

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

KEITH A. WALKER, JR.

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1952 EDA 2013

Appeal from the Judgment of Sentence June 26, 2013  
in the Court of Common Pleas of Chester County  
Criminal Division at Nos.: CP-15-SA-0000377-2012;  
CP-15-SA-0000378-2012

BEFORE: SHOGAN, J., OTT, J., and PLATT, J.\*

MEMORANDUM BY PLATT, J.

**FILED JANUARY 31, 2014**

Appellant, Keith A. Walker, Jr., appeals from the judgment of sentence imposed after his conviction of driving while operating privilege is suspended or revoked and theft of services.<sup>1</sup> Appellant's counsel seeks to withdraw from representation pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *Commonwealth v. Santiago*, 978 A.2d 349 (Pa. 2009). We affirm Appellant's judgment of sentence and grant counsel's petition to withdraw.

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\* Retired Senior Judge assigned to the Superior Court.

<sup>1</sup> 75 Pa.C.S.A. § 1543(b) and 18 Pa.C.S.A. § 3926, respectively.

The background of this case follows. In the early morning hours of June 24, 2012, Officer William Vibbahn of the West Chester Police Department observed Appellant and a second individual on motorcycles, attempting to exit a parking garage without paying. The officer detained the second motorcyclist. Meanwhile, Officer David Hammond stopped Appellant when he observed him drive the wrong way down a nearby one-way street. A certified driving record disclosed that Appellant was driving with a suspended license. Officer Hammond issued citations to Appellant for driving while operating privilege is suspended and theft of services.

On August 21, 2012, Appellant, who was represented by counsel, proceeded to a summary trial before a magisterial district judge (MDJ). The MDJ found Appellant guilty of the above charges the same day.

On September 5, 2012, Appellant appealed the MDJ's verdict to the trial court, which held a *de novo* trial on June 26, 2013. Officers Vibbahn and Hammond testified on the Commonwealth's behalf. Specifically, during the cross-examination of Officer Hammond, the following exchange occurred:

Q: And was [Appellant] the sole rider on the motorcycle?

A: Yes, he was.

Q: Did you testify in this matter at the summary trial level?

[Assistant District Attorney]: Objection. Relevancy, your Honor.

THE COURT: Yes, I generally don't want to get into what happened below, unless you've got some good faith basis for inquiring.

[Appellant's Counsel]: I do have, your Honor, I think, a good faith basis for inquiring. I just want to ask a question with regards to something I believe might have been stated at the summary trial level.

THE COURT: Well, if you don't have a transcript, to me, it's problematic. Is there a transcript as to what was said or done?

[Appellant's Counsel]: Unfortunately, no, your Honor. That's due to a technical issue.

THE COURT: Well, it may be, but I think I'm going to sustain the objection.

(N.T. Trial, 6/26/13, at 35-36).

At the conclusion of the trial, the court convicted Appellant of the above summary offenses and sentenced him to ninety days' incarceration and a fifty dollar fine. Appellant timely appealed.<sup>2</sup>

On September 16, 2013, counsel filed a petition to withdraw and an **Anders** brief on the basis that the appeal is frivolous.

The standard of review for an **Anders** brief is well-settled.

Court-appointed counsel who seek to withdraw from representing an appellant on direct appeal on the basis that the appeal is frivolous must:

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<sup>2</sup> On July 29, 2013, in response to the court's order to file a Rule 1925(b) statement, counsel filed notice of his intent to file an **Anders** brief pursuant to Rule 1925(c)(4). **See** Pa.R.A.P. 1925(b), (c)(4). The court filed a Rule 1925(a) opinion on August 1, 2013. **See** Pa.R.A.P. 1925(a).

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

[T]his Court may not review the merits of the underlying issues without first passing on the request to withdraw.

***Commonwealth v. Lilley***, 978 A.2d 995, 997 (Pa. Super. 2009) (citations and some quotation marks omitted). Further, our Supreme Court ruled in ***Santiago, supra***, that ***Anders*** briefs must contain “a discussion of counsel’s reasons for believing that the client’s appeal is frivolous. . . .” ***Santiago, supra*** at 360.

Instantly, counsel’s ***Anders*** brief and petition to withdraw comply with the applicable technical requirements and reveal that he has made “a conscientious examination of the record [and] determined that the appeal would be frivolous.” ***Lilley, supra*** at 997. Additionally, the record establishes that counsel served Appellant with a copy of the ***Anders*** brief and petition to withdraw, which advised Appellant of his right to retain new counsel, or to proceed *pro se* and raise additional issues to this Court. ***See id.***; (***see also*** Petition to Withdraw as Attorney of Record, 9/16/13, Exhibit 1, at 1). Further, the petition and brief cite “to anything that arguably might support the appeal.” ***Lilley, supra*** at 997; (***see also Anders*** Brief, at 9-

11). As noted by our Supreme Court in **Santiago**, the fact that some of counsel's statements arguably support the frivolity of the appeal does not violate the requirements of **Anders**. **See Santiago, supra** at 360-61.

Having concluded that counsel's petition and brief comply with the technical **Anders** requirements, we next will conduct our own independent review to determine whether the appeal is wholly frivolous.

The **Anders** brief raises one question for our review: "Did the [trial] court abuse its discretion when it precluded specific testimony from a Commonwealth witness during cross examination? (**Anders** Brief, at 4). Specifically, Appellant claims that "the trial court's refusal to allow [Officer Hammond], during cross examination, to testify about his prior testimony in the matter at the [m]agisterial [c]ourt, was an abuse of discretion." (**Id.** at 7). We disagree.

"It is clear that the trial court has the discretion to determine the scope and limits of cross-examination and that [an appellate] Court cannot reverse those findings absent a clear abuse of discretion or an error of law." **Commonwealth v. Rivera**, 983 A.2d 1211, 1230 (Pa. 2009), *cert. denied*, 560 U.S. 909 (2010) (citation and internal quotation marks omitted). "Abuse of discretion is not merely an error of judgment, but rather where the judgment is manifestly unreasonable or where the law is not applied or where the record shows that the action is a result of partiality, prejudice, bias or ill will." **Commonwealth v. King**, 959 A.2d 405, 411 (Pa. Super.

2008) (citation omitted). Our independent review of the record reveals that the trial court did not abuse its discretion or commit an error of law in this case.

At trial, the trial court precluded Appellant's counsel from cross-examining Officer Hammond about his prior testimony at Appellant's MDJ hearing on the basis of relevance. (**See** N.T. Trial, 6/26/13, at 35-36). Specifically, the court explained:

Unfortunately, all the court heard was that defense counsel wanted to ask a question with regard to something he believed "might have been stated" at the summary trial level. It was not clear to the [court] that counsel wanted to show a prior inconsistent statement. Nor did defense counsel make any offer of proof for the record which would have allowed the court to further evaluate the proposed evidence and the basis on which it could be admitted.

(Trial Court Opinion, 8/01/13, at unnumbered pages 1-2).

Our review of the record supports the trial court's explanation. Indeed, the **Anders** brief completely fails to explain the relevance of the proposed cross examination. (**See Anders** Brief, at 10-11). Instead, Appellant baldly asserts that he "was denied a fair and impartial trial" because the court's decision resulted in the "with[olding] [of] important evidence" and that, had the court "heard the full testimony of Officer Hammond, [it] would have acquitted [Appellant] of all charges." (**Id.** at 10). We disagree. Appellant has utterly failed to provide any pertinent citation to authority or to the record to support these conclusory arguments. (**See id.** at 10-11); **see also** Pa.R.A.P. 2119(a)-(c).

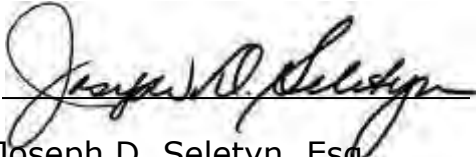
Further, our review of the record reveals that, while cross-examining Officer Hammond, Appellant's counsel attempted to ask the officer about his summary trial testimony. (**See** N.T. Trial, 6/26/13, at 35). The Commonwealth objected to this question on the basis of relevance and counsel responded that he "want[ed] to ask a question with regards to something **I believe might have been stated** at the summary trial level." (**Id.**) (emphasis added). Not only did trial counsel not identify the substance of the alleged prior testimony, he failed to identify exactly how it was relevant. (**See id.** at 35-36). Hence, Appellant utterly fails to demonstrate that the trial court abused its discretion or committed an error of law when it limited his counsel's cross-examination of Officer Hammond. **See Rivera, supra** at 1230; **King, supra** at 411.

Therefore, based on our own independent review of the record, we conclude that Appellant's claim is "wholly frivolous" and does not merit relief. **See See Rivera, supra** at 1230; **King, supra** at 411. Additionally, we find no other non-frivolous issues that would merit relief.

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

J-S78042-13

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: 1/31/2014