

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

DUSTIN CHRISTOPHER GOSHORN

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1167 MDA 2012

Appeal from the Judgment of Sentence May 30, 2012
In the Court of Common Pleas of Franklin County
Criminal Division at No(s): CP-28-CR-0000063-2012

BEFORE: SHOGAN, J., OTT, J., and COLVILLE, J.*

MEMORANDUM BY OTT, J.:

FILED MAY 07, 2013

Dustin Christopher Goshorn appeals from the judgment of sentence entered against him following his entry into a negotiated guilty plea to the charge of aggravated assault.¹ In exchange for his guilty plea, the Commonwealth agreed to dismiss charges of flight, simple assault and attempted homicide. Additionally, it was agreed Goshorn would receive a sentence of 42 to 84 months' incarceration. In this appeal, Goshorn claims his sentence was manifestly excessive. Counsel has reviewed the claim and the certified record and has determined the appeal is frivolous. Therefore,

* Retired Senior Judge assigned to the Superior Court.

¹ 18 Pa.C.S. § 2702(a)(1).

counsel has filed an **Anders**² brief as well as a motion to withdraw as counsel. Following a thorough review of the certified record, submission by defense counsel, and relevant law, we grant counsel's motion to withdraw and affirm Goshorn's judgment of sentence.

The facts underlying Goshorn's crime are easily related. Sometime in the late night/early morning hours of January 5-6, 2012, Goshorn choked his girlfriend, Kristy Murphy. This left distinct marks on her neck and throat. He also beat her, causing severe swelling to her face and breaking her upper dental plate. On April 20, 2012, Goshorn entered into the negotiated plea as described above. Even though sentence was negotiated, a pre-sentence report was ordered and Goshorn was not formally sentenced until May 30, 2012. Approximately one week later, Goshorn requested counsel appeal his judgment of sentence, stating, "I would like to appeal my sentence on grounds of the time being extremely long for the charge and I would like to get it lowered as much as possible." **See** Inmate Request Slip, 6/5/12. This timely appeal followed.

As noted, Counsel has filed an **Anders** brief in this matter.

When presented with an **Anders** brief, this Court may not review the merits of the underlying issues without first passing on the request to withdraw. **Commonwealth v. Goodwin**, 928 A.2d 287, 290 (Pa. Super. 2007) (*en banc*.) Before counsel is permitted to withdraw, he or she must meet the following requirements:

² **Anders v. California**, 386 U.S. 738 (1967).

First, counsel must petition the court for leave to withdraw and state that after making a conscientious examination of the record, he has determined that the appeal is frivolous; second, he must file a brief referring to any issues in the record of arguable merit; and third, he must furnish a copy of the brief to the defendant and advise him of his right to retain new counsel or to himself raise any additional points he deems worthy of the Superior Court's attention.

[***Commonwealth v. Santiago***, 602 Pa. [159] at 178-79, 978 A.2d [349] at 361 [(2009)]. FN2

FN2. The requirements set forth in ***Santiago*** apply to cases where the briefing notice was issued after August 25, 2009, the date the Santiago opinion was filed. As the briefing notice in this case was issued after Santiago was filed, its requirements are applicable here.

Commonwealth v. Martuscelli, 54 A.3d 940, 947 (Pa. Super. 2012).

Counsel has fulfilled the mandates of ***Anders/Santiago***. He has stated he has made a conscientious review of the record,³ he has determined there are no non-frivolous issues to be litigated, and explained why the issue Goshorn raised is meritless. He has notified Goshorn of his determination, as well as of his intent to file the ***Anders*** brief. Finally, counsel has also notified Goshorn of his right to obtain private counsel and to file a response to the ***Anders*** brief. Goshorn has not filed a response to

³ We note that the notes of testimony from the guilty plea were not transcribed. However, we do not believe this is fatal to the ***Anders*** brief. We have reviewed the charging documents, the written guilty plea colloquy and the notes of testimony from the sentencing hearing. There is no indication in the record that there were any problems with the guilty plea or that Goshorn wanted to withdraw the plea. Further, counsel informed Goshorn he was not going to challenge the adequacy or voluntariness of the plea and Goshorn never responded. Therefore, we do not believe there are any cognizable issues attendant to the guilty plea.

the **Anders** brief. Having determined counsel has fulfilled his duties to Goshorn pursuant to **Anders/Santiago**, we grant counsel's motion to withdraw as counsel.

The sole issue raised is a challenge to the discretionary aspect of his sentence. Goshorn claims his sentence is "extremely long for the charge" and he would "like to get it lowered." This issue has been squarely addressed in prior decisions.

Where the plea agreement contains a negotiated sentence which is accepted and imposed by the sentencing court, there is no authority to permit a challenge to the discretionary aspects of that sentence. "If either party to a negotiated plea agreement believed the other side could, at any time following entry of sentence, approach the judge and have the sentence unilaterally altered, neither the Commonwealth nor any defendant would be willing to enter into such an agreement." [**Commonwealth v. Coles**, 365 Pa. Super. [562] at 571, 530 A.2d [453] at 458. Permitting a discretionary appeal following the entry of a negotiated plea would undermine the designs and goals of plea bargaining, and "would make a sham of the negotiated plea process[.]" **Id.** at 568, 530 A.2d at 456.

Commonwealth v. Reichle, 589 A.2d 1140, 1141 (Pa. Super. 1991).

Goshorn entered into a negotiated plea; he may not now claim his sentence is excessive.⁴

Judgment of sentence affirmed. Motion to withdraw is granted.

⁴ Goshorn's 3½ to 7 year sentence represents a bottom of the standard range sentence for his crime, a first-degree felony (F1). The statutory maximum for aggravated assault as an F1 is 20 years.

Judgment Entered.

Mary A. Straybell
Deputy Prothonotary

Date: 5/7/2013