County Criminal Court: CRIMINAL LAW—Jury Trial—Evidence. After conducting a full and independent review of the record, this Court finds no arguable issue for appeal in this case. The record in this case supports the denial of Appellant's motion for judgment of acquittal, and the judgment and sentence are supported by competent, substantial evidence. Affirmed. *Jeffrey Hensley v. State of Florida*, No. 13-CF-3135-WS (Fla. 6th Cir. App. Ct. September 30, 2014).

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY
APPELLATE DIVISION

JEFFREY HENSLEY,
Appellant,

v.

STATE OF FLORIDA,
Appellee.
_____/

UCN: 512013CF003135A000WS
Appeal No: CRC1303135CFAWS
L.T. No: 12-7933XBNTWS

On appeal from County Court

Honorable Debra Roberts

Simone A. Lennon, Esquire,
for Appellant,

Ashley Donnell, Esquire,
Office of the State Attorney,
for Appellee.

ORDER AND OPINION

Based on this Court's full and independent review of the record, the Court finds no arguable issue for appeal in this case. Therefore it is unnecessary to require the filing of an additional brief in this matter, or the appointment of new counsel to represent Appellant on appeal. The record in this case supports the denial of Appellant's motion for judgment of acquittal, and the judgment and sentence are supported by competent, substantial evidence. The trial court is therefore affirmed.

STATEMENT OF THE CASE AND FACTS

Testimony at trial in this case was that Appellant was observed by a motorist swerving on the road. The motorist alerted police and followed the vehicle until a Deputy arrived and made contact with the driver. The Deputy testified that when he arrived Appellant was attempting to drive up a dirt road off the highway. The Deputy observed a beer can in the bed of the truck and Appellant in the driver's seat as the sole occupant of the truck. The Deputy testified as to detecting an odor of alcohol, and Appellant as having bloodshot, watery eyes. Another Trooper was called to assist on the scene, and testified to observing signs of impairment and requesting Appellant perform a field sobriety test. The Trooper testified that Appellant's eyes jerked from left to right during the test, that Appellant swerved during the instructions, failed to take heel to toe steps and declined to stand on one leg. The Trooper also testified that Appellant admitted to drinking three beers. Appellant's testimony at trial in this case was that he is disabled due to a previous injury that crushed his toe, and that he also had bad disks in his neck and back. Appellant testified that a woman drove him home on the night of the incident and he had not been driving. Appellant was arrested for driving under the influence of alcohol in violation of § 316.193, Fla. Stat., and was convicted by a jury and sentenced to 11 months and 29 days in jail.

STANDARD OF REVIEW

Once an attorney has filed an *Anders* brief, the Court has "the responsibility of conducting a full and independent review of the record to discover any arguable issues apparent on the face of the record." *In re Anders Briefs*, 581 So. 2d 149, 151 (Fla. 1991) (citing *Anders v. California*, 386 U.S. 738, 744, 87 S. Ct. 1396, 1400 (1967)). "If the appellate court finds that the record supports any arguable claims, the court must afford the indigent the right to appointed counsel, and it must give the state an opportunity to file a brief on the arguable claims." *Id.*

When reviewing an order on a motion for judgment of acquittal, this Court applies a de novo standard of review. *State v. Fagan*, 857 So. 2d 320, 321 (Fla. 2d DCA 2003). This Court will not reverse the judgment of the trial court if there is competent

substantial evidence supporting it. *See Pagan v. State*, 830 So. 2d 792, 803 (Fla. 2002).

ANALYSIS

Attorney for Appellant filed a brief in this case pursuant to *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967), stating that no meritorious argument could be found to support the contention that the trial court committed reversible error in this case, despite a thorough review of the record on appeal and the law on point. Accordingly, should this Court find the possibility of reversible error, counsel should be permitted to file another brief on behalf of Appellant, or other counsel appointed to do so. *Penson v. Ohio*, 488 U.S. 75, 109 S. Ct. 346 (1988).

> [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.

Anders v. State of California, 386 U.S. 738, 744, 87 S. Ct. 1396, 1400 (U.S. 1967). The *Anders* case provides "a narrow exception" to an indigent's "right of counsel by enabling courts to entertain an appeal as of right without counsel when counsel believes the appeal is wholly without merit," but, "once a court determines that the trial record supports arguable claims, there is no basis for the exception and, as provided in *Douglas*, the criminal appellant is entitled to representation." *In re Anders Briefs*, 581 So. 2d 149, 150-51 (Fla. 1991). "However, the appellate court is to conduct its full and independent review even if the indigent elects not to file a pro se brief," and may only allow counsel to withdraw and consider the merits of the appeal without assistance of

counsel "if the appellate court finds no arguable issue for appeal." *Id.* at 151 (citing *Penson*, 488 U.S. at 80).[1]

On appeal, counsel for Appellant directs the Court's attention to potential error in the trial court's denial of Appellant's motion for judgment of acquittal, and the judgment and sentence in this case. The purpose of a judgment of acquittal is to review the legal sufficiency of the evidence. When each element of a crime is supported by competent evidence a motion for judgment of acquittal should be denied. *Anderson v. State*, 504 So. 2d 1270, 1271 (Fla. 1st DCA 1986). This Court will not reverse the judgment of the trial court if there is competent substantial evidence supporting it. *See Pagan v. State*, 830 So. 2d 792, 803 (Fla. 2002). "If, after viewing the evidence in the light most favorable to the State, a rational trier of fact could find the existence of the elements of the crime beyond a reasonable doubt, sufficient evidence exists to sustain a conviction." *Id.*

We find no error with the trial court's denial of Appellant's motion for judgment of acquittal in this case. Further, testimony of the officers in this case is sufficient evidence to support the jury's finding that Appellant was guilty beyond a reasonable doubt of driving under the influence. Pursuant to statute, driving under the influence as Appellant was charged is a first degree misdemeanor with a maximum penalty of one year in county jail. This conviction was Appellant's fourth DUI. The trial court imposed a legal sentence that does not exceed the statutory maximum for the crime of which Appellant was convicted.

[1] Appellant was provided notice by order of this Court that counsel for Appellant had filed a brief pursuant to *Anders v. State of California*, 386 U.S. 738, asserting there are no meritorious grounds for appeal, and was provided the opportunity to file an independent brief on appeal prior to consideration of the merits of the appeal by this Court. Appellant did not respond to the order.

CONCLUSION

After conducting a full and independent review of the record, this Court finds no arguable issue for appeal in this case. The record in this case supports the denial of Appellant's motion for judgment of acquittal, and the judgment and sentence are supported by competent, substantial evidence. The trial court is therefore affirmed.

It is ORDERED AND ADJUDGED that the order of the trial court is AFFIRMED.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this 30th day of September, 2014.

Original order entered on September 30, 2014 by Circuit Judges Stanley R. Mills, Linda Babb and Daniel D. Diskey.