

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

XIOMARA CAMPOS

Appellant

No. 1827 MDA 2013

Appeal from the Order Entered August 28, 2013
In the Court of Common Pleas of Luzerne County
Criminal Division at No(s): CP-40-CR-0001597-2012 & CP-40-CR-0001913-
2012

BEFORE: BENDER, P.J.E., MUNDY, J., and JENKINS, J.

MEMORANDUM BY JENKINS, J.:

FILED JUNE 05, 2014

On May 14, 2013, Appellant Xiomara Campos (“Appellant”) entered a negotiated guilty plea in the Luzerne County Court of Common Pleas to possession of a controlled substance with intent to deliver (“PWID”),¹ possession of a controlled substance,² and possession of drug paraphernalia.³ On the same day, the trial court imposed a sentence of 24 months of county intermediate punishment, with the first 12 months to be served as house arrest with electronic home monitoring, on the PWID conviction, and a concurrent aggregate sentence of 24 months of probation

¹ 35 P.S. § 780-113(a)(30).

² 35 P.S. § 780-113(a)(16).

³ 35 P.S. § 780-113(a)(32).

for the possession of a controlled substance and possession of drug paraphernalia convictions.

On May 24, 2013, Appellant filed a *pro se* motion to withdraw her guilty plea that alleged that she was rushed into the guilty plea, was not fully informed of the consequences of a felony conviction, and did not want immediate sentencing. On August 28, 2013, the trial court conducted a hearing and denied the motion.

On September 26, 2013, Appellant timely filed a notice of appeal claiming that the trial court erred in denying her post-sentence motion to withdraw her guilty plea. Appellant's counsel has filed a brief and an application seeking to withdraw from representation pursuant to ***Anders v. California***⁴ and its Pennsylvania counterpart, ***Commonwealth v. Santiago***.⁵ We affirm the judgment of sentence and grant counsel's petition to withdraw.

Before addressing the merits of Appellant's underlying issue presented, we must first pass on counsel's petition to withdraw. ***Commonwealth v. Goodwin***, 928 A.2d 287, 290 (Pa.Super.2007) (*en banc*). Prior to withdrawing as counsel on a direct appeal under ***Anders***, counsel must file a brief that meets the requirements established by our Supreme Court in ***Santiago***. The brief must:

(1) provide a summary of the procedural history and facts, with citations to the record; (2) refer to anything in the record that

⁴ 386 U.S. 738 (1967).

⁵ 978 A.2d 349 (Pa.2009).

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. Counsel must also provide a copy of the **Anders** brief to the appellant, together with a letter that advises the appellant of his or her right to "(1) retain new counsel to pursue the appeal; (2) proceed *pro se* on appeal; or (3) raise any points that the appellant deems worthy of the court's attention in addition to the points raised by counsel in the Anders brief." **Commonwealth v. Nischan**, 928 A.2d 349, 353 (Pa.Super.2007). Substantial compliance with these requirements is sufficient. **Commonwealth v. Wrecks**, 934 A.2d 1287, 1290 (Pa.Super.2007). "After establishing that the antecedent requirements have been met, this Court must then make an independent evaluation of the record to determine whether the appeal is, in fact, wholly frivolous." **Commonwealth v. Palm**, 903 A.2d 1244, 1246 (Pa.Super.2006).

Instantly, counsel filed a petition to withdraw as counsel. The petition states counsel "made a conscientious review of the record and has concluded that the grounds sought to be reviewed by [Appellant] are wholly frivolous." Petition to Withdraw at 1. Counsel notified Appellant of the withdrawal request, supplied her with a copy of the **Anders** brief, and sent her a letter explaining her right to proceed *pro se* or with new, privately-retained counsel to raise any additional points or arguments that Appellant believed

had merit. **See** Letter to Appellant, February 10, 2014, attached to Petition to Withdraw. In the **Anders** brief, counsel provides a summary of the facts and procedural history of the case with citations to the record, refers to evidence of record that might arguably support the issue raised on appeal, provides citations to relevant case law, and states her conclusion that the appeal is wholly frivolous and her reasons therefor. Accordingly, counsel has substantially complied with the requirements of **Anders** and **Santiago**.

As Appellant filed neither a *pro se* brief nor a counseled brief with new, privately-retained counsel, we review this appeal based on the issue of arguable merit raised in the **Anders** brief:

Whether the trial court abused its discretion by denying [Appellant's] post-sentence motion to withdraw her guilty plea?

Anders Brief, p. 1. This claim lacks merit.

Initially, this Court's scope of review of a trial court's ruling on a motion to withdraw a plea is to review the record of the plea and any post-sentence proceeding. **See Commonwealth v. Moser**, 921 A.2d 526, 528-530 (Pa.Super.2007). Our standard of review is whether the trial court abused its discretion. **Id.**, 921 A.2d at 530.

No absolute right to withdraw a plea exists. **Commonwealth v. Flick**, 802 A.2d 620, 623 (Pa.Super.2002). "Once a defendant has entered a plea of guilty, it is presumed that he was aware of what he was doing, and the burden of proving involuntariness is upon him." **Moser**, 921 A.2d at 529; **see also Commonwealth v. Rush**, 909 A.2d 805, 808

(Pa.Super.2006) (“Our law presumes that a defendant who enters a guilty plea was aware of what he was doing. He bears the burden of proving otherwise.”). The standard for withdrawal of a guilty plea after the imposition of sentence is much higher than the standard applicable to a pre-sentence motion to withdraw. **Commonwealth v. Byrne**, 833 A.2d 729, 737 (Pa.Super.2003). A defendant must demonstrate that manifest injustice would result if the court were to deny her post-sentence motion to withdraw the plea. **Id.** “Manifest injustice may be established if the plea was not tendered knowingly, intelligently, and voluntarily.” **Commonwealth v. Hodges**, 789 A.2d 764, 765 (Pa.Super.2002); **see also** Pa.R.Crim.P. 590(a)(3). “[D]isappointment by a defendant in the sentence actually imposed does not represent manifest injustice.” **Byrne**, 833 A.2d at 737 (citation omitted); **see also Commonwealth v. Moser**, 921 A.2d 526, 528-529 (Pa.Super.2007) (“The law does not require that appellant be pleased with the outcome of his decision to enter a plea of guilty: All that is required is that [appellant’s] decision to plead be knowingly, voluntarily and intelligently made.”).

“In order for a guilty plea to be constitutionally valid, the guilty plea colloquy must affirmatively show that the defendant understood what the plea connoted and its consequences.” **Commonwealth v. Fluharty**, 632 A.2d 312, 314 (Pa.Super.1993). “Determining whether a defendant understood the connotations of his plea and its consequences requires an examination of the totality of the circumstances surrounding the plea.”

Moser, 921 A.2d at 529. Even if “there is an omission or defect in the guilty plea colloquy, a plea of guilty will not be deemed invalid if the circumstances surrounding the entry of the plea disclose that the defendant had a full understanding of the nature and consequences of his plea and that he knowingly and voluntarily decided to enter the plea.” **Fluharty**, 632 A.2d at 315. The entry of a negotiated plea is a “strong indicator” of the voluntariness of the plea. **Commonwealth v. Meyers**, 642 A.2d 1103, 1106 (Pa.Super.1994).

“A valid plea colloquy must delve into six areas: 1) the nature of the charges, 2) the factual basis of the plea, 3) the right to a jury trial, 4) the presumption of innocence, 5) the sentencing ranges, and 6) the plea court’s power to deviate from any recommended sentence.” **Commonwealth v. Morrison**, 878 A.2d 102, 107 (Pa.Super.2005); Comment to Pa.R.Crim.P. 590(A)(2). A written plea colloquy that is read, completed and signed by the defendant and made part of the record may serve as the defendant’s plea colloquy when supplemented by an oral, on-the-record examination. **Morrison**, 878 A.2d at 108 (**citing** Comment to Pa.R.Crim.P. 590). Further, “where the record clearly demonstrates that a guilty plea colloquy was conducted, during which it became evident that the defendant understood the nature of the charges against him, the voluntariness of the plea is established.” **Moser**, 921 A.2d at 529.

Here, the totality of the circumstances illustrates that Appellant’s guilty plea colloquy touched upon all areas required for a valid plea. **See** N.T.

5/14/2013. At the sentencing hearing, the Commonwealth outlined the charges, the maximum possible sentences, the negotiated sentences, and the fact that Appellant was to be immediately sentenced. **Id.** at 2. Appellant agreed. **Id.** at 3. The trial court then conducted an extensive colloquy during which it reviewed the plea agreement outline by the Commonwealth, the presumption of innocence, and the Commonwealth's burden of proof. **Id.** at 3-6. Appellant confirmed that she understood the charges, the plea agreement, the maximum possible sentences, and the plea agreement. **Id.** at 4-5. She further stated that she had discussed the matter with counsel, was satisfied with counsel's representation, and that no one had forced her to plead guilty. **Id.** at 4-6. She further agreed to the Commonwealth's factual summary of the plea. **Id.** at 5. Appellant also read, completed, and signed a written plea agreement. **Id.** at 4-5. She is bound by these statements. **See Commonwealth v. McCauley**, 797 A.2d 920, 922 (Pa.Super.2001) ("A defendant is bound by the statements he makes during his plea colloquy, and may not assert grounds for withdrawing the plea that contradict statements made when he pled."). Based on the above, the trial court expressly accepted the plea as knowingly and voluntarily tendered and sentenced Appellant consistent with the terms of the negotiated plea agreement. N.T. 5/14/2013, pp. 7-10.

At a hearing conducted on Appellant's motion to withdraw her guilty plea, the trial court heard Appellant's testimony that she did not have enough time to decide about the plea agreement, chose poorly in pleading

guilty, and did not understand that a felony could not later be expunged from her record. **See generally** N.T. 8/28/2013. The court denied the motion as follows:

Based upon everything presented, a review of the record, the [c]ourt is going to deny the motion to withdraw the guilty plea. It is clear to the [c]ourt that there is no manifest injustice.

[Appellant] was given a lengthy colloquy. [Appellant] reviewed a plea agreement, signed a plea agreement. The plea agreement sets forth everything on the record of the colloquy. [Appellant] knew it was a felony offense. On the written plea agreement, it is a felony offense.

I think this is just a case where following afterwards, [Appellant] wants to change her mind, but there is not grounds that the [c]ourt sees to allow her to withdraw the guilty plea. So the motion is denied.

N.T. 8/28/2013, pp. 18-19.

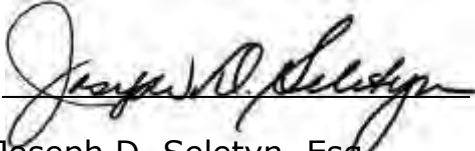
Our review of the sentencing and post-sentence motion hearing transcripts reveals that the lower court did not abuse its discretion. The record supports the trial court's findings and conclusion that Appellant entered her plea knowingly, voluntarily, and intelligently.

Additionally, our independent review of the record has revealed no non-frivolous claims that Appellant could have raised, and we agree with counsel that this appeal is wholly frivolous. Accordingly, we affirm the judgment of sentence.

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

J-S30034-14

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive style and is positioned above a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/5/2014