copy of the brief along with the request to withdraw. *Id.* The appellant then must be given sufficient time to raise any matters he so chooses. *Id.* After those requirements are satisfied, the appellate court must conduct a thorough examination of the proceedings to determine if the appeal is actually frivolous. *Id.* If the appellate court does determine the appeal is frivolous, it may then grant counsel's request to withdraw and then dismiss the appeal without violating any constitutional requirements, or the court can proceed to a decision on the merits if state law requires it. *Id.*

{¶ 8} Appellant's appointed counsel satisfied the requirements of *Anders* 386 U.S. 744. We notified Appellant of his appellate counsel's representation and offered him ample time to file a pro se brief. None has been filed.

## III

{¶ 9} Counsel sets forth two potential assignments of error. The first assignment of error is as follows:

{¶ 10} “DRANE’S TRANSFER FROM THE JUVENILE DIVISION TO THE GENERAL DIVISION WAS INAPPROPRIATE BECAUSE HE WAS AMENABLE TO CARE IN THE JUVENILE SYSTEM.”

{¶ 11} Drane argues that the juvenile court failed to properly weigh the factors set forth in R.C. 2152.12 (D) and (E), and that the testimony from Drane’s probation officer, Karen Shaffer, as well as Dr. Fujimara, the psychologist who interviewed Drane, could be interpreted to favor Drane remaining in the juvenile court.

{¶ 12} The record reveals that the juvenile court judge closely examined all the facts presented and weighed the factors set forth in R.C. 2152.12 (D) and (E), making specific findings that are supported in the record.

{¶ 13} Drane’s first proposed assignment of error lacks merit and is overruled.

{¶ 14} His second proposed assignment of error is as follows:

{¶ 15} “THE FIREARM SPECIFICATION UNDER R.C. 2941.145 AND THE SUBSEQUENT THREE YEAR SENTENCE UNDER R.C. 2929.14 WERE INAPPROPRIATE AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.”

{¶ 16} Drane argues that there was no evidence that he actually had a weapon on his person or under his control, and therefore that the attachment of the attendant firearm specification to his conviction is against the manifest weight of the evidence.

{¶ 17} “When an appellate court analyzes a conviction under the manifest weight of the evidence standard it must review the entire record, weigh all of the evidence and all the reasonable inferences, consider the credibility of the witnesses and determine whether in resolving conflicts in the evidence, the fact finder clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and

a new trial ordered. (Internal citations omitted). Only in exceptional cases, where the evidence ‘weighs heavily against the conviction,’ should an appellate court overturn the trial court’s judgment.” *State v. Dossett*, Montgomery App. No. 20997, 2006-Ohio-3367, ¶ 32.

{¶ 18} R.C. 2923.03(F) permitted the State of Ohio to indict Drane for aggravated robbery, since “a charge of complicity may be stated in terms of this section, or in terms of the principal offense.” As stated by this court in *State v. Rust* (1984), 14 Ohio App.3d 314, an aider and abettor can be found guilty of a firearm specification. R.C. 2941.145 does not exempt aiders and abettors. Since R.C. 2923.03 provides for punishment of an aider and abettor as if the principal offender, the penalty enhancement provision of R.C. 2941.145 is applicable. See, *State v. Chavis* (1992), Montgomery App. No. 12064. Accordingly, Drane’s sentence on the firearm specification is not against the manifest weight of the evidence.

{¶ 19} Drane’s second potential assignment of error is overruled.

V

{¶ 20} Upon an independent review of the record, we have found no grounds for a meritorious appeal. Accordingly, the judgment of the trial court is affirmed.

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FAIN, J. and GRADY, J., concur.

Copies mailed to:

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Hon. Mary L. Wiseman