

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
TAHMERE LINDSAY,	:	
	:	
Appellant	:	No. 1603 EDA 2013

Appeal from the Judgment of Sentence May 7, 2013
In the Court of Common Pleas of Delaware County
Criminal Division No(s): CP-23-CR-0006249-2012

BEFORE: PANELLA, MUNDY and FITZGERALD,* JJ.

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

Appellant, Tahmere Lindsay, appeals from the judgment of sentence entered in the Delaware County Court of Common Pleas pursuant to a negotiated guilty plea. Appellant contends the plea was not knowing, intelligent and voluntary because he did not know his entry of the plea amounted to a violation of his juvenile probation. Appellant’s counsel, Richard J. Blasetti, Esq., has filed a petition to withdraw pursuant to **Anders v. California**, 386 U.S. 738 (1967), and **Commonwealth v. McClendon**,

* Former Justice specially assigned to the Superior Court.

434 A.2d 1185 (Pa. 1981). We affirm and grant counsel's petition to withdraw.

On May 7, 2013, Appellant entered a negotiated guilty plea to robbery and firearms not to be carried without a license.¹ N.T., 5/7/13, at 4-5. On the same date, the court imposed a sentence of fifty to one hundred months' imprisonment for robbery and five years' consecutive state probation for firearms not to be carried without a license. *Id.* at 17. This timely appeal followed.² Counsel filed an **Anders** petition and brief with this Court.

As a prefatory matter, we examine whether counsel complied with the requirements of **Anders, supra**, and **McClendon, supra**, as clarified by the Pennsylvania Supreme Court in **Commonwealth v. Santiago**, 978 A.2d 349 (Pa. 2009). "When faced with a purported **Anders** brief, this Court may not review the merits of any possible underlying issues without first examining counsel's request to withdraw." **Commonwealth v. Wimbush**, 951 A.2d 379, 382 (Pa. Super. 2008) (citation 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

¹ 18 Pa.C.S. §§ 3701(a)(1)(ii); 6106(a)(1).

² Appellant was ordered to file a Pa.R.A.P. 1925(b) statement of errors complained of on appeal. Counsel informed the PCRA court that he intended to file an **Anders** brief with this Court, and therefore did not file a Rule 1925(b) statement. **See** Pa.R.A.P. 1925(c)(4).

(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.

Instantly, counsel's application for leave to withdraw and appellate brief comply with the technical requirements of **Anders** and **Santiago**. **See id.** The application and brief set forth a plea issue, cite relevant legal authority, and conclude the appeal is frivolous. **See id.** The record also establishes Appellant was served a copy of the brief and application, which advised him of the right to retain new counsel, or proceed *pro se* and raise additional issues to this Court. **See id.**

Once the requirements attendant to counsel's request to withdraw are satisfied, a reviewing court will examine the proceedings and render an independent judgment of whether the appeal is in fact wholly frivolous. **Wimbush**, 951 A.2d at 382.

The **Anders** brief raises the following issue for our review: "Whether the plea was knowing, intelligent and voluntary given that the instant plea would act as a violation on Appellant's juvenile probation?" **Ander's** Brief at 3.

First, we consider whether the issue is waived. "A defendant wishing to challenge the voluntariness of a guilty plea on direct appeal must either object during the plea colloquy or file a motion to withdraw the plea within ten days of sentencing. Pa.R.Crim.P. 720(A)(1), (B)(1)(a)(i). Failure to

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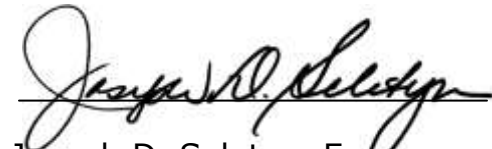
employ either measure results in waiver.” ***Commonwealth v. Lincoln***, 72 A.3d 606, 609-10 (Pa. Super. 2013).

The court sentenced Appellant on May 7, 2013. Appellant did not challenge the voluntariness of his guilty plea during the guilty plea colloquy or file a motion to withdraw the plea within ten days after sentencing. ***See id.*** Therefore, Appellant waived his challenge to the validity of his guilty plea. ***See id.***

A review of the record reveals no other meritorious issue that could provide relief.

Judgment of sentence affirmed. Counsel’s petition to withdraw granted.

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