[Cite as *State v. Dyer*, 2018-Ohio-2979.]

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

State of Ohio — Court of Appeals No. L-17-1258

Appellee — Trial Court No. CR0201702122

v.

Jesse E. Dyer, Jr. — **DECISION AND JUDGMENT**

Appellant — Decided: July 27, 2018

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Alyssa Breyman, Assistant Prosecuting Attorney, for appellee.

Patricia Horner, for appellant.

* * * * *

SINGER, J.

{¶ 1} This matter is before the court on the *Anders* brief filed pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), by appellant's appointed counsel, Patricia Horner.

{¶ 2} On June 29, 2018 we released *State v. Wenner*, 6th Dist. Sandusky No. S-18-4, 2018-Ohio-2590, in which this court pronounced that it will no longer accept *Anders* briefs in criminal appeals. However, because this case was filed pre-*Wenner*, we proceed with our role customarily undertaken pursuant to *Anders*.

{¶ 3} The procedure to be followed by appointed counsel who desires to withdraw for want of a meritorious, appealable issue is set forth in *Anders*, as well as *State v. Duncan*, 57 Ohio App.2d 93, 385 N.E.2d 323 (8th Dist.1978). *See also* 6th Dist.Loc.App.R. 10(G).

{¶ 4} In *Anders*, the U.S. Supreme Court found if counsel, after a conscientious examination of the case, determines it to be wholly frivolous, counsel should so advise the court and request permission to withdraw. *Anders* 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 furnish the client with a copy of the brief and request to withdraw and allow the client sufficient time to raise any matters the client so chooses. *Id*. Once the requirements are fulfilled, the appellate court must conduct a full examination of the proceedings and decide if the appeal is indeed frivolous. *Id*. If the appellate court determines the argument is frivolous, it may grant counsel's request to withdraw and dismiss the appeal or it may proceed to a decision on the merits. *Id*.

{¶ 5} Here, our review reveals counsel failed to include the required contents of an *Anders* brief, the required statement of compliance, the required motion to withdraw, and the required language reflecting compliance with service of the *Anders* brief upon

appellant. *Id*. *See also* 6th Dist.Loc.App.R. 10(G). In that regard, because counsel did not comply with the *Anders* requirements, we find the record insufficient to conduct an examination and decide if the appeal is indeed frivolous. *See, e.g., State v. Bracey,* 6th Dist. Sandusky No. S-16-025, 2017-Ohio-4334. As a result, we dismiss Patricia Horner as counsel, and we appoint Clayton Gerbitz, P.O. Box 208, Swanton, Ohio, 43558, to represent appellant for purposes of this appeal.

{¶ 6} Newly appointed counsel is to submit an original merit brief on this matter pursuant to *Wenner,* and is granted 20 days from the date of this order to file an amended praecipe. The record is to be filed 23 days from the date the amended praecipe is filed. Briefing shall then proceed pursuant to App.R. 18. The clerk is ordered to serve all parties, including the defendant, with notice of this decision.

Counsel appointed.

Arlene Singer, J. _____
JUDGE

James D. Jensen, J. _____
JUDGE

Christine E. Mayle, P.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.supremecourt.ohio.gov/ROD/docs/.