

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN THE INTEREST OF:	:	IN THE SUPERIOR COURT OF
A.S.B., A MINOR	:	PENNSYLVANIA
	:	
	:	
APPEAL OF:	:	
A.S.B., A MINOR	:	No. 239 MDA 2013

Appeal from the Dispositional Order Entered January 9, 2013,  
In the Court of Common Pleas of Luzerne County,  
Juvenile Division, at No. CP-40-JV-0000140-2012.

BEFORE: SHOGAN, ALLEN and MUSMANNO, JJ.

MEMORANDUM BY SHOGAN, J.: **FILED DECEMBER 06, 2013**

Appellant, A.S.B., appeals from the dispositional order entered in the Luzerne County Court of Common Pleas, Juvenile Division, following her adjudication of delinquency for acts constituting disorderly conduct in violation of 18 Pa.C.S.A. § 5503. Appellant’s counsel has filed a petition to withdraw and a brief pursuant to **Anders v. California**, 386 U.S. 738 (1967), **Commonwealth v. McClendon**, 434 A.2d 1185 (Pa. 1981), and **Commonwealth v. Santiago**, 978 A.2d 349 (Pa. 2009). Upon review, we grant counsel’s petition to withdraw and affirm the dispositional order.

The relevant facts and procedural history of this matter were set forth in the juvenile court’s opinion as follows:

At the Adjudication Hearing the Commonwealth presented two witnesses; Dr. George Cheponis and Officer Matthew Bonawits. The testimony of Dr. George Cheponis, established that on December 12, 2011, he was working at the Alternative Learning Center (ALC), as a Crisis Intervention Specialist. The

Alternative Learning Center (ALC) is a school for children with behavioral problems and for children who have been expelled from other schools. On the day in question, Dr. Cheponis was assigned to the in-school suspension room that was also referred to [as the] behavior room.

Dr. Cheponis testified to his job duties and noted that he was assigned specific periods to monitor the in-school suspension room. The in-school suspension room or behavioral room, is a room for students that are having behavioral problems and need to be removed from their regular classes for a period of time. He noted that one of the specific rules of the in-school suspension room was to remain seated.

The testimony established that [Appellant] was present in the in-school suspension room on December 12, 2011 and was initially talking with other students and "doing okay". (N.T. 6). Dr. Cheponis observed that at some point [Appellant] got up and left her seat and went to the back window. [Appellant] asked him what he would do if she lit up a cigarette. Dr. Cheponis told [Appellant] not to do it. Again she asked what he would do if she lit a cigarette and he replied that he would write her up.

Despite the warning by Dr[.] Cheponis, [Appellant] proceeded to produce and light a cigarette. (N.T. pp. 3-7). Dr. Cheponis immediately contacted the school police officer, Officer Matthew Bonawits, via walkie talkie, who arrived within 20-30 seconds. (N.T. p. 7). Officer Bonawits arrived in the room and indicated that he smelled cigarette smoke and spoke to [Appellant]. Officer Bonawits stated that he did not see [Appellant] with a cigarette and left the room to return to his office to document the incident. At that point, Dr. Cheponis, who was standing in the doorway, stated that a pencil was thrown at him and struck him above his left eye. Officer Bonawits immediately return[ed] to the room and asked [Appellant] to come to his office. He testified that [Appellant] became very belligerent at that time. Dr. Cheponis also opined that the situation escalated thereafter and that [Appellant] became extremely emotional.

Officer Bonawits placed [Appellant] in custody with handcuffs and attempted to escort her to his office. Officer Bonawits testified that [Appellant] was belligerent and kicked the

walls in the hallway, continued to struggle and repeatedly shouted obscenities as he escorted her to the office. (N.T. pp. 20-23). He stated that her behavior was irate and she continued to use obscenities saying "Don't fuckin' touch me. Leave me the fuck alone". (N.T. 22)[.] He specifically recollected that there was a struggle, continuous yelling and obscenities coming from [Appellant].

Dr. Cheponis remained in the behavioral room with the remaining students and stated that he intended to write up [Appellant] after his duties in the room were finished. (N.T. pp. 8-12, 16).

Officer Bonawits indicated that he took [Appellant] to room 117 [and] provided [Appellant] a seat. At that time, he sat down at the desk to contact her parent. Officer Bonawits testified that [Appellant] continued to curse and upon being seated began kicking a filing cabinet that was situated near her seat. He noted that the filing cabinet was used by the secretaries and contained files. [Appellant] continued to kick the file cabinet with enough force to cause the cabinet to rock back and forth. He attested that he moved the filing cabinet away from [Appellant]. After Officer Bonawits moved the filing cabinet out of her reach and her mother was contacted [Appellant] eventually calmed down. (N.T. p. 23).

Juvenile Court Opinion, 5/17/13, at 4-6.

At the adjudication hearing, the juvenile court found that Appellant had engaged in behavior that satisfied the elements of the disorderly conduct statute, 18 Pa.C.S.A. § 5503, graded as a misdemeanor of the third degree.<sup>1</sup> The juvenile court adjudicated Appellant delinquent, and following the entry of the dispositional order on January 9, 2013, Appellant filed this timely appeal on January 31, 2013.

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<sup>1</sup> Appellant was also adjudicated delinquent for the summary offense of using tobacco in school in violation of 18 Pa.C.S.A. § 6306.1. However, Appellant has not challenged that adjudication on appeal.

As noted above, Appellant's counsel filed a petition to withdraw and an **Anders** brief. "When faced with a purported **Anders** brief, this Court may not review the merits of the underlying issues without first passing on the request to withdraw." **Commonwealth v. Rojas**, 874 A.2d 638, 639 (Pa. Super. 2005). Furthermore, there are clear mandates that counsel seeking to withdraw pursuant to **Anders/McClendon/Santiago** must follow.

In order for counsel to withdraw from an appeal pursuant to **Anders** ... certain requirements must be met:

- (1) counsel must petition the court for leave to withdraw stating that after making a conscientious examination of the record it has been determined that the appeal would be frivolous;
- (2) counsel must file a brief referring to anything that might arguably support the appeal, but which does not resemble a "no merit" letter or *amicus curiae* brief; and
- (3) counsel must furnish a copy of the brief to defendant and advise him of his right to retain new counsel, proceed *pro se* or raise any additional points that he deems worthy of the court's attention.

**Commonwealth v. Millisock**, 873 A.2d 748, 751 (Pa. Super. 2005).

In **Santiago**, the Supreme Court set forth specific requirements for the brief accompanying counsel's petition to withdraw:

[I]n the **Anders** brief that accompanies court-appointed Counsel's petition to withdraw, counsel must: (1) provide a summary of the procedural history and facts, with citations to the record; (2) refer to anything in the record that counsel believes arguably supports the appeal; (3) set forth counsel's conclusion that the appeal is frivolous; and (4) state counsel's reasons for concluding that the appeal is frivolous. Counsel

should articulate the relevant facts of record, controlling case law, and/or statutes on point that have led to the conclusion that the appeal is frivolous.

**Santiago**, 978 A.2d at 361. Additionally, because this matter concerns a juvenile adjudication, counsel is required to notify the juvenile's parents or legal guardian when moving to withdraw. **Commonwealth v. Heron**, 674 A.2d 1138, 1140 (Pa. Super. 1996).

In the case before us, Appellant's counsel has complied with the requirements of **Santiago**, and our review of counsel's petition to withdraw, supporting documentation, and **Anders** brief reveals that counsel has satisfied all of the foregoing requirements. Counsel has furnished a copy of the brief to Appellant; advised her of her right to retain new counsel, proceed *pro se*, or raise any additional points that she deems worthy of this Court's attention; and has attached a copy of the letter sent to Appellant to the **Anders** petition as required under **Millisock**. Moreover, counsel has also certified that she notified Appellant's parents of her petition to withdraw pursuant to **Heron**,<sup>2</sup> and counsel specifically averred that this appeal is wholly frivolous. **Anders** Brief at 7.

Once counsel has met her obligations, "it then becomes the responsibility of the reviewing court to make a full examination of the

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<sup>2</sup> **See** Certified Letter to the Parents of A.S.B., 8/5/13 (explaining that, following counsel's review, she concluded that an appeal would be frivolous, and explained Appellant's rights concerning proceeding *pro se* or retaining private counsel).

proceedings and make an independent judgment to decide whether the appeal is in fact wholly frivolous.” **Santiago**, 978 A.2d at 355 n.5. Thus, we will now examine the issues set forth by counsel in the **Anders** brief that Appellant believes have merit.

Appellant raises the following issues:

[1.] Whether the Juvenile Court erred by finding the Juvenile factually responsible for one count of disorderly conduct pursuant to 18 Pa.C.S. § 5503(a)(4) where the Commonwealth failed to present evidence sufficient to establish beyond a reasonable doubt that the Juvenile created a hazardous or physically offensive condition?

[2.] Whether the Juvenile Court erred by finding the Juvenile factually responsible for one count of disorderly conduct pursuant to 18 Pa.C.S. § 5503(a)(4) where the Commonwealth failed to present evidence sufficient to establish beyond a reasonable doubt, the mens rea element?

[3.] Whether the Juvenile Court erred by grading the offense of disorderly conduct as a misdemeanor of the third degree pursuant to 18 Pa.C.S. § 5503(b) where the Commonwealth failed to present evidence sufficient to establish beyond a reasonable doubt that the Juvenile intended to cause substantial harm or serious inconvenience, or persisted in disorderly conduct after reasonable warning or request to desist?

**Anders** Brief at 1-2. As all three of these issues are interrelated, we shall address them concurrently.

It is well settled that this Court will not disturb a juvenile court’s disposition absent a manifest abuse of discretion. **In re R.N.**, 951 A.2d 363, 366 (Pa. Super. 2008) (citation omitted). “When a juvenile is charged with an act that would constitute a crime if committed by an adult, the

Commonwealth must establish the elements of the crime by proof 'beyond a reasonable doubt.'" **Id.** (quoting ***In the Interest of A.D.***, 771 A.2d 45, 48 (Pa. Super. 2001) (*en banc*)). "In determining whether the Commonwealth presented sufficient evidence to meet its burden of proof, the test to be applied is whether, viewing the evidence in the light most favorable to the Commonwealth, and drawing all reasonable inferences therefrom, there is sufficient evidence to find every element of the crime charged." **Id.** at 366-367 (citation and quotation marks omitted).

Disorderly conduct is defined as follows:

**Disorderly conduct**

**(a) Offense defined.**--A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

- (1) engages in fighting or threatening, or in violent or tumultuous behavior;
- (2) makes unreasonable noise;
- (3) uses obscene language, or makes an obscene gesture; or
- (4) creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

**(b) Grading.**--An offense under this section is a misdemeanor of the third degree if the intent of the actor is to cause substantial harm or serious inconvenience, or if he persists in disorderly conduct after reasonable warning or request to desist. Otherwise disorderly conduct is a summary offense.

**(c) Definition.**--As used in this section the word "public" means affecting or likely to affect persons in a place to which the public

or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, any neighborhood, or any premises which are open to the public.

18 Pa.C.S.A. § 5503(a). “The *mens rea* requirement of Section 5503 demands proof that appellant by her actions intentionally or recklessly created a risk [of causing] or caused a public inconvenience, annoyance or alarm.” ***Commonwealth v. Maerz***, 879 A.2d 1267, 1269 (Pa. Super. 2005) (citation omitted). “The specific intent requirement of this statute may be met by a showing of a reckless disregard of the risk of public inconvenience, annoyance, or alarm, even if the appellant’s intent was to send a message to a certain individual, rather than to cause public inconvenience, annoyance, or alarm.” ***Id.*** (citation and quotation marks omitted).

Upon review, we conclude that Appellant is not entitled to relief on any of these issues. As noted above, Appellant, with full knowledge that she was not permitted to smoke in school, lit a cigarette in Dr. Cheponis’ classroom. Dr. Cheponis then contacted Officer Bonawits. Undeterred, Appellant continued her disruptive behavior and became belligerent with Officer Bonawits. Appellant repeatedly used loud and obscene language, and she had to be placed in handcuffs and removed from the classroom. Appellant continued shouting obscenities and kicking the walls of the school while Officer Bonawits escorted her to another room. Once inside a separate



room, Appellant proceeded to repeatedly kick a filing cabinet until Officer Bonawits moved the cabinet. As the juvenile court pointed out, "The series of events as discussed could have totally been avoided if [Appellant] would have followed the instructions provided by Officer Bonawit[s] and followed him to the office." Juvenile Court Opinion, 5/17/13, at 8. We also agree with the juvenile court's conclusion that Appellant's behavior served no legitimate purpose, and at a minimum, showed a reckless disregard of the risk of public inconvenience, annoyance, or alarm. *Id.* at 7-8. Moreover, Appellant's repeated kicking of walls and cabinets, struggling with the officer, and pervasive use of profanity established her clear intent to cause a serious inconvenience.

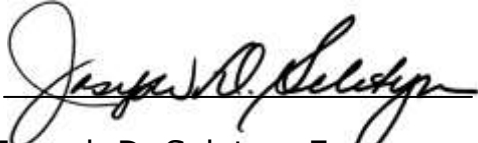
Viewing the evidence, as we must, in the light most favorable to the Commonwealth, we discern no error. The evidence was sufficient to establish the *mens rea* and elements of disorderly conduct graded as a misdemeanor of the third degree.

For the reasons discussed above and following our independent review of the record, we conclude that Appellant's appeal is wholly frivolous, and we affirm the dispositional order. Moreover, as we agree with counsel's assessment of the appeal, and because we conclude that counsel has satisfied the requirements for withdrawal, we grant counsel's petition to withdraw.

J-S67007-13

Dispositional order affirmed. Petition to withdraw granted.  
Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive style with a horizontal line underneath it.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 12/6/2013