

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

JAMES HILL,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2770 EDA 2013

Appeal from the Judgment of Sentence of January 29, 2010
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0512781-2010

BEFORE: FORD ELLIOTT, P.J.E., OLSON AND STABILE, JJ.

MEMORANDUM BY OLSON, J.:

FILED JULY 09, 2014

Appellant, James Hill, appeals from the judgment of sentence entered on January 29, 2010. On this direct appeal, Appellant's court-appointed counsel has filed both an application to withdraw as counsel and an accompanying brief pursuant to ***Commonwealth v. McClendon***, 434 A.2d 1185 (Pa. 1981), and its federal predecessor, ***Anders v. California***, 386 U.S. 738 (1967). We conclude that Appellant's counsel has complied with the procedural requirements necessary to withdraw and that this appeal is wholly frivolous. We therefore grant counsel's application to withdraw and affirm the judgment of sentence.

The factual and procedural history of this case is as follows. On July 23, 2003, Appellant pled guilty to forgery¹ and simple assault.² He was sentenced to two years of probation. On December 21, 2005, Appellant's probation was revoked and he was sentenced to 11½ to 23 months' imprisonment to be followed by three years of probation. After being released from prison, Appellant failed to report to his probation officer. Unbeknownst to the trial court, Appellant was also on probation in a case in the Montgomery County Court of Common Pleas. Appellant was reporting regularly to his probation officer in Montgomery County and making necessary payments in that case.

One year after his release from prison, he was arrested for various drug offenses. He was ultimately found guilty of those drug offenses and sentenced to two to four years' imprisonment. The trial court then conducted a probation revocation hearing at which time evidence was presented regarding Appellant's failure to report to his probation officer, his failure to make payments as required, and his convictions for the drug offenses. On January 29, 2010, the trial court found that Appellant violated his probation by committing the drug offenses and therefore revoked his probation and sentenced him to 1 to 2 years' incarceration, to be served consecutively to the two to four years' incarceration from the drug case.

¹ 18 Pa.C.S.A. § 4101.

² 18 Pa.C.S.A. § 2701.

Appellant did not appeal from the judgment of sentence that followed the revocation proceedings. On January 31, 2013, Appellant filed a PCRA petition. On September 20, 2013, Appellant's PCRA petition was granted in part and denied in part. The PCRA court granted Appellant the right to file an appeal in this matter *nunc pro tunc* but denied his request to file a post-sentence motion *nunc pro tunc*. This timely appeal followed.

Counsel raises one issue in his **Anders** Brief, whether the evidence was sufficient to support the revocation of Appellant's probation. **See** Anders Brief at 10.

Before reviewing the merits of this appeal, however, this Court must first determine whether counsel has fulfilled the necessary procedural requirements for withdrawing as counsel. **Commonwealth v. Washington**, 63 A.3d 797, 800 (Pa. Super. 2013). To withdraw under **Anders**, court-appointed counsel must satisfy certain technical requirements. 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." **Commonwealth v. Martuscelli**, 54 A.3d 940, 947 (Pa. Super. 2012), quoting **Commonwealth v. Santiago**, 978 A.2d 349, 361 (Pa. 2009). Second, counsel must file an **Anders** brief, in which counsel:

- (1) provide[s] a summary of the procedural history and facts, with citations to the record;

(2) refer[s] to anything in the record that counsel believes arguably supports the appeal;

(3) set[s] forth counsel's conclusion that the appeal is frivolous; and

(4) state[s] 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.

Washington, 63 A.3d at 800, quoting **Santiago**, 978 A.2d at 361.

Finally, counsel must furnish a copy of the **Anders** brief to his client and "advise[] him of his right to retain new counsel, proceed *pro se* or raise any additional points that he deems worthy of the court's attention, and attach[] to the **Anders** petition a copy of the letter sent to the client." **Commonwealth v. Daniels**, 999 A.2d 590, 594 (Pa. Super. 2010) (citation omitted).

If counsel meets all of the above 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." **Santiago**, 978 A.2d at 355 n.5, quoting **McClendon**, 434 A.2d at 1187. It is only when both the procedural and substantive requirements are satisfied that counsel will be permitted to withdraw. In the case at bar, counsel has complied with the procedural

requirements for petitioning to withdraw on direct appeal.³ We now turn to the issue raised in counsel's **Anders** brief.

As we have stated:

A probation violation is established whenever it is shown that the conduct of the probationer indicates the probation has proven to have been an ineffective vehicle to accomplish rehabilitation and not sufficient to deter against future antisocial conduct. Moreover, the Commonwealth need only make this showing by a preponderance of the evidence.

Commonwealth v. Ortega, 995 A.2d 879, 886 (Pa. Super. 2010), *appeal denied*, 20 A.3d 1211 (Pa. 2011) (citations and footnote omitted).

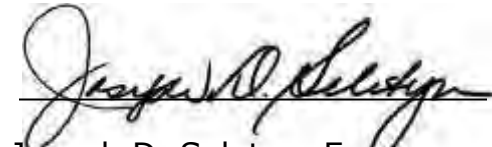
Appellant contends that he did not have notice that he had to report to the probation officer in Philadelphia County. However, we need not reach that issue to determine whether there was sufficient evidence for the trial court to revoke Appellant's probation. It is well-settled that, "Conviction of a new crime is a sufficient basis for a court to revoke a sentence of probation." **Commonwealth v. Kalichak**, 943 A.2d 285, 289 (Pa. Super. 2008) (citation omitted). Evidence was presented at the revocation hearing that Appellant was convicted of drug-related offenses while he was on probation. **See** N.T., 1/29/10, at 5. This evidence alone was sufficient for the trial court to revoke Appellant's probation. As such, Appellant's contention that the evidence was insufficient to revoke his probation is wholly frivolous.

³ Appellant has not filed any response to counsel's **Anders** brief.

In sum, we conclude that the lone issue raised in counsel's **Anders** brief is frivolous. Furthermore, after an independent review of the entire record, we conclude that no other issue of arguable merit exists. Therefore, we will grant counsel's request to withdraw. Having determined that the issue raised on appeal is frivolous, we will affirm the judgment of sentence.

Application to withdraw as counsel granted. Judgment of sentence affirmed.

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: 7/9/2014