

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-081235
Plaintiff-Appellee,	:	TRIAL NO. B-0805767
vs.	:	<i>JUDGMENT ENTRY.</i>
DAVID HAMBY,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

David Hamby appeals his conviction for escape. We affirm the judgment of the trial court.

Hamby was indicted for leaving a residential facility while under detention for burglary. He pleaded guilty to the offense. The trial court conducted a Crim.R. 11 colloquy with Hamby, accepted the guilty plea, and later sentenced Hamby to one year's confinement.

Pursuant to *Anders v. California*,² Hamby's appointed counsel now advises this court that, after a thorough review of the record, she has found nothing that would arguably support Hamby's appeal, and she has moved this court for permission to withdraw as counsel. Under *Anders*, this court is now charged with the task of independently reviewing the record for any prejudicial error that would warrant the reversal of the trial court's judgment.³ Counsel, as required by *Anders*, has given Hamby an opportunity to provide grounds for his appeal. Hamby believes

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² (1967), 386 U.S. 738, 87 S.Ct. 1396.

³ *Id.*

that prosecuting witness was not truthful. But Hamby did not raise this issue with the trial court, so the issue was waived when he pleaded guilty knowingly, intelligently, and voluntarily. Hamby has also suggested that his indictment was defective because it alleged that he had been convicted of a sexually oriented offense. The language in the indictment included language from R.C. 2921.34(A)(1), which prohibits the failure to return to detention following temporary leave, and from R.C. 2921.34(A)(2), which prohibits a previously adjudicated sexually violent offender from leaving a restricted geographic area. The bill of particulars made clear that the state was alleging that Hamby had violated R.C. 2921.34(A)(1) only. Finally, Hamby claims that he was not credited for the correct amount of days for time previously served. But it appears from the record that the trial court properly credited Hamby for 118 days previously served.

We have thoroughly reviewed the record, and we concur in counsel's conclusion that the proceedings below were free of error prejudicial to Hamby.

Our determination that the proceedings below were free of prejudicial error also compels our conclusion that there are no reasonable grounds for this appeal. But due to Hamby's indigency, we allow no penalty.

Therefore, we affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., SUNDERMANN and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on July 29, 2009

per order of the Court _____.

Presiding Judge