

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

MARIO MEDINA

Appellant

No. 759 MDA 2014

Appeal from the Judgment of Sentence April 30, 2014
In the Court of Common Pleas of Lebanon County
Criminal Division at No(s): CP-38-CR-0001395-2013

BEFORE: GANTMAN, P.J., JENKINS, J., and MUSMANNO, J.

MEMORANDUM BY GANTMAN, P.J.:

FILED DECEMBER 23, 2014

Appellant, Mario Medina, appeals the judgment of sentence entered in the Lebanon County Court of Common Pleas, following his jury trial conviction of one count each of persons not to possess a firearm, receiving stolen property, robbery, and escape.¹ We affirm and grant counsel's petition to withdraw.

The relevant facts and procedural history of this case are as follows. While on a public street on August 20, 2013, Appellant ran up to the victim, ripped the victim's money from her hands, and fled. Appellant took approximately seven hundred twenty-seven dollars and twenty cents (\$727.20) from the victim. A witness to the incident followed Appellant by

¹ 18 Pa.C.S.A. §§ 6105(a)(1), 3925(a), 3701(a)(1)(v), 5121(a).

car as he fled. Appellant pointed a gun in her direction. Police responded to reports by both the victim and the witness. Police surrounded a house that Appellant had entered. The owner of the home allowed police to enter. Police initially looked for but did not find Appellant. Police then received permission to search the home and found a stolen handgun. After some time in hiding, Appellant exited the home. Police officers stationed around the perimeter of the home spotted Appellant. Police officers testified that when Appellant stepped out of hiding and surrendered to police, Appellant stated: “[Y]ou got me.” and “[T]he shit in the house is mine.” (**See** N.T. Trial, 3/5/14, at 64, 75.) Police arrested Appellant. While handcuffed, Appellant ran from police. Video surveillance captured the robbery. Appellant did not contest the robbery or that he hid successfully as police searched the home for him. Appellant later confirmed ownership of the gun in a recorded statement. Appellant testified at trial that he was going to take responsibility for anything found in the house, and when questioned about ownership of the marijuana found in the house, Appellant stated, “Yes, that’s mine.” (**Id.** at 105-106). A jury convicted Appellant of persons not to possess a firearm, receiving stolen property, robbery, and escape.

The court sentenced Appellant to an aggregate five and one-half to seventeen (5½-17) years’ imprisonment on April 30, 2014. On May 2, 2014, Appellant timely filed a notice of appeal. Counsel filed a contemporaneous Pa.R.A.P. 1925(c)(4) statement of his intent to file an

Anders brief.

As a preliminary matter, appellate counsel seeks to withdraw his representation pursuant to **Anders v. California**, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967) and **Commonwealth v. Santiago**, 602 Pa. 159, 978 A.2d 349 (2009). **Anders** and **Santiago** require counsel to: 1) petition the Court for leave to withdraw, certifying that after a thorough review of the record, counsel has concluded the issues to be raised are wholly frivolous; 2) file a brief referring to anything in the record that might arguably support the appeal; and 3) furnish a copy of the brief to the appellant and advise him of his right to obtain new counsel or file a *pro se* brief to raise any additional points the appellant deems worthy of review. **Santiago, supra** at 173-79, 978 A.2d at 358-61. Substantial compliance with these requirements is sufficient. **Commonwealth v. Wrecks**, 934 A.2d 1287, 1290 (Pa.Super. 2007). "After establishing that the antecedent requirements have been met, this Court must then make an independent evaluation of the record to determine whether the appeal is, in fact, wholly frivolous." **Commonwealth v. Palm**, 903 A.2d 1244, 1246 (Pa.Super. 2006) (quoting **Commonwealth v. Townsend**, 693 A.2d 980, 982 (Pa.Super. 1997)).

In **Santiago, supra**, our Supreme Court addressed the briefing requirements where court-appointed appellate counsel seeks to withdraw representation:

Neither **Anders** nor **McClendon**^[2] requires that counsel's brief provide an argument of any sort, let alone the type of argument that counsel develops in a merits brief. To repeat, what the brief must provide under **Anders** are references to anything in the record that might arguably support the appeal.

* * *

Under **Anders**, the right to counsel is vindicated by counsel's examination and assessment of the record and counsel's references to anything in the record that arguably supports the appeal.

Santiago, supra at 176, 177, 978 A.2d at 359, 360. Thus, the Court held:

[I]n 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 178-79, 978 A.2d at 361.

Instantly, counsel filed a petition for leave to withdraw representation. The petition states counsel reviewed the record and determined the appeal is wholly frivolous. Counsel indicates he notified Appellant of the withdrawal request. Counsel also supplied Appellant with a copy of the brief and a letter explaining Appellant's right to proceed *pro se* or with new privately retained counsel to raise any additional points or arguments Appellant believed have

² **Commonwealth v. McClendon**, 495 Pa. 467, 434 A.2d 1185 (1981).

merit. In his **Anders** brief, counsel provides a summary of the facts and procedural history of the case with reference to the record. Counsel refers to matters in the record which might arguably support the appeal and provides citation to relevant law. Counsel also states the reasons for his conclusion that the appeal is wholly frivolous. Thus, counsel has complied with the requirements of **Anders** and **Santiago**.

As Appellant has filed neither a *pro se* brief nor a counseled brief with new privately retained counsel, we review this appeal on the basis of the issues raised in the **Anders** brief:

DOES AN EXAMINATION OF THE RECORD PROVIDE ANY BASIS FOR ANY ARGUMENTS SUPPORTING REVERSAL OR MODIFICATION OF THE ORDER IN QUESTION?

(**Anders** Brief at 1).

In the **Anders** brief, counsel states he found nothing that arguably supports an appeal, where the testimony and other trial evidence all sustain the verdict. Further, Appellant has brought no other issues or complaints to counsel other than a general demand for an appeal. Counsel concludes the appeal is frivolous. We agree.

Section 6105 of the Crimes Code describes in pertinent part the offense of persons not to possess a firearm:

§ 6105. Persons not to possess, use, manufacture, control, sell or transfer firearms

(a) Offense defined.—

(1) A person who has been convicted of an offense enumerated in subsection (b), within or without this Commonwealth, regardless of the length of sentence or whose conduct meets the criteria in subsection (c) shall not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth.

18 Pa.C.S.A. § 6105(a)(1). Section 3925 of the Crimes Code defines the offense of receiving stolen property as follows:

§ 3925. Receiving stolen property

(a) Offense defined.—A person is guilty of theft if he intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with intent to restore it to the owner.

(b) Definition.—As used in this section the word “receiving” means acquiring possession, control or title, or lending on the security of the property.

18 Pa.C.S.A. § 3925. Likewise, the relevant section of the robbery statute states:

§ 3701. Robbery.

(a) Offense defined.—

(1) A person is guilty of robbery if, in the course of committing a theft, he:

* * *

(v) physically takes or removes property from the person of another by force however slight;

* * *

18 Pa.C.S.A. § 3701(a)(1)(v). Section 5121 of the Criminal Code provides:

§ 5121. Escape

(a) Escape.—A person commits an offense if he unlawfully removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period.

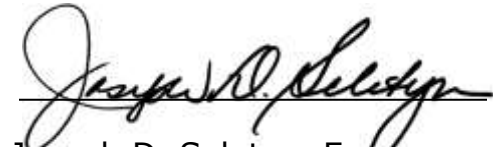
18 Pa.C.S.A. § 5121(a).

Instantly, the record reveals no viable issues for appeal. Here, the victim and a witness saw Appellant rip the victim's money from her hands, on a public street. Video surveillance captured the robbery. Appellant pointed a firearm in the direction of the witness. Police responded to reports by both the victim and the witness. Police surrounded a house that Appellant had entered. The owner of the home allowed police to enter. Police initially searched the home but did not find Appellant. Police then received permission to search the home where they found a stolen handgun. After some time in hiding, Appellant exited the home. Police officers stationed around the perimeter of the home spotted Appellant. Police officers testified that when Appellant stepped out of hiding and surrendered to police, Appellant stated: "[Y]ou got me." and "[T]he shit in the house is mine." (**See** N.T. Trial, 3/5/14, at 64, 75.) Police arrested Appellant. While handcuffed, Appellant ran from police. Appellant did not contest the robbery or that he hid successfully as police searched the home for him. Appellant later confirmed ownership of the gun in a recorded statement. Appellant testified at trial that he was going to take responsibility for anything found in the house, and when questioned about ownership of the marijuana found in

the house, Appellant stated, "Yes, that's mine." (*Id.* at 105-106). Therefore, we see no reason to disturb the jury's verdict or detect anything in the record to call that verdict into question. Accordingly, we affirm and grant counsel's petition to withdraw.

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: 12/23/2014