

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

In re T.D.

Court of Appeals Nos. L-13-1237
L-13-1238
L-13-1239

Trial Court Nos. DL 12223930
DL 13235317
DL 13235449

DECISION AND JUDGMENT

Decided: May 16, 2014

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Patricia Wardrop, Assistant Prosecuting Attorney, for appellee.

Dan M. Weiss, for appellant.

* * * * *

YARBROUGH, P.J.

I. Introduction

{¶ 1} This is an *Anders* appeal. Appellant, T.D., appeals the judgment of the Lucas County Court of Common Pleas, Juvenile Division, finding him delinquent and

committing him to the custody of the Ohio Department of Youth Services for a total minimum term of 30 months and a maximum period not to exceed his attainment of 21 years of age.

A. Facts and Procedural Background

{¶ 2} On May 15, 2012, a complaint was filed with the juvenile court, charging appellant with one count of burglary in violation of R.C. 2911.12(A)(1). The charge stemmed from an incident that occurred on May 10, 2012, in which appellant broke into a home located in Toledo, Ohio, and proceeded to remove property and cash from the home. Appellant subsequently entered an admission to the charge and a dispositional hearing was held on June 27, 2012. Ultimately, appellant was put on probation and placed at Starr Commonwealth as part of his probation plan.

{¶ 3} Six months later, appellant was charged with a violation of the terms of his probation. On December 28, 2012, appellant admitted to the violation, and was removed from Starr Commonwealth and placed at the Youth Treatment Facility in Toledo. While at the Youth Treatment Facility, two additional charges were brought against appellant.

{¶ 4} In case No. DL 13235317, appellant was charged with one count of assault in violation of R.C. 2903.13(A) and (C)(2)(b), in connection with an incident in which he spat on another juvenile's shoulder. Four days later, appellant was again charged with assault in case No. DL 13235449 as a result of an incident where appellant punched another juvenile in the face several times. The cases were consolidated and a hearing was held on October 11, 2013.

{¶ 5} On the morning of the hearing, appellant stated to his supervisor that “I am not going to F’ing court. You’ll have to drag me to court.” Due to appellant’s refusal to attend the hearing, along with the safety issues stemming from appellant’s history of violence, the court ordered that appellant appear in court with handcuffs, leg shackles, and a “spit mask.” Upon appellant’s entrance into the courtroom, the following conversation took place:

THE COURT: We’re here in the matters of [appellant].

THE JUVENILE: Man, fuck this matter.

THE COURT: Today is October 11th —

THE JUVENILE: Oh, fuck today.

THE COURT: — 2013.

THE JUVENILE: Oh, fuck 2013.

THE COURT: And it’s —

THE JUVENILE: Oh, fuck whatever you’re about to say, man. I am not going to let you talk the whole court time.

THE COURT: [Appellant], you have the right to remain silent.

Anything —

THE JUVENILE: I don’t care what you’re talking about.

THE COURT: — you say can be used against you.

THE JUVENILE: La-la-la-la-la-la-la-la-la —

THE COURT: We've been trying to conduct these proceedings and we now have two deputy sheriffs in here with the record being made, and it's extremely difficult to work. The Court finds that I cannot function and do my work with [appellant] carrying on the way he is. [appellant] —

THE JUVENILE: What you going to say next, Bitch?

THE COURT: I'm going to say will you please be quiet.

THE JUVENILE: No. I'm talking the whole court time.

THE COURT: Well, if you talk —

THE JUVENILE: You all drag me in this bitch. I didn't want to come in this bitch, and now I'm going to talk 'til this bitch over.

THE COURT: Well, if you talk the whole time, we can't do our work here.

THE JUVENILE: You can't talk. That's the whole point. I win either way, Bitch.

THE COURT: Well, if you choose to talk, then I'm going to ask you —

THE JUVENILE: To be removed?

THE COURT: Exactly.

THE JUVENILE: Yes, and that's what I want to do. Take me out of this bitch.

THE COURT: You want to be removed? Do you understand that when you leave —

THE JUVENILE: Yes, I understand. Now stop talking, Bitch. You said too many words to me. I'm done talking. La-la-la-la-la-la-la.

THE COURT: Okay. You might be done talking to me, but I'm not done talking to you. So you understand that you have the right to be present in these proceedings?

THE JUVENILE: La-la-la-la-la-la-la.

THE COURT: And you have the right to assist your counsel in these proceedings.

THE JUVENILE: Oh, fuck your proceedings.

* * *

[THE STATE]: Your Honor, the State at this time would move to have —

THE JUVENILE: Stop playing with me, Bro. I'll flip this bitch.

[THE STATE]: — the defendant removed from the courtroom.

THE COURT: Okay.

THE JUVENILE: That shit don't hurt, Bro. You ain't doing shit that ain't been done before, nigga.

THE COURT: At this — at this point in time the Court finds that [appellant] is being so disruptive that the Court cannot —

THE JUVENILE: Man, I'm sitting here trying to listen, but this dude want to keep on playing with me, Bro.

THE COURT: The Court saw [appellant] try to pick up counsel's table that he was at.

THE JUVENILE: I didn't try to pick it up. I tried to look back.

THE COURT: And the Court finds this to be disruptive. We have now had a motion from State's counsel that the proceedings are being disrupted and we cannot go forward because [appellant] —

THE JUVENILE: Let me go out this bitch. Come on, it's time to go.

THE COURT: — is being antagonistic, verbal and physically aggressive toward the deputies even though he's been restrained.

{¶ 6} Ultimately, appellant was removed from the courtroom upon a finding that the proceedings could not continue in his presence. The court found that appellant's conduct was "so disruptive that the Court had difficulty communicating with the parties and with counsel and with [appellant]. Even though [appellant] said that he could behave, the Court found that his physical conduct was contrary to that. And for the safety of [appellant] and for the safety of others, he — he was excused."

{¶ 7} After taking testimony from several witnesses, the court inquired about having appellant returned to the courtroom for the remainder of the adjudication phase of the trial. All parties declined to have appellant returned. Prior to proceeding to

disposition, the court again asked if the parties wished to have appellant returned to the courtroom. This time, appellant's counsel indicated to that court that he had spoken to appellant and appellant wished to return to the courtroom for disposition. Additionally, counsel indicated that appellant promised to behave this time around. The court decided to permit appellant to return to the courtroom. Appellant was not disruptive during the dispositional phase.

{¶ 8} At the conclusion of the dispositional hearing, appellant was adjudicated delinquent and committed to the custody of the Ohio Department of Youth Services for a total minimum term of 30 months and a maximum period not to exceed his attainment of 21 years of age. Appellant's timely appeal followed.

B. *Anders* Requirements

{¶ 9} Appointed counsel has filed a brief and requested leave to withdraw as counsel pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). Under *Anders*, if, after a conscientious examination of the case, counsel concludes the appeal to be wholly frivolous, he or she should so advise the court and request permission to withdraw. *Id.* at 744. This request must be accompanied by a brief identifying anything in the record that could arguably support the appeal. *Id.* In addition, counsel must provide the appellant with a copy of the brief and request to withdraw, and allow the appellant sufficient time to raise any additional matters through the filing of his or her own appellate brief. *Id.* Appointed counsel has satisfied these requirements in this case.

{¶ 10} Once these requirements are satisfied, the appellate court is required to conduct an independent examination of the proceedings below to determine if the appeal is indeed frivolous. *Id.* If it so finds, the appellate court may grant counsel’s request to withdraw, and decide the appeal without violating any constitutional requirements. *Id.*

C. Assignment(s) of Error

{¶ 11} Appointed counsel has proposed the following potential assignment of error for our review:

APPELLANT’S CONSTITUTIONAL RIGHTS WERE
VIOLATED WHEN THE TRIAL COURT BARRED HIM FROM THE
ADJUDICATION HEARING ON THE CRIMINAL CHARGES
PRESENTED BY THE LUCAS COUNTY JUVENILE PROSECUTOR.

{¶ 12} Appellant has not filed a pro se brief in this matter.

II. Analysis

{¶ 13} In counsel’s sole potential assignment of error, he argues that appellant’s constitutional rights were violated when the trial court excluded appellant from the adjudication hearing. In making his argument, counsel cites Crim.R. 43 for the proposition that appellant is entitled to be present at the hearing.

{¶ 14} We note at the outset that the Rules of Criminal Procedure “prescribe the procedure to be followed in all courts of this state in the exercise of criminal jurisdiction.” Further, Crim.R. 1(C) states that the criminal rules, “*to the extent that specific procedure is provided by other rules of the Supreme Court or to the extent that*

they would by their nature be clearly inapplicable, shall not apply to procedure * * * (5) in juvenile proceedings against a child as defined in Rule 2(D) of the Rules of Juvenile Procedure.” (Emphasis added.) We find that the Rules of Juvenile Procedure do not expressly provide for a juvenile defendant’s physical presence during a delinquency proceeding. Thus, we apply the procedure set forth in Crim.R. 43. *See In re Coleman*, 4th Dist. Scioto No. 01CA2773, 2002 WL 853481, *4 (Mar. 27, 2002) (applying Crim.R. 6(E) where the Rules of Juvenile Procedure did not contain “specific procedures to govern the disclosure of grand jury testimony” and the rule was not clearly inapplicable).

{¶ 15} A criminal defendant has a federal and state fundamental due process right to be present at all critical stages of his trial, absent a waiver of rights or other extraordinary circumstances. *State v. Williams*, 6 Ohio St.3d 281, 286, 452 N.E.2d 1323 (1983). Section 10, Article I of the Ohio Constitution provides that “[i]n any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel.” Moreover, Crim.R. 43(A)(1) provides:

Except as provided in Rule 10 of these rules and division (A)(2) of this rule, the defendant must be physically present at every stage of the criminal proceeding and trial, * * * except as otherwise provided by these rules. In all prosecutions, the defendant’s voluntary absence after the trial has been commenced in the defendant’s presence shall not prevent continuing the trial to and including the verdict.

{¶ 16} While a juvenile defendant has a clear right to be present during the course of the criminal proceedings against him, Crim.R. 43(A)(3) provides that “[t]he defendant may waive, in writing or on the record, the defendant’s right to be physically present under these rules with leave of court.” Further, Crim.R. 43(B) allows the court to exclude the defendant from the courtroom due to conduct that is “so disruptive that the hearing or trial cannot reasonably be conducted with the defendant’s continued physical presence.”

{¶ 17} Here, appointed counsel recognizes the obvious fact that appellant’s conduct was so disruptive that the court could not conduct the hearing while appellant remained in the courtroom. Indeed, the discussion between appellant, as set forth verbatim in the recitation of facts above, speaks for itself in demonstrating the disruptive nature of appellant’s outbursts. Additionally, we recognize that appellant expressed his strong desire to be excluded from the courtroom on multiple occasions. Thus, the record supports a determination that appellant waived his right to be present, as contemplated by Crim.R. 43(A)(3).

{¶ 18} In light of the foregoing, we find counsel’s sole potential assignment of error not well-taken.

III. Conclusion

{¶ 19} This court, as required under *Anders*, has undertaken our own examination of the record to determine whether any issue of arguable merit is presented for appeal.

We have found none. Accordingly, we grant the motion of appellant’s counsel to withdraw.

{¶ 20} The judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24. The clerk is ordered to serve all parties 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.

JUDGE

Stephen A. Yarbrough, P.J.

JUDGE

James D. Jensen, J.
CONCUR.

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:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.