

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

MERLE PAYNE,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 2206 EDA 2013

Appeal from the Judgment of Sentence entered June 27, 2013,  
in the Court of Common Pleas of Philadelphia County,  
Criminal Division, at No(s): CP-51-CR-0011051-2010

BEFORE: GANTMAN, P.J., ALLEN, and FITZGERALD\*, JJ.

MEMORANDUM BY ALLEN, J.:

**FILED AUGUST 19, 2014**

Merle Payne ("Appellant") appeals from the judgment of sentence imposed after a jury convicted him of indecent assault and corruption of the morals of a minor.<sup>1</sup> Appellant's appointed counsel seeks to withdraw, citing ***Anders v. California***, 386 U.S. 738 (1967) and ***Commonwealth v. McClendon***, 434 A.2d 1185 (Pa. 1981). We affirm the judgment of sentence and grant counsel's petition to withdraw.

The facts are as follows: On March 20, 2010, B.S., the ten-year-old victim, reported to her mother and grandmother that Appellant had sexually assaulted her during the night. The victim was transported to St.

---

<sup>1</sup> 18 Pa.C.S.A. §§ 3126 and 6301, respectively.

\*Former Justice specially assigned to the Superior Court.

Christopher Hospital for examination and treatment. Affidavit of Probable Cause, 3/26/2010. Detective Linda Blowes interviewed the victim, and Appellant was subsequently arrested and charged with rape (18 Pa.C.S.A. § 3121), involuntary deviate sexual intercourse with a child (IDSI) (18 Pa.C.S.A. § 3123), unlawful contact with a minor (18 Pa.C.S.A. § 6318), unlawful restraint (18 Pa.C.S.A. § 2902), statutory sexual assault (18 Pa.C.S.A. § 3122.1), sexual assault (18 Pa.C.S.A. § 3214.1), false imprisonment (18 Pa.C.S.A. § 2903), endangering the welfare of children (18 Pa.C.S.A. § 4304), corruption of minors (18 Pa.C.S.A. § 6301), indecent assault (18 Pa.C.S.A. § 3126), and simple assault (18 Pa.C.S.A. § 2701).

A jury trial commenced on August 29, 2012, on the charges of IDSI with a child, unlawful contact with a minor, indecent assault of a child, and corrupting the morals of a minor. The jury found Appellant guilty of indecent assault and corrupting the morals of a minor.<sup>2</sup>

On June 27, 2013, the trial court sentenced Appellant to an aggregate term of three and a half (3½) to ten (10) years in prison. This appeal followed. Both Appellant and the trial court have complied with Pa.R.A.P. 1925.

---

<sup>2</sup> The jury was unable to reach a unanimous decision on the remaining charges.

Appellant raises the following issue for our review:

- I. Was the evidence sufficient to prove indecent assault and corrupting the morals of a minor?

**Anders** Brief at 2.

Preliminarily, we note that Appellant's counsel has filed a brief pursuant to **Anders** and its Pennsylvania counterpart, **McClendon**. **See Anders**, 386 U.S. 738; **McClendon**, 434 A.2d at 1187. Where an **Anders/McClendon** brief has been presented, our standard of review requires counsel seeking permission to withdraw pursuant to **Anders** to: (1) petition the court for leave to withdraw stating that after making a conscientious examination of the record it has been determined that the appeal would be frivolous; (2) file a brief referring to anything that might arguably 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 him of his right to retain new counsel or raise any additional points that he deems worthy of the court's attention. **Commonwealth v. McBride**, 957 A.2d 752, 756 (Pa. Super. 2008). Counsel is required to submit to this Court "a copy of any letter used by counsel to advise the appellant of the rights associated with the **Anders** process." **Commonwealth v. Woods**, 939 A.2d 896, 900 (Pa. Super. 2007). Pursuant to **Commonwealth v. Santiago**, 978 A.2d 349, 361 (Pa. 2009), appellant's counsel must state in the **Anders** brief the reasons for concluding that the appeal is frivolous. If these requirements are met, this

Court may then review the record to determine whether we agree with counsel's assessment that the appeal is frivolous.

In the instant case, by letter dated March 19, 2014, Appellant's counsel notified Appellant of his intent to file an **Anders** brief and petition to withdraw with this Court, and informed Appellant of his rights to retain new counsel and raise additional issues. That same day, Appellant's counsel filed an appropriate petition seeking leave to withdraw. Finally, Appellant's counsel has submitted an **Anders** brief to this Court, with a copy provided to Appellant. Accordingly, the technical requirements of **Anders** have been met. We will therefore conduct our own independent examination of the issues set forth in counsel's brief to determine if they are frivolous and whether counsel should be permitted to withdraw.

Appellant asserts that the evidence was insufficient to establish that he committed the crimes of indecent assault and corrupting the morals of a minor. **Anders** Brief at 9-11.

Our standard of review with regard to this challenge is as follows:

The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying [the above] test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined

circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the [finder] of fact, while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

***Commonwealth v. Devine***, 26 A.3d 1139, 1145 (Pa. Super. 2011).

An individual is guilty of indecent assault where “the person has indecent contact with the complainant, causes the complainant to have indecent contact with the person or intentionally causes the complainant to come into contact with seminal fluid, urine or feces for the purpose of arousing sexual desire in the person or the complainant and ... the complainant is less than 13 years of age.” 18 Pa.C.S.A. § 3126(7). An individual is guilty of corrupting the morals of a minor if the perpetrator is 18 years of age or older and “by any course of conduct in violation of Chapter 31 (relating to sexual offenses) corrupts or tends to corrupt the morals of any minor less than 18 years of age.” 18 Pa.C.S.A. § 6301(a)(ii).

Here, the trial court, finding the evidence sufficient to sustain Appellant’s convictions, explained:

[T]he Commonwealth presented sufficient evidence that [Appellant] engaged in sexual activity with ten-year old B.S. B.S. testified that in March of 2010, she lived with her maternal grandmother and stayed with her mother on the weekend. [Appellant] was her mother’s boyfriend and was living with B.S.’s mother in an apartment located at 5826 Masher Street. On or about March 20, 2010, B.S. was sleeping over at her mother’s apartment when she was awakened by [Appellant] pulling down her underwear. B.S. testified that [Appellant] put his penis in

between her butt cheeks and whispered, "You're old enough to do this so you should let me do it." B.S. did not see his face, but she knew [Appellant's] voice. The next day, B.S. told her grandmother what had occurred; then B.S. told her mother. B.S. was taken to St. Christopher's Hospital where she was examined. A forensic examination was positive for sperm on the rectal swab taken from B.S. Seminal stains containing sperm were observed on the rear crotch area of the complainant's underwear. DNA testing was inconclusive.

... The jury found the testimony of the Commonwealth's witnesses credible. Testimony in this case, which the factfinder was free to accept as true, is more than sufficient to meet this benchmark. The jury had the prerogative to convict [Appellant] on some of the charges, while at the same time acquitting him on the other charges. ***Commonwealth v. Miller***, 657 A.2d 946 (Pa. Super. 1995).

Based on the above, the overwhelming evidence of guilt in the present case was certainly sufficient in law to prove beyond reasonable doubt that [Appellant] was guilty of the crimes for which he stands convicted.

Trial Court Opinion, 1/31/14, at 4-5 (citations to notes of testimony omitted).

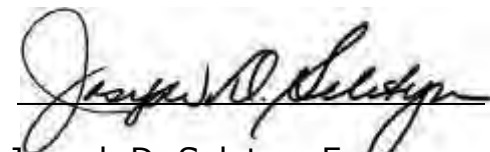
Upon review, and viewing the evidence admitted at trial in the light most favorable to the Commonwealth as verdict winner, we agree with the trial court that the Commonwealth presented sufficient evidence for the jury to find every element of indecent assault and corruption of minors beyond a reasonable doubt. B.S., the ten-year-old victim, testified credibly that Appellant sexually assaulted her when she was asleep in her bedroom at her mother's house. N.T., 8/29/12, at 36-52. The victim specified that while she was asleep in her bed, Appellant got into the bed with her, pulled her underwear down, and "put his penis in my butt." *Id.* at 40. She further

testified that although the room was dark, she recognized his voice when he spoke to her. *Id.* at 41. ***See Commonwealth v. Trippett***, 932 A.2d 188, 201 (Pa. Super. 2007) (“under prevailing Pennsylvania law, the uncorroborated testimony of a sexual assault victim, if believed by the trier of fact, is sufficient to convict a defendant”) (citations and internal quotations omitted). The jury found B.S. credible, and we will not disturb such credibility determinations on appeal. We agree with the trial court that Appellant’s sufficiency claim fails because the victim’s testimony was sufficient to sustain Appellant’s convictions.

Upon independent examination of the record, we conclude that Appellant has not raised any non-frivolous issues for our review. We therefore affirm the judgment of sentence and grant counsel’s petition to withdraw.

Judgment of sentence affirmed. 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: 8/19/2014