[Cite as *State v. Johnson*, 2024-Ohio-4875.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. Patricia A. Delaney, P.J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	Case No. CT 2024 0030
	:	
FORREST JOHNSON	:	
	:	
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Muskingum County Court of Common Pleas CR2023- 0826
JUDGMENT:	Affirmed Motion For Leave to Withdraw Granted
DATE OF JUDGMENT ENTRY:	October 8, 2024

APPEARANCES:

For Plaintiff-Appellee:	For Defendant-Appellant:
Ron Welch Muskingum County Prosecutor 27 North Fifth Street, P.O. Box 189 Zanesville, Ohio 43702	Chris Brigdon 8138 Somerset Road Thornville, Ohio 43076

Delaney, P.J.

{¶1} Defendant-Appellant Forrest Johnson has appealed from the March 4, 2024, Judgment Entry of the Muskingum County Court of Common Pleas in which he was convicted of two counts of rape and one count of gross sexual imposition after he pleaded guilty. Plaintiff-Appellee the State of Ohio did not appear in this appeal.

{¶2} The lawyer who was appointed to represent Johnson on appeal has submitted a brief as provided by to the United States Supreme Court's decision in *Anders v. California*, 386 U.S. 738 (1967), asserting he found no issues of arguable merit for appeal. He has moved to withdraw as counsel. In his brief, Counsel stated that a copy of the *Anders* brief was sent to Johnson. Johnson has not filed a brief.

{¶3} We have independently reviewed the record and have concluded that there are no issues of arguable merit. Accordingly, we grant the motion to withdraw and affirm the judgment of the trial court.

FACTS AND PROCEDURAL HISTORY

{¶4} Prior to the change of plea hearing, there were no discovery responses or hearings. Therefore, we are limited to the indictment and the facts presented at the change of plea hearing. The facts were offered by the prosecutor and Defendant stipulated to them for purposes of the plea.

{¶5} On September 15, 2021, Defendant's daughter met with her school resource counselor at the middle school. She told the counselor that her father had sex with her on the previous day. This was reported to Children Services and referred to a detective. During a forensic interview and subsequent investigation, it was discovered that there had been multiple incidents of sexual contact.

{¶6} Beginning when the child was 11 years old, Defendant asked to have sex with her on multiple occasions until eventually she submitted against her will. The abuse took place between June 21, 2020, and September 14, 2021. Defendant would wear a condom each time and would put his penis in her vagina. The prosecutor stated that more detail was provided by the child, but that he was abbreviating the narrative to those facts necessary to establish the charges.

{¶7} As the case was being investigated, another victim came forward and spoke to the detective in the case. She indicated that Defendant had done things to her as well when she was a child between May 18, 2008, and May 17, 2010. Although an adult at the time of the investigation, the woman recounted that when she was six or seven, she was alone with Defendant in a house that had a bedroom in the living room. Defendant told her to take off her clothes and get on the bed. He gave her the "option" of letting him do "whatever he wanted" or kissing her all over. He then kissed her on her body, including her breasts and vagina.

{¶8} Defendant was charged in an 11-count indictment with four counts of rape in violation of R.C. 2907.02(A)(1)(b), 2907.02(B), each a felony in the first degree, one count of gross sexual imposition in violation of R.C. 2907.05(A)(4), 2907.05(C)(2), a felony in the third degree, and two counts of child endangerment in violation of R.C. 2919.22(A), 2919.22(E)(2)(a), each a misdemeanor in the first degree, for sexual contact with his daughter. He was charged with three counts of gross sexual imposition in violation of R.C. 2907.05(A)(4), 2907.05(C)(2), each a felony in the third degree, for his sexual contact with the second victim.

{¶9} Defendant filed discovery requests including a motion to preserve and produce evidence. He did not file any other motions.

{¶10} On January 18, 2024, Defendant entered into a signed plea agreement with the State. He agreed to change his plea to guilty for Counts 1 and 5 for rape of his daughter and Count 8 for gross sexual imposition regarding the second victim. The State agreed to dismiss the other seven charges. The parties agreed to a joint sentencing recommendation of 25 years in prison.

{¶11} On January 18, 2024, the court held a hearing and Defendant changed his plea to guilty on those three counts. The judge conducted a plea colloquy and advised Defendant of the rights he was giving up by changing his plea. The court accepted the plea change and ordered a presentence investigation. On February 18, 2024, Defendant was sentenced to a mandatory minimum prison term of 20 years, up to an indefinite maximum of 30 years in prison. He was also sentenced to post-release control.

{¶12} The court appointed counsel on his behalf for an appeal. His appellate counsel reviewed the record and has asked this Court to determine if any issues of arguable merit exist to pursue on an appeal.

ASSIGNMENTS OF ERROR

{¶13} In his *Anders* brief, Johnson's counsel has not pointed to any potential assignments of error for this Court to review. In the Statement of the Issues section of his brief, he states:

> Due to the fact that the trial court followed the joint recommendation of the Parties after a negotiated pleas agreement, there are no frivolous issues regarding the Appellant's conviction of counts 1, 5, and 8 and the subsequent sentencing.

ANALYSIS

Anders Brief

{¶14} In *Anders v. California*, 386 U.S. 738 (1967), the United States Supreme Court weighed an indigent defendant's right to counsel against counsel's duty to refrain from filing frivolous pleadings. It concluded that if a court appointed appellate lawyer performed a conscientious examination of the record and concluded that the appeal was "wholly frivolous," then he should advise the court and request permission to withdraw. *Id.* at 744. The request to withdraw must be accompanied by a brief identifying anything in the record that could arguably support the appeal. *Id*. Counsel also must: (1) furnish his client with a copy of the brief and request to withdraw and (2) allow his client sufficient time to raise any matters that the client chooses. *Id*.

{¶15} Once counsel satisfies these requirements, the appellate court must fully examine the proceedings to determine if any arguably meritorious issue exists. *Id*. An appeal is wholly frivolous if the record is devoid of any legal points arguable on the merits. *State v. Middaugh*, 2003-Ohio-91, ¶ 13 (5th Dist.). If the court determines that the appeal is wholly frivolous, it may grant counsel's request to withdraw and dismiss the appeal without violating constitutional requirements or it may proceed to a decision on the merits if state law so requires. *Id*. If the court "concludes that there are nonfrivolous issues for appeal, 'it must, prior to decision, afford the indigent the assistance of counsel to argue the appeal.'" *Penson v. Ohio*, 488 U.S. 75, 80 (1988), quoting *Anders*, 386 U.S. at 744.

{¶16} When determining if an issue is frivolous and lacks arguable merit, it is not enough to expect that the prosecution will present a strong argument in reply or to conclude that it is uncertain whether a defendant will prevail on the issue on appeal. *State*

v. Sanders, 2024-Ohio-2235, ¶ 12 (5th Dist.). Rather, an issue lacks arguable merit if pursuant to the facts and law "no responsible contention can be made that it offers a basis for reversal." *Id*., citing *State v. Pullen,* 2002-Ohio-6788 (2d Dist.), ¶ 4.

{¶17} In this case, defendant's counsel has concluded that there are no arguably meritorious claims to raise on appeal. He has provided no potential challenges to the trial court's rulings.

{¶18} This Court has reviewed the record, including the hearing transcripts for the plea change and sentencing. After reviewing the record before us, we agree that there are no issues of merit for the Court to review. Appellate counsel has followed the *Anders* procedures. We therefore concur with appellate counsel that Defendant's appeal is without merit and wholly frivolous as set forth in *Anders*.

{¶19} Having independently reviewed the record and determined that the proceedings were proper, this Court concludes that counsel's motion to withdraw should be granted and the trial court's judgment should be affirmed.

CONCLUSION

{¶20} Counsel's Motion to Withdraw as counsel is granted. The judgment of the Muskingum County Court of Common Pleas is affirmed.

By: Delaney, P.J.,

Wise, J. and

Baldwin, J., concur.