

County Criminal Court: CRIMINAL LAW—Evidence. The trial court properly denied motion for judgment of acquittal. The record demonstrates sufficient evidence to support each element of the crime of which Appellant was convicted, and the sentence imposed is a legal sentence. Affirmed. *William Gale v. State of Florida*, No. 13-CF-5315-WS (Fla. 6th Cir. App. Ct. December 16, 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**

WILLIAM GALE,
Appellant,

UCN: 512013CF005315A000WS
Appeal No: CRC1305315CFAWS
L.T. No: 13-3062-MM-WS

v.

STATE OF FLORIDA,
Appellee.

_____/

On appeal from County Court,

Honorable Marc Salton,

Simone A. Lennon, Esquire,
for Appellant,

Samantha Beckman, Esquire,
Office of the State Attorney,
for Appellee.

ORDER AND OPINION

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

STATEMENT OF THE CASE AND FACTS

Appellant was charged with one count of Petit Theft in violation of § 812.014, Fla. Stat., and one count of Trespass on Property other than Structure or Conveyance, in violation of § 810.09, Fla. Stat. A trial was had in the matter on July 24, 2013, at which State presented two witnesses. The victim in the case testified that she owned a mobile home and surrounding property which she had rented to Appellant. The victim testified that Appellant was evicted from the property for non-payment of rent, and that Appellant left personal items on the premises after the eviction, but was not given permission to re-enter the property to claim the items. The victim testified that upon learning that Appellant had re-entered the property, she notified the Sheriff's Office.

State's second witness at trial was Deputy Bland, who testified that he received a call regarding a request by Appellant to remove his truck from the premises after the eviction, and then received a second call from the victim informing him that Appellant had been evicted and was not authorized to be on the property. The Deputy testified that he arrived at the premises and spoke with Appellant, and advised Appellant to leave the premises. The Deputy testified that at that time, he observed that the gates to the premises were closed and secured with chains and locks. The Deputy testified that he received a second call that Appellant had returned to the property, and that he later observed Appellant entering a tow truck that was leaving the property, and that the gates to the property were open at that time.

Appellant moved for a judgment of acquittal after the close of State's presentation of evidence, which motion was denied. The defense called three witness, a friend of Appellant's, who testified that she had loaned Appellant a lock and keys which Appellant used to lock the premises when he occupied the property, and that the lock Appellant removed to enter the property during the incident belonged to her. The witness further testified that one of the officers on the premises at the time of the incident asked her to bring her personal key and use it to unlock the lock which had been removed. On cross-examination, the witness testified that she had previously been convicted of three felonies, and had been convicted of seven crimes involving dishonesty.

The second witness to testify on behalf of Appellant was his nephew, who testified that Appellant called him to request assistance retrieving the truck from the premises, and testified that Appellant never entered the victim's property, and was on the street when the tow truck arrived to remove Appellant's truck from the premises.

Appellant also testified on his own behalf, and admitted to unlocking the chains to the gate while officers were present; that the lock and key were borrowed from a friend who previously testified; that he did not personally set foot on the property, but only unlocked the gate for the tow truck, and that the victim had given him permission in a voicemail on the morning of the incident to enter the property for purposes of retrieving the truck. On rebuttal, the victim denied having given Appellant permission to retrieve the truck on that day. The Deputy testified on rebuttal that he did not give Appellant permission to open the lock, and that he personally observed Appellant on the premises when he responded to the second call regarding the incident.

The jury returned a verdict of not guilty on the charge of Petit Theft, but returned a verdict of guilty on the charge of Trespass, and Appellant was sentenced to one year probation and 15 days in jail.

STANDARD OF REVIEW

Attorney for Appellant filed a brief on appeal pursuant to *Anders v. California*, 386 U.S. 738, 744, 87 S. Ct. 1396, 1400 (1967), stating there is no meritorious argument on appeal. 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*, 386 U.S. at 744). "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 and sentence of the trial court if there is

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

LAW AND ANALYSIS

Attorney for Appellant states 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, if this Court finds 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); *Anders*, 386 U.S. at 744. 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).

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, and 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). “When a defendant moves for judgment of acquittal,” it amounts to an admission of “all facts in evidence adduced and every conclusion favorable to the State reasonably inferable therefrom.” *Id.* See *Sutton v. State*, 834 So. 2d 332, 334 (Fla. 5th DCA 2003).

The State produced sufficient evidence at the trial below to satisfy each element of the crime of which Appellant was convicted. Section 810.09, Fla. Stat., provides in relevant part:

(1)(a) A person who, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance:

1. As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011; or
2. If the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass,

commits the offense of trespass on property other than a structure or conveyance.

The victim testified that Appellant was evicted from the premises and was asked to return all keys to the property, including gate keys, upon his departure. The victim testified that Appellant left personal property on the premises after the eviction, namely, Appellant's truck, but was not given permission to re-enter the property to retrieve the items at the time of the incident. Both the victim and the Deputy testified to observing a wrecking truck pulling out of the gate from the premises, and that the locks were missing on the gate after the truck left. The Deputy testified to observing Appellant near the premises and informing Appellant he was not permitted on the property, and that he later received a second call and observed Appellant on the premises entering a tow truck that was exiting the premises, and that the gates had previously been closed and locked but were open at that point.

The record contains competent, substantial evidence to support the denial of the judgment of acquittal, and the judgment and sentence in this case. The sentence of one year of probation and 15 days in jail is a legal sentence. Trespass on Property other than Structure or Conveyance as charged in this case is a first degree misdemeanor, for which the maximum penalty is a one year sentence to county jail. See § 810.09(2)(a), Fla. Stat. The sentence imposed in this case was one year of probation, with 15 days to be served in the county jail. There is no indication that this is not a legal sentence.

Appellant was provided notice by this Court that Appellant had the opportunity to file an additional brief as a result of appellate counsel filing a brief pursuant to *Anders v. State of California*, 386 U.S. 738. Appellant did not elect to file an additional brief or otherwise respond to the Court's notice.

CONCLUSION

Based on this Court's full and independent review of the record, the Court finds no arguable issue for appeal in this case. The judgment and sentence in this case are supported by competent, substantial evidence. The trial court is hereby AFFIRMED.

It is therefore ORDERED that the order of the trial court denying the motion for judgment of acquittal, and the judgment and sentence in this case are AFFIRMED.

Done and ordered in Chambers at New Port Richey, Pasco County, Florida this 16th day of December, 2014.

Original order entered on December 16, 2014 by Circuit Judges Stanley R. Mills, Shawn Crane and Daniel D. Diskey.