

J-S08026-13

J-S08027-13

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

JHALIL MAYHUGH

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1233 EDA 2012

Appeal from the Judgment of Sentence February 9, 2012
In the Court of Common Pleas of Montgomery County
Criminal Division at No(s): CP-46-CR-0007372-2010

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

JHALIL MAYHUGH

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1234 EDA 2012

Appeal from the Judgment of Sentence February 9, 2012
In the Court of Common Pleas of Montgomery County
Criminal Division at No(s): CP-46-CR-0004845-2010

BEFORE: FORD ELLIOTT, P.J.E., LAZARUS, J., and MUSMANNNO, J.

MEMORANDUM BY LAZARUS, J.

FILED MAY 29, 2013

In these consolidated appeals¹ from his judgment of sentence entered in the Court of Common Pleas of Montgomery County, Jhalil Mayhugh claims

¹ Jhalil Mayhugh filed two appeals from the same order, both of which involve the same question with respect to two different sets of charges – the
(Footnote Continued Next Page)

the trial court erred in denying his post-sentence motion to withdraw his guilty plea. Counsel has petitioned this Court to withdraw his representation of Mayhugh in both appeals pursuant to **Anders, McClendon** and **Santiago**.² After our review, we affirm Mayhugh's judgment of sentence and grant counsel's petitions to withdraw.

On February 9, 2012, Mayhugh entered a negotiated guilty plea to purchase/receive controlled substance by unauthorized person³ in exchange for a sentence of 2 years' probation and the withdrawal of various other charges. That same day, Mayhugh entered a negotiated guilty plea to one count each of robbery,⁴ conspiracy⁵ and theft by unlawful taking,⁶ in exchange for a sentence of five to ten years' imprisonment and the withdrawal of various other charges. The Honorable Joseph A. Smyth

(Footnote Continued) —————

first involving an arrest for drugs in June 2010, and the second involving an arrest for robbery and related charges in August 2010. We have consolidated the cases on appeal. **See** Pa.R.A.P. 513 ("Where there is more than one appeal from the same order, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order them to be argued together in all particulars as if but a single appeal.").

² **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).

³ 35 P.S. § 780-113(a)(19).

⁴ 18 Pa.C.S.A. § 3701.

⁵ 18 Pa.C.S.A. § 903.

⁶ 18 Pa.C.S.A. § 3921.

accepted the plea agreements and sentenced Mayhugh that same day. Thereafter, Mayhugh filed timely motions to withdraw his guilty pleas, which Judge Smyth denied. These appeals followed, and Mayhugh raises the following issue on appeal:

Whether a manifest injustice resulted from the trial court's denial of Mayhugh's post-sentence motion to withdraw his guilty plea?

"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). In order to withdraw pursuant to **Anders** and **McClendon**, counsel must: (1) petition the Court for leave to withdraw, certifying that after a thorough review of the record, counsel has concluded the issues to be raised are wholly frivolous; (2) file a brief referring to anything in the record that might arguably support the appeal; and (3) furnish a copy of the brief to the appellant and advise him of his right to obtain new counsel or file a *pro se* brief to raise any additional points that the appellant deems worthy of review. **Commonwealth v. Hernandez**, 783 A.2d 784, 786 (Pa. Super. 2001). In **Santiago**, the Pennsylvania Supreme Court altered the requirements for withdrawal under **Anders** to mandate the inclusion of a statement detailing counsel's reasons for concluding the appeal is frivolous.

Here, counsel states that he has examined the record and concluded the appeal is wholly frivolous. Counsel mailed Mayhugh a copy of the brief and a letter explaining his right to proceed *pro se*, or with newly retained counsel, and to raise any other issues he believes might have merit.

Counsel also has submitted briefs setting out in neutral form a single issue of arguable merit. Finally, counsel has explained, pursuant to the dictates of **Santiago**, why he believes the issue to be frivolous. **See Anders** Briefs, at 4-8. Thus, counsel has substantially complied with the **Anders/McClendon/Santiago** requirements.

We now proceed with our independent review of the proceedings to determine whether the appeal is, in fact, wholly frivolous. **See Commonwealth v. Wright**, 846 A.2d 730, 736 (Pa. Super. 2004). The standard of review for post-sentence motions for withdrawal is well settled:

Our law is clear that, to be valid, a guilty plea must be knowingly, voluntarily and intelligently entered. **Commonwealth v. Shekerko**, 432 Pa. Super. 610, 639 A.2d 810, 813 (1994). There is no absolute right to withdraw a guilty plea, and the decision as to whether to allow a defendant to do so is a matter within the sound discretion of the trial court. **Commonwealth v. Muhammad**, 794 A.2d 378, 382 (Pa. Super. 2002). To withdraw a plea after sentencing, a defendant must make a showing of prejudice amounting to "manifest injustice." **Id.**, 794 A.2d at 383. "A plea rises to the level of manifest injustice when it was entered into involuntarily, unknowingly, or unintelligently." **Commonwealth v. Ingold**, 823 A.2d 917, 920 (Pa. Super. 2003). A defendant's disappointment in the sentence imposed does not constitute "manifest injustice." **Muhammad**, 794 A.2d at 383.

Commonwealth v. Pollard, 832 A.2d 517, 522 (Pa. Super. 2003).

A court accepting a defendant's guilty plea is required to conduct an on-the-record inquiry during the plea colloquy. **Commonwealth v. Ingold**, 823 A.2d 917, 920 (Pa. Super. 2003). In the colloquy, the court must inquire into the following areas:

(1) Does the defendant understand the nature of the charges to which he or she is pleading guilty or nolo contendere?

- (2) Is there a factual basis for the plea?
- (3) Does the defendant understand that he or she has the right to trial by jury?
- (4) Does the defendant understand that he or she is presumed innocent until found guilty?
- (5) Is the defendant aware of the permissible range of sentences and/or fines for the offenses charged?
- (6) Is the defendant aware that the judge is not bound by the terms of any plea agreement tendered unless the judge accepts such agreement?

Id. at 920-21. **See** Pa.R.Crim.P. 590-Comment. Our law presumes that a defendant who enters a guilty plea was aware of what he was doing. **Commonwealth v. Stork**, 737 A.2d 789, 790 (Pa. Super. 1999). He bears the burden of proving otherwise. **Id.**

Here, the transcript of the plea colloquy demonstrates that Mayhugh understood the nature of the charges to which he was pleading, the factual basis of the plea with respect to all of the charges, that he had the right to a jury of his peers, and that he was presumed innocent until proven guilty beyond a reasonable doubt. The transcript also indicates that Mayhugh understood the permissible range of sentences and that the judge was not bound by the plea agreement unless he accepted it, which he did. **See** N.T. Guilty Plea Colloquy, 2/9/2012, at 6-13. The court reviewed the terms of the plea agreement at length with Mayhugh. N.T. Guilty Plea Hearing, 2/9/2012, at 4. Additionally, Mayhugh completed and signed a written guilty plea colloquy form. **See** Guilty Plea Form, 2/9/2012.

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We find no merit to Mayhugh's claim that his plea was invalid. The record clearly demonstrates that Mayhugh's plea was knowingly, voluntarily, and intelligently entered. We find no manifest injustice. ***Pollard, supra.***

Judgment of sentence affirmed; petitions to withdraw granted.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Karen Gambett", written over a horizontal line.

Prothonotary

Date: 5/29/2013