County Criminal Court: CRIMINAL PROCEDURE—Jurisdiction. The Court lacks jurisdiction to consider an appeal of a judgment entered based on a plea agreement when defendant did not file a motion to withdraw plea or a motion to vacate, the trial court had jurisdiction over the matter, imposed a legal sentence, and there are no allegations the State violated the terms of the plea agreement. The appeal is dismissed. *Tony Robert Dull v. State of Florida*, No. 14-CF-0070-WS (Fla. 6th Cir. App. Ct. March 31, 2015).

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

TONY ROBERT DULL,		
Appellant,	**UCN:**	**512014CF000070A000WS**
		512014CF000071A000WS
v.	**Appeal Nos:**	**CRC14000070CFAWS**
		CRC14000071CFAWS
STATE OF FLORIDA,	**L.T. Nos:**	**2013-006935-MM-WS**
Appellee,		**2013-007006-MM-WS**

_____/

On appeal from County Court,

Honorable Anne Wansboro,

Simone Lennon, Esquire,
for Appellant.

ORDER AND OPINION

Appellant pled no contest to the charges at hand and did not file a motion to withdraw the pleas, or otherwise preserve any issue for appellate review. The record demonstrates no meritorious issues on appeal, and therefore it is unnecessary to allow counsel to file an additional brief, or appoint new counsel to represent Appellant, as counsel for Appellant filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), in each appeal. The appeals are hereby dismissed.[1]

[1] Although separate appeals were filed addressing each charge, the plea agreements were entered during the same hearing on December 4, 2013, and counsel for Appellant submitted nearly identical briefs in each appeal. The cases involve similar issues of fact and law and are hereby consolidated on appeal.

STATEMENT OF THE CASE AND FACTS

On November 14, 2013, Appellant was charged with two counts of Trespass in Structure or Conveyance in violation of § 810.08, Fla. Stat.[2] On December 4, 2013, Appellant entered pleas of no contest to both charges. The trial court accepted the agreed upon disposition of the adjudication, and sentenced Appellant to time served (53 days), court costs, and no contact with the victim. Appellant filed a timely notice of appeal in this Court. On appeal, counsel for Appellant filed a brief pursuant to *Anders v. California*, 386 U.S. 738, asserting that despite review of the record and applicable law, there is no meritorious argument that the trial court committed error in these matters.

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*, 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. See Penson v. Ohio*, 488 U.S. 75 (1988).

LAW AND ANALYSIS

Attorney for Appellant states no meritorious argument can be found to support the contention that the trial court committed reversible error in this case. "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." *In re Anders Briefs*, 581 So. 2d at 151 (citing *Penson*, 488 U.S. at 80).

When a defendant pleads to the charges at hand without reserving the right to contest a dispositive issue, only certain challenges may be raised on appeal: 1) the trial court lacked jurisdiction over the matter; 2) the State violated the plea agreement

[2] It appears the trespasses occurred at the same location on October 11, 2013, and again on October 13, 2013.

entered into with the defendant; 3) the trial court denied a motion to withdraw the plea; or, 4) the sentence imposed is an illegal sentence. *See Counts v. State*, 376 So. 2d 59, 60 (Fla. 2d DCA 1979); Fla. R. App. P. 9.140(b)(2)(A) (a defendant "may not appeal from a guilty or nolo contendere plea" unless the defendant "expressly reserve[s] the right to appeal a prior dispositive order of the lower tribunal"). *See McGinty v. State*, 463 So. 2d 495 (Fla. 2d DCA 1985) (dismissing appeal after pro se appellant failed to respond to an order from the court to show cause why the appeal should not be dismissed, after finding that defendant entered a guilty plea, the sentence imposed was within the maximum permitted by law, and defendant had not filed a motion to withdraw the plea, and explaining to appellant that if he believed the plea was involuntary the issue could only be raised on collateral attack and not by direct appeal). The issue is a jurisdictional one "which the court is obliged to resolve even if not raised by either counsel" on appeal. *McGinty*, 463 So. 2d at 495.

The trial court had jurisdiction over the charges against Appellant, who was charged with misdemeanor offenses. There is no motion in the record to withdraw Appellant's plea, and Appellant did not reserve the right to appeal any dispositive issues in the matter. Further, the sentence imposed does not exceed the statutory maximum for the crimes charged. *See* §§ 810.08(2)(a), 775.082, 775.083, Fla. Stat. The Court finds no meritorious argument that error was committed in these causes. *See McGinty*, 463 So. 2d 495. *See also Hadden v. State*, 555 So. 2d 430 (Fla. 2d DCA 1990). The Court in *McGinty* dismissed the appeal, directing appellant that the proper remedy would be a motion to withdraw plea or vacate the sentence pursuant to Fla. R. Crim. P. 3.850, rather than by direct appeal. *See* 463 So. 2d at 496. *See generally Griffin v. State* 760 So. 2d 205 (Fla. 2d DCA 2000).

The record demonstrates no meritorious argument on appeal in this case. Despite being provided a copy of the brief filed by counsel on appeal, as well as notice by order of this Court that Appellant had the opportunity to file an additional brief as a result of appellate counsel filing a brief pursuant to *Anders*, 386 U.S. 738, Appellant did not elect to file an additional brief or otherwise respond to the Court's order. This Court's

review of the record demonstrates no basis on which to allege error in these matters. The appeal is therefore dismissed, in accordance with *McGinty*, 463 So. 2d at 496.

CONCLUSION

There is no meritorious ground to allege error on appeal. Appellant failed to file a motion to withdraw plea or a motion to vacate pursuant to Fla. R. Crim. P. 3.850. The Court finds no basis on which to allege error in these matters. The appeals are therefore DISMISSED.

It is ORDERED AND ADJUDGED that Appeal No. 2014-CF-0070-WS, and No. 2014-CF-0071-WS are hereby DISMISSED.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this 31st day of March, 2015.

Original order entered on March 31, 2015, by Circuit Judges Daniel D. Diskey, Linda Babb and Shawn Crane.