

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
CONAL IRVIN JAMES WRIGHT,	:	
	:	
Appellant	:	No. 3428 EDA 2013

Appeal from the Judgment of Sentence entered on November 12, 2013  
in the Court of Common Pleas of Montgomery County,  
Criminal Division, No. CP-46-CR-0002598-2013

BEFORE: BOWES, SHOGAN and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

**FILED JULY 18, 2014**

Conal Irvin James Wright (“Wright”) appeals from the judgment of sentence imposed following his guilty plea to criminal attempt and invasion of privacy. **See** 18 Pa.C.S.A. §§ 901, 7507.1. Timothy Peter Wile, Esquire (“Wile”), Wright’s counsel, has filed a Petition to Withdraw as counsel and an accompanying brief pursuant to **Anders v. California**, 386 U.S. 738, 744 (1967). We affirm and grant Wile’s Petition to Withdraw.

On August 14, 2013, Wright tendered an open plea of guilty to one count each of criminal attempt and invasion of privacy. Wright admitted to planting a video recorder in a faculty restroom of Souderton Vantage Academy, a school that serves at-risk students. The trial judge deferred sentencing for ninety days and ordered a pre-sentence investigation (PSI)

report, a psychological evaluation, a probation and parole intervention (PPI) evaluation, and a sexually violent predator (SVP) assessment.

At the sentencing hearing on November 12, 2013, the judge stated that she had reviewed the PSI report and that Wright had undergone a psychological evaluation. However, the judge also stated that the PPI report had not yet been delivered to the court. Nevertheless, both the Commonwealth and Wright's counsel allowed the court to proceed with sentencing absent the PPI evaluation. The trial court sentenced Wright to an aggregate term of six to twelve months in prison. Wright filed a timely Notice of Appeal.

Wright's counsel, Wile, has filed a brief pursuant to **Anders** that raises the following question for our review: "Did the trial court abuse its discretion when it imposed an aggregate sentence of six (6) to twelve (12) months of total confinement upon [Wright] with respect to his convictions for [] criminal attempt and invasion of privacy?" **Anders** Brief at 5 (capitalization omitted). Wile filed a separate Petition to Withdraw as counsel with this Court on March 26, 2014. Wright filed neither a *pro se* brief, nor retained alternate counsel for this appeal.

"[W]e note that when faced with a purported **Anders** brief, this Court may not review the merits of the underlying issues without first passing on the request to withdraw." **Commonwealth v. Edwards**, 906 A.2d 1225, 1227 (Pa. Super. 2006) (citation, brackets, and quotation marks omitted).

Pursuant to **Anders**, when counsel believes an appeal is frivolous and wishes to withdraw from representation, he must do the following:

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

**Commonwealth v. Curry**, 931 A.2d 700, 701 (Pa. Super. 2007) (citation omitted). In **Commonwealth v. Santiago**, 978 A.2d 349 (Pa. 2009), our Supreme Court addressed the second requirement of **Anders**, *i.e.*, the contents of an **Anders** brief, and set forth the following requirements for **Anders** briefs:

- (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
- (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. "Once counsel has satisfied the [**Anders**] requirements, it is then this Court's duty to conduct its own review of the trial court's proceedings and render an independent judgment as to whether

the appeal is, in fact, wholly frivolous.” **Edwards**, 906 A.2d at 1228 (citation omitted).

Here, we conclude that Wile has substantially complied with each of the requirements of **Anders**. **See Commonwealth v. Wrecks**, 934 A.2d 1287, 1290 (Pa. Super. 2007) (stating that counsel needs to substantially comply with the requirements of **Anders**). Wile has provided this Court with the pertinent issues Wright seeks to raise, and stated that the appeal is frivolous. Further, Wile’s brief comports with the requirements set forth in **Santiago**. By letter dated March 25, 2014, Wile also advised Wright of his rights to proceed *pro se* or retain alternate counsel and file additional claims, and stated Wile’s intention to seek permission to withdraw. Accordingly, Wile has complied with the procedural requirements for withdrawing from representation, and we will review the record to determine whether the appeal is frivolous.

Initially, Wright contends that the trial court abused its discretion by imposing the sentence without considering the PSI report. Wright challenges the discretionary aspects of his sentence. “Challenges to the discretionary aspects of sentencing do not entitle an appellant to review as of right.” **Commonwealth v. Moury**, 992 A.2d 162, 170 (Pa. Super. 2010). Prior to reaching the merits of a discretionary sentencing issue,

[this Court conducts] a four part analysis to determine: (1) whether appellant has filed a timely notice of appeal, **see** Pa.R.A.P. 902 and 903; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify

sentence, **see** Pa.R.Crim.P. [720]; (3) whether appellant's brief has a fatal defect, [**see**] Pa.R.A.P. 2119(f); and (4) whether there is a substantial question that the sentence appealed from is not appropriate under the Sentencing Code, [**see**] 42 Pa.C.S.A. § 9781(b).

**Moury**, 992 A.2d at 170 (citation omitted).

Here, our review of the record discloses that Wright did not object at sentencing to the court's alleged abuse of discretion, nor did he file a post-sentence motion.<sup>1</sup> Accordingly, Wright has waived this claim. **See Commonwealth v. Gibbs**, 981 A.2d 274, 282 (Pa. Super. 2009) (stating that in order to preserve a challenge to the discretionary aspects of sentencing for appellate review, the appellant must have raised the claim either during sentencing or in a timely post-sentencing motion); **see also Commonwealth v. Barnhart**, 933 A.2d 1061, 1066-67 (Pa. Super. 2007) (holding that the appellant had waived his challenge to the discretionary aspects of his sentence since he did not raise this claim at sentencing or in a post-sentence motion).

Moreover, even if Wright's sentencing challenge was not waived, it would lack merit because the record indicates that the sentencing court considered the PSI report. **See** Trial Court Opinion, 11/12/13, at 4; N.T., 11/12/13, at 3-4; **see also Commonwealth v. Ventura**, 975 A.2d 1128, 1135 (Pa. Super. 2009) (stating that "where the sentencing judge had the benefit of a presentence investigation report, it will be presumed that he or

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<sup>1</sup> Indeed, Wile concedes that Wright failed to preserve his challenge to his sentence for appellate review. **See Anders** Brief at 17.

she was aware of the relevant information regarding the defendant's character and weighed those considerations along with mitigating statutory factors") (citation omitted). The trial court also considered the circumstances of the crimes, the impact on the community, and the psychological evaluation performed on Wright.<sup>2</sup> **See** Trial Court Opinion, 11/12/13, at 30, 33.

Furthermore, Wright's claim that the trial judge had an improper connection with Souderton Vantage Academy is wholly frivolous. Indeed, Wright never raised an objection or moved for the judge's recusal. Moreover, Wright does not point to any evidence to demonstrate that the judge acted with bias.

Based upon the foregoing, we are convinced that Wright's appeal is wholly frivolous and that there are no non-frivolous issues to be considered. Accordingly, we grant Attorney Wile's Petition to Withdraw as counsel under the precepts of **Anders** and its progeny.

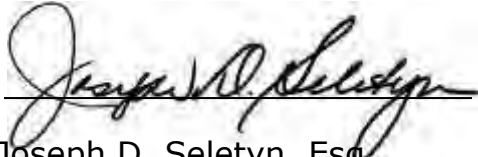
Judgment of sentence affirmed; Petition to Withdraw as counsel granted.

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<sup>2</sup> At sentencing, the parties agreed that Wright's psychological evaluation and treatment served the same purpose as a PPI evaluation. **See** N.T., 11/12/13, at 3-4.

J-S31041-14

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: 7/18/2014