

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

CRAIG SHELTON BROWN

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 3514 EDA 2013

Appeal from the Judgment of Sentence November 12, 2013  
In the Court of Common Pleas of Montgomery County  
Criminal Division at No(s): CP-46-CR-0005695-2013

BEFORE: BOWES, J., DONOHUE, J., and MUNDY, J.

MEMORANDUM BY MUNDY, J.:

**FILED JULY 08, 2014**

Appellant, Craig Shelton Brown, appeals from the November 12, 2013 judgment of sentence of 30 days to 23 months' imprisonment, to be followed by two years' probation consecutive to the expiration of his parole, imposed after he entered a negotiated guilty plea to, *inter alia*, one count of stalking.<sup>1, 2</sup> The trial court also ordered that Appellant serve the first three months of parole on electronic monitoring. Contemporaneously with this appeal, counsel has requested leave to withdraw in accordance with **Anders**

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<sup>1</sup> 18 Pa.C.S.A. § 2709.1(a).

<sup>2</sup> The record reflects that Appellant also entered negotiated guilty pleas at this time in three other criminal informations, Nos. CR-0006754-2013, CR-0003974-2013, and CR-0005605-2013. However, none of these respective charges are at issue in the instant appeal. **See** N.T., 11/12/13, at 3-7.

**v. California**, 386 U.S. 738 (1967), and its progeny. After careful review, we grant counsel's petition to withdraw and affirm the judgment of sentence.<sup>3</sup>

The relevant facts and procedural history of this case may be summarized as follows. On July 18, 2013, Appellant was charged with stalking and harassment<sup>4</sup> in connection with a confrontation Appellant had with a homeowner in Norristown Borough, Montgomery County, Pennsylvania, in which Appellant threatened to assault the homeowner and vandalize the home. Thereafter, on November 12, 2013, Appellant entered a negotiated guilty plea to one count of stalking, and was sentenced as agreed the same day to 30 days to 23 months' imprisonment, to be followed by two years' probation consecutive to the expiration of his parole. N.T., 11/12/13, at 4. The trial court further directed that Appellant be placed on electronic monitoring for the first three months of parole, and have no contact with the victim. **Id.** at 24. The Commonwealth *nol prossed* the charge of harassment. Appellant was represented by Montgomery County Public Defender, Patricia Cassidy, Esquire (Attorney Cassidy), at this

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<sup>3</sup> On May 16, 2014, the Commonwealth filed a letter indicating that it agrees with Appellant's counsel that the claims raised on appeal are frivolous, and it will not be filing a responsive brief in this matter.

<sup>4</sup> 18 Pa.C.S.A. § 2709.

time. Appellant did not file a post-sentence motion seeking to withdraw his guilty plea.

On December 10, 2013, Appellant filed a timely *pro se* notice of appeal. On December 18, 2013, Timothy Peter Wile, Esquire, the Assistant Public Defender Chief for Montgomery County – Appellate Division (hereinafter, counsel), entered his appearance on behalf of Appellant. That same day, counsel filed an amended notice of appeal on Appellant’s behalf.<sup>5</sup> Thereafter, on April 28, 2014, Appellant’s counsel filed a motion and brief to withdraw from representation in accordance with ***Anders*** and its progeny. The record reflects that counsel initially failed to attach to his petition to withdraw a copy of his letter to Appellant advising him of his rights to retain private counsel and/or proceed *pro se*. ***See Commonwealth v. Millisock***, 873 A.2d 748, 751-752 (Pa. Super. 2005) (stating that counsel is required to attach to his or her petition to withdraw a copy of the letter sent to the client advising of the right to retain private counsel and/or proceed *pro se*). On May 16, 2014, this Court entered an order directing counsel to furnish it with copies of the letter. ***See Per Curiam Order***, 5/16/14. In response, on May 27, 2014, counsel filed a second copy of his original petition to

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<sup>5</sup> The record reflects that on February 26, 2014, the appeal filed at No. 3571 EDA 2013 was dismissed as duplicative by this Court. ***See Per Curiam Order***, 2/26/14. Additionally, we note that Appellant and the trial court have complied with Pa.R.A.P. 1925.

withdraw, which included a copy of his April 24, 2014 letter to Appellant. Appellant did not respond to counsel's motion to withdraw.

In his **Anders** brief, counsel raises the following issue on Appellant's behalf.

[I.] Did the trial court abuse its discretion by imposing a judgment of sentence upon Appellant that is unduly harsh and excessive under the circumstances of Appellant's case?

**Anders** Brief at 5.

"When presented with an **Anders** brief, this Court may not review the merits of the underlying issues without first passing on the request to withdraw." **Commonwealth v. Titus**, 816 A.2d 251, 254 (Pa. Super. 2003) (citation omitted). For cases where the briefing notice was issued after August 25, 2009, as is the case here, an **Anders** brief shall comply with the requirements set forth by our Supreme Court in **Commonwealth v. Santiago**, 978 A.2d 349 (Pa. 2009).

[W]e hold that in the **Anders** brief that accompanies court-appointed counsel's petition to withdraw, counsel must: (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.

**Id.** at 361. Additionally, counsel must furnish the appellant with a copy of the brief, advise him in writing of his right to retain new counsel or proceed *pro se*, and attach to the **Anders** petition a copy of the letter sent to appellant as required under **Millisock**. **See Commonwealth v. Daniels**, 999 A.2d 590, 594 (Pa. Super. 2010) (holding that, “[w]hile the Supreme Court in **Santiago** set forth the new requirements for an **Anders** brief, ... the holding did not abrogate the notice requirements set forth in **Millisock** that remain binding legal precedent”) (footnote omitted). “After counsel has satisfied these requirements, we must conduct our own review of the trial court proceedings and independently determine whether the appeal is wholly frivolous.” **Titus, supra** at 254 (citation omitted).

In the instant matter, we conclude that counsel’s **Anders** brief complies with the requirements of **Santiago**. First, counsel has provided a procedural and factual summary of the case with references to the record. **See Anders** Brief at 6-9. Second, counsel advances relevant portions of the record that arguably support Appellant’s contention on appeal. **Id.** at 11-14. Third, counsel concluded, following his independent review of the record, that Appellant’s appeal “from [the November 12, 2013] judgment of sentence is wholly frivolous as lacking any basis in either law or fact.” **Id.** at 14-15. Lastly, as noted, counsel has complied with the requirements set forth in **Millisock**. As a result, we proceed to conduct an independent review to ascertain if the appeal is indeed wholly frivolous.

Instantly, Appellant contends that the judgment of sentence imposed by the trial court following his entry of an negotiated guilty plea to one count of stalking was “unduly harsh and excessive under the circumstances of [this] case[.]” and the trial court abused its discretion in sentencing him in this fashion. **Anders Brief** at 5, 11. For the following reasons, we conclude that Appellant’s claim is frivolous.

This Court has long recognized that the entry of an negotiated guilty plea “constitutes a waiver of all nonjurisdictional defects and defenses. When a defendant pleads guilty, he waives the right to challenge anything but the legality of his sentence and the validity of his plea.” **Commonwealth v. Barbaro**, --- A.3d. ---, 2014 WL 2601509, \*1 n.2 (Pa. Super. 2014), quoting **Commonwealth v. Jones**, 929 A.2d 205, 212 (Pa. 2007). Herein, Appellant has failed to challenge his guilty plea on any of these bases. Rather, Appellant merely avers that his sentence of 30 days to 23 months’ imprisonment, to be followed by two years’ probation consecutive to the expiration of his parole, was “unduly harsh and excessive[.]” **Anders Brief** at 5. As the trial court properly explained in its opinion, however, this sentence was the precise sentence to which Appellant knowingly, voluntarily, and intelligently entered a negotiated guilty plea. Trial Court Opinion, 3/18/14, at 2; **see also** N.T., 11/12/13, at 4, 10-15, 21-23. Accordingly, Appellant’s challenge to the discretionary aspects of his negotiated guilty plea sentence is waived. **See, e.g., Commonwealth v.**

**Baney**, 860 A.2d 127, 131 (Pa. Super. 2004) (holding that, “having entered a valid negotiated guilty plea, ... [appellant] cannot challenge the discretionary aspects of his sentence[.]”) (citation omitted), *appeal denied*, 877 A.2d 459 (Pa. 2005).<sup>6</sup>

In any event, even if Appellant were permitted to challenge his November 12, 2013 negotiated sentence, his claim would still fail. The record reflects that Appellant has failed to comply with the second prong of the four-factor test<sup>7</sup> articulated in **Commonwealth v. Edwards**, 71 A.3d

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<sup>6</sup> Moreover, our review of the record reveals that Appellant did not object to said guilty plea at the November 12, 2013 hearing, or file a post-sentence motion seeking to withdraw said plea. In order to preserve an issue related to a guilty plea, an appellant must either object at the colloquy or otherwise raise the issue at the hearing or through a post-sentence motion. **Commonwealth v. Tareila**, 895 A.2d 1266, 1270 n.3 (Pa. Super. 2006); **see also** Pa.R.A.P. 302(a) (stating, “[i]ssues not raised in the lower court are waived and cannot be raised for the first time on appeal[.]”). Accordingly, for all the forgoing reasons, we conclude that Appellant’s sentencing claim is both frivolous and waived.

<sup>7</sup> Prior to reaching the merits of a discretionary sentencing issue, we conduct a four-part analysis to determine the following.

- (1) whether the appeal is timely;
- (2) whether Appellant preserved his issue;
- (3) whether Appellant's brief includes a concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of sentence; and
- (4) whether the concise statement raises a substantial question that the sentence is appropriate under the sentencing code.

**Commonwealth v. Edwards**, 71 A.3d 323, 329-330 (Pa. Super. 2013) (citations omitted), *appeal denied*, 81 A.3d 75 (Pa. 2013).

323, 329-330 (Pa. Super. 2013) (citations omitted), *appeal denied*, 81 A.3d 75 (Pa. 2013). Specifically, Appellant failed to raise this sentencing claim during the November 12, 2013 sentencing proceedings. Furthermore, Appellant did not file a timely post-sentence motion to modify his sentence, pursuant to Pa.R.Crim.P. 720(B). "Absent such efforts, an objection to a discretionary aspect of a sentence is waived." ***Commonwealth v. Kittrell***, 19 A.3d 532, 538 (Pa. Super. 2011), *appeal denied*, 32 A.3d 1276 (Pa. 2011). ***See also Commonwealth v. Ahmad***, 961 A.2d 884, 886 (Pa. Super. 2008) (holding that in order to preserve for appellate review an issue involving the discretionary aspects of sentence, the claim first must have been raised in a post-sentence motion or presented to the trial court); ***accord*** Pa.R.A.P. 302(a). Accordingly, Appellant has waived any challenge to the discretionary aspects of his sentence on this basis as well.

For all the foregoing reasons, we agree with counsel that Appellant's appeal is "wholly frivolous." ***Titus, supra*** at 254. Accordingly, we grant counsel's petition to withdraw and affirm the trial court's November 12, 2013 judgment of sentence.

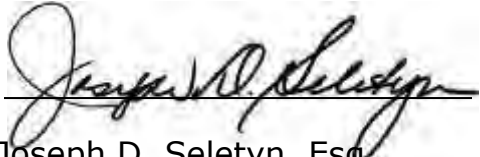
Judgment of sentence affirmed. Petition to withdraw as counsel granted.

Judge Bowes concurs in the result.



J-S41035-14

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: 7/8/2014