

FILED

Aug 29, 2016

Court of Appeals
Division III
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III



STATE OF WASHINGTON,)	
)	NO. 34203-4-III
Respondent,)	
)	MOTION TO DISMISS
vs.)	PURSUANT TO RAP
)	RAP 18.3 (a)(2)
ALFRED EARLE BROWN,)	
)	
Appellant.)	
_____)	

1. IDENTITY OF MOVING PARTY

The State of Washington, Respondent herein, asks for the relief designated in Part 2.

2. STATEMENT OF RELIEF SOUGHT

Respondent requests that this Court dismiss the appeal filed herein.

3. FACTS RELEVANT TO MOTION

Pursuant to RAP 10.3 (b) the State shall not include a facts section, the facts as presented by Appellant are sufficient for the purposes of this Motion to Dismiss.

After this appeal was filed, counsel for appellant filed Appellant's Brief and Motion to Withdraw pursuant to Anders v. California, 386 U.S. 738, 18 L.Ed.2d 493, 87 S.Ct. 1396 (1967); RAP 15.2(h) and 18.3(a)(2). Appellant's counsel obviously reviewed the Report of Proceedings and the Clerk's Papers and stated that she found no meritorious appealable issues and requested that this court grant permission to withdraw. Counsel for appellant addressed each of five possible matters to which error could be assigned. The State concurs in Appellant's counsel's legal opinion with regard to these issues.

4. GROUND FOR RELIEF AND ARGUMENT

Respondent has also reviewed the record to include all matters filed in the Superior Court file, the record and the case law cited by Appellant. Respondent would concur with Appellant that there are no issues of merit in this case.

Appellant has addressed five areas which upon initial review of the record would appear to be possible areas for review. These issues are;

- i. Involuntary waiver of Miranda rights
- ii. Involuntary guilty plea
- iii. Ineffective assistance of counsel

iv. Sentence outside the standard range

v. Statements at sentencing by persons other than the victim;

As counsel has indicated none of these are issues which rise to the level of such that additional review is warranted by this court.

It is apparent that counsel of Appellant has fully and completely considered these issues including citation to the applicable case law. The Respondent must agree with the analysis set forth in Appellant's brief regarding these issues.

Counsel's motion to withdraw indicates, after reviewing the record in this case, Appellant's counsel finds no meritorious appealable issue. The reference to the record covers several pages and is a thorough and complete summation of all facts set forth in the record herein, and demonstrates that Appellant's counsel has conducted a full examination of all the proceedings herein.

The standard of review for this type of hearing is set out in State v. Campbell, 84 Wn. App. 596, 601-02, 929 P.2d 1175 (1997):

The court's determination as to the defendant's resources and ability to pay is essentially factual and should be reviewed under the clearly erroneous standard. State v. Baldwin, 63 Wn. App. 303, 312, 818 P.2d 1116, 837 P.2d 646 (1991). The evidence is minimally sufficient to support the trial court's finding that Campbell was able to make payment on his financial obligations. Thus, he does not face

imprisonment for inability to pay, but only for contemptuous refusal to pay. Therefore, under Curry and Barklind, his constitutional claims fail.

The examination of the record by Appellant's counsel confirmed that nothing in this record might arguably support an appeal; that there are no legal points in this appeal which are arguable on their merits. The record supports Appellants request for dismissal.

State v. Leeloo, 94 Wn. App. 403, 405-06, 972 P.2d 122 (1999) set forth the standard that must be met by counsel, clearly counsel has complied:

In Anders, the Supreme Court set out the procedure for withdrawal of appellate counsel as follows:

[I]f counsel finds his case to be wholly frivolous, after a conscientious examination of it, he should so advise the court and request permission to withdraw. That request must, however, be accompanied by a brief referring to anything in the record that might arguably support the appeal. A copy of counsel's brief should be furnished the indigent and time allowed him to raise any points that he chooses; the court - not counsel then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous. If it so finds it may grant counsel's request to withdraw and dismiss the appeal insofar as federal requirements are concerned, or proceed to a decision on the merits, if state law so requires. Washington courts have not addressed whether Anders

requires counsel to review and provide this court with transcripts from plea or sentencing hearings before a motion to withdraw can be entertained. Our courts have recognized, however, that appointed counsel "may be entitled to a complete transcript in order to . . . comply with Anders" and that the reviewing court has a duty to independently review "the whole record." The few courts that have addressed this issue in other jurisdictions have uniformly held that counsel must review and provide a transcript or alternative record of such proceedings. (Footnotes omitted.)

5. CONCLUSION

A review of the record by Respondent supports the position of counsel for Appellant; there are no issues which if raised on appeal, would be successful. The State concurs in the legal opinions made by Appellant's counsel and joins in counsel's request that this Court independently review the record to determine if there are any errors in the trial court or anything other matters which might arguably support an appeal.

If this Court concurs with counsel for Appellant and the State, this appeal should be dismissed. State v. Hairston, 133 Wn.2d 534, 536-7, 946 P.2d 397 (1997):

In this jurisdiction once appellate counsel is appointed in a criminal matter counsel may withdraw only with the court's permission. RAP 18.3(a)(1). If appointed appellate counsel can find no basis for a

good faith appeal, counsel may file a request to withdraw known as an Anders brief. RAP 18.3(a)(2). In such a situation the court may relieve counsel and either dismiss the appeal or leave the indigent to proceed pro se; however, the court must first ascertain that the appeal is in fact frivolous lest it deny the defendant his constitutional right to appeal. (Footnotes omitted.)

Respectfully submitted this 26th day of August, 2016

s/ David B. Trefry

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DECLARATION OF SERVICE

I, David B. Trefry, state that on August 26, 2016, I emailed a copy, by agreement of the parties, of the Respondent's Brief to: Ms. Andrea Burkhart at andrea@burkhartandburkhart.com

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 26th day of August, 2016 at Spokane, Washington.

s/ David B. Trefry

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YAKIMA COUNTY PROSECUTOR

August 26, 2016 - 5:03 PM

Transmittal Letter

Document Uploaded: 342034-Brown 342034 Reply to Ander Mot Dis.pdf
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Court of Appeals Case Number: 34203-4
Party Represented: State of Washington - Yakima County Prosecutors Office
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Comments:

No Comments were entered.

Proof of service is attached and an email service by agreement has been made to andrea@burkhartandburkhart.com and breanna@burkhartandburkhart.com.

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