

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
JOSE QUILES,	:	
	:	
Appellant	:	No. 1527 EDA 2011

Appeal from the Judgment of Sentence May 26, 2011
 In the Court of Common Pleas of Delaware County
 Criminal No(s).: CP-23-CR-0005478-2009

BEFORE: FORD ELLIOTT, P.J.E., MUNDY, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.: **FILED NOVEMBER 25, 2013**

Appellant, Jose Quiles, appeals from the judgment of sentence entered in the Delaware County Court of Common Pleas following his convictions for theft by unlawful taking¹ and possession of drug paraphernalia.² This case has returned to us after we remanded on February 25, 2013, for the trial court to conduct a **Grazier**³ hearing within thirty days. Appellant’s court-appointed counsel has filed a petition to withdraw pursuant to **Anders v. California**, 386 U.S. 738 (1967), and **Commonwealth v. Santiago**, 978

* Former Justice specially assigned to the Superior Court.

¹ 18 Pa.C.S. § 3921.

² 35 Pa.C.S. § 780-113(a)(32).

³ **Commonwealth v. Grazier**, 713 A.2d 81 (Pa. 1998).

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A.2d 349 (Pa. 2009). We grant counsel's petition and affirm the judgment of sentence.

We set forth the procedural history in our prior memorandums. **See Commonwealth v. Quiles**, 1527 EDA 2011 (Pa. Super. Feb. 25, 2013) (unpublished memorandum); **Commonwealth v. Quiles**, 1527 EDA 2011 (Pa. Super. June 21, 2012) (unpublished memorandum). Following our second remand, the trial court held a second **Grazier** hearing on April 30, 2013. Appellant agreed to have counsel represent him. Appellant's appointed counsel filed a petition to withdraw from representation with this Court on October 9, 2013. Appellant did not file a *pro se* brief with this Court.

"[T]his Court may not review the merits of the underlying issues without first passing on the request to withdraw." **Commonwealth v. Garang**, 9 A.3d 237, 240 (Pa. Super. 2010) (citation omitted).

[T]he three requirements that counsel must meet before he or she is permitted to withdraw from representation [are] as follows:

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.

Id. (citations omitted).

[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.

[I]n Pennsylvania, when counsel meets his or her obligations, "it then becomes the responsibility of the reviewing court to make a full examination of the proceedings and make an independent judgment to decide whether the appeal is in fact wholly frivolous."

Id. at 355 n.5 (citation omitted).

Instantly, in counsel's **Anders** brief, he stated that he thoroughly examined the record. He summarized the factual and procedural history with citations to the record. He referred to everything in the record that he believes arguably supports the appeal. Appellant's counsel articulated the facts from the record, case law, and statutes that led him to conclude that the appeal is frivolous. He furnished a copy of the brief to Appellant. He also advised him of his right to retain new counsel or to himself raise any additional points *pro se* that he deems worthy of the Court's consideration. We find that Appellant's counsel has complied with all the requirements set forth above. **See id.** at 361; **Garang**, 9 A.3d at 240. Therefore, we now review the merits of the underlying issue on appeal. **See Santiago**, 978 A.2d at 355 n.5.

The **Anders** brief presents one issue for our review: “Whether the sentence of full back time (612 days) was harsh and excessive under the circumstances?” **Anders** Brief at 1. Instantly, Appellant agreed he violated his parole and agreed he should be resentenced to full back time of 612 days. N.T. **Gagnon II**⁴ Hr’g, 5/26/11, at 3. In **Commonwealth v. Galletta**, 864 A.2d 532 (Pa. Super. 2004), this Court addressed this very argument and held the following:

[The defendant’s] argument that this sentence is harsh and excessive cannot be addressed in the context of a review of a parole revocation, since as the [**Commonwealth v. Mitchell**, 632 A.2d 934 (Pa. Super. 1993)] court held “there is no authority to give a new sentence” [**Id.** at 936]. [The defendant] was not re-sentenced; rather, he was recommitted solely to serve the remainder of his original sentence and may at some point again be granted parole.

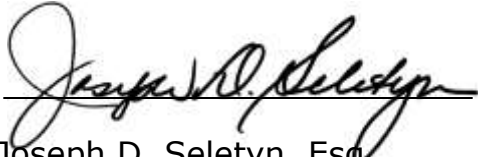
Galletta, 864 A.2d at 539. The reasoning by the **Galletta** Court aptly applies to the instant case and we hold Appellant is not entitled to relief. **See id.** After independent review, we find no further non-frivolous issues. **See Santiago**, 978 A.2d at 355 n.5. Accordingly, we grant counsel’s petition to withdraw and affirm Appellant’s judgment of sentence.

Petition to withdraw granted. Judgment of sentence affirmed.

⁴ **Gagnon v. Scarpelli**, 411 U.S. 778 (1973).

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Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 11/25/2013