

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

STATE OF OHIO,	:	APPEAL NO. C-170477
Plaintiff-Appellee,	:	TRIAL NO. B-1703156
vs.	:	<i>OPINION.</i>
RAFEVEL GREEN,	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Motion to Withdraw as Counsel for Appellant is Granted, New Counsel for Appellant is Appointed, Further Briefing is Ordered, and Appeal is Ordered to be Resubmitted

Date of Judgment Entry on Appeal: June 20, 2018

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Paula E. Adams*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Brian T. Goldberg, for Defendant-Appellant.

MYERS, Judge.

{¶1} Following guilty pleas, Rafevel Green was convicted of having a weapon while under a disability, trafficking in cocaine, trafficking in heroin, aggravated possession of drugs, and child endangering. Green’s appointed appellate counsel has filed a no-error brief in accordance with Loc.R. 16.2 following the procedures identified in *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).

{¶2} Counsel has advised this court that, after a thorough review of the record, he has found nothing that would arguably support Green’s appeal, and that the appeal is wholly frivolous. *See id.* Counsel has communicated his conclusion to Green and has offered him an opportunity to respond and to raise any issues. Green has not done so. Counsel has, therefore, moved for permission to withdraw as counsel. *See Anders* at 744; *see also* 1st Dist. Loc.R. 16.2(C)(1) and 16.2(D)(2).

{¶3} Counsel now requests that this court independently examine the record to determine whether the appeal is wholly frivolous. *See Anders* at 744. If we determine that the appeal is wholly frivolous, we may proceed to a decision on the merits. *See In re Booker*, 133 Ohio App.3d 387, 390, 728 N.E.2d 405 (1st Dist.1999), citing *Anders* at 744. If, however, we conclude that “any legal points arguable on their merits and prejudicial to the defendant exist, we must ensure, prior to decision, that the indigent defendant receives the assistance of counsel to argue the appeal.” *State v. Gilbert*, 1st Dist. No. C-110382, 2012-Ohio-1366, ¶ 6, citing *Booker* at 390-391.

{¶4} Based on our review of the record and the applicable law, we cannot say that Green’s appeal is wholly frivolous. We find that an arguable issue exists as

to the validity of Green's guilty pleas where the trial court failed to notify him of his constitutional right to confront his accusers. *See State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, ¶ 19, 29.

{¶5} Because legal points arguable on their merits remain to be resolved, this court cannot now, without the assistance of counsel to argue these matters for Green, and without the state's response, reach a decision on the merits of the appeal. *See Gilbert* at ¶ 9, citing *Anders*, 386 U.S at 744, 87 S.Ct. 1396, 18 L.Ed.2d 493. We, therefore, grant counsel's motion to withdraw. We appoint attorney Scott A. Rubenstein, Attorney Registration Number 0071655, to serve as counsel for Green. We order him to present, in accordance with App.R. 12 and 16(A), an assignment of error on the issue of the validity of Green's guilty plea, and on any other matter that counsel may discover in a diligent review of the record.

{¶6} We further order new counsel to file a brief on or before July 16, 2018, 2018, and counsel for the state to file a responsive brief on or before August 16, 2018.

Judgment accordingly.

CUNNINGHAM, P.J. and **MILLER, J.**, concur.

Please note:

The court has recorded its own entry on the date of the release of this opinion.