

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
EDDIE JOHNSON,	:	
	:	
Appellant	:	No. 553 WDA 2014

Appeal from the Judgment of Sentence March 26, 2014,
Court of Common Pleas, Erie County,
Criminal Division at No. CP-25-CR-0002460-2013

BEFORE: DONOHUE, MUNDY and FITZGERALD*, JJ.

CONCURRING MEMORANDUM BY DONOHUE, J.: **FILED DECEMBER 5, 2014**

I agree with the result reached by the Majority. I write separately, however, because in reaching its decision, the Majority only determined that the issue raised by counsel in her **Anders** brief was wholly frivolous. **See** Maj. at 7. The case relied on by the Majority, **Commonwealth v. Washington**, 63 A.3d 797 (Pa. Super. 2013), to limit its review to the issues raised by counsel is an anomaly in our jurisprudence. It deviates from decisions prior to its filing and is inconsistent with subsequent published decisions of this Court.

Pursuant to **Anders v. California**, 386 U.S. 738 (1967), when faced with an adequate **Anders** brief, it is the duty of this Court to conduct an independent review of the record to determine whether there are any non-frivolous issues that counsel failed to raise on his or her client’s behalf. **See**

*Former Justice specially assigned to the Superior Court.

Anders, 386 U.S. at 744 (stating that the court must conduct an independent review of the record to determine “whether the case is wholly frivolous”). Relevant Pennsylvania case law, including this Court’s en banc decision in **Commonwealth v. Goodwin**, 928 A.2d 287 (Pa. Super. 2007) (en banc), states that **Anders** requires that this Court conduct an independent review of the record to discern if there are any additional, non-frivolous issues that counsel omitted. *See, e.g., Goodwin*, 928 A.2d at 292; *see also Commonwealth v. James*, 46 A.3d 776, 778 (Pa. Super. 2012) (en banc) (stating the history of the case, which included an unpublished memorandum decision by a three-judge panel of this Court wherein we denied counsel’s request to withdraw pursuant to **Anders**, as the panel found an issue of arguable merit and remanded the case for the filing of an advocates brief); **Commonwealth v. Harden**, __ A.3d __, 2014 WL 5421012 at *3 (Pa. Super. Oct. 27, 2014) (“We now must conduct an independent review of the record to determine whether the issues identified by Harden in this appeal are, as counsel claims, wholly frivolous, or if there are any other meritorious issues present in this case.”).

I have conducted an independent review of the record and found no non-frivolous issues that **Anders** counsel failed to raise in her brief. I therefore agree with the Majority that we must affirm the judgment of sentence and grant counsel permission to withdraw.

Justice Fitzgerald joins this concurring memorandum.