NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: M.H., A MINOR	IN THE SUPERIOR COURT OF PENNSYLVANIA
	No. 92 MDA 2014

Appeal from the Order Entered December 16, 2013
In the Court of Common Pleas of Schuylkill County
Criminal Division at No(s): CP-54-JV-0000135-2013

BEFORE: BENDER, P.J.E., BOWES, J., and PANELLA, J.

MEMORANDUM BY BENDER, P.J.E.: **FILED JULY 28, 2014**

Appellant, M.H., a juvenile, appeals from the dispositional order entered on December 16, 2013, after the juvenile court adjudicated her delinquent for committing criminal mischief. Appellant solely challenges the sufficiency of the evidence to prove that she committed criminal mischief. Additionally, Appellant's counsel, Mark A. Barket, Esq., seeks permission to withdraw his representation of Appellant pursuant to ***Anders v. California***, 386 U.S. 738 (1967), as elucidated by our Supreme Court in ***Commonwealth v. McClendon***, 434 A.2d 1185 (Pa. 1981), and amended in ***Commonwealth v. Santiago***, 978 A.2d 349 (Pa. 2009). Upon review, we agree with counsel that Appellant's appeal is frivolous. Accordingly, we affirm Appellant's dispositional order and grant counsel's petition to withdraw.

Appellant was arrested on August 13, 2013, and charged with committing criminal mischief, based on evidence that she and a cohort, N.G., "keyed" a vehicle owned by Pamela Smith. On December 16, 2013, the juvenile court conducted a hearing, at which Ms. Smith, Appellant, and N.G. testified. At the close thereof, the court determined that Appellant committed the offense of criminal mischief and, accordingly, it adjudicated her delinquent. That same day, the court entered a dispositional order requiring, *inter alia*, that Appellant complete an 18-month term of probation, as well as 180 hours of community service. She was also directed to pay restitution to Ms. Smith. Appellant filed a timely notice of appeal. On April 15, 2014, Attorney Barket filed with this Court a petition to withdraw and an ***Anders*** brief.

"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. Rojas***, 874 A.2d 638, 639 (Pa. Super. 2005) (quoting ***Commonwealth v. Smith***, 700 A.2d 1301, 1303 (Pa. Super. 1997)). In ***Santiago***, our Supreme Court altered the requirements for counsel to withdraw under ***Anders***. Thus, pursuant to ***Anders/Santiago***, in order to withdraw from an appeal, counsel now 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.

Commonwealth v. Daniels, 999 A.2d 590, 593 (Pa. Super. 2010) (citing ***Santiago***, 978 A.2d at 361). "Counsel also must provide a copy of the ***Anders*** brief to his client." ***Commonwealth v. Orellana***, 86 A.3d 877, 880 (Pa. Super. 2014).

> Attending the brief must be a letter that advises the client of his right to: "(1) retain new counsel to pursue the appeal; (2) proceed *pro se* on appeal; or (3) raise any points that the appellant deems worthy of the court[']s attention in addition to the points raised by counsel in the ***Anders*** brief." ***Commonwealth v. Nischan***, 928 A.2d 349, 353 (Pa.Super.2007), *appeal denied*, 594 Pa. 704, 936 A.2d 40 (2007).

Id. Once we are satisfied that counsel satisfied these technical requirements, this Court must then conduct its own review of the record and independently determine whether the appeal is, in fact, wholly frivolous. ***See Daniels***, at 594.

Instantly, Attorney Barket's ***Anders*** brief provides a summary of the procedural history and facts of Appellant's case. While counsel fails to cite to the record, the facts and procedural history of this case are straightforward; thus, we conclude that counsel's "brief substantially, if not perfectly, complies with ***Anders***[]" in this regard. ***Commonwealth v. Wrecks***, 934 A.2d 1287, 1290 (Pa. Super. 2007) (concluding that counsel's

substantial compliance with ***Anders*** was adequate, despite his failure "to cite law relevant to the question of timeliness," where we found the "applicable time limits to be straightforward").

Attorney Barket's ***Anders*** brief also includes a discussion of the sole issue Appellant seeks to raise on appeal, a challenge to the sufficiency of the evidence. Attorney Barket sets forth his conclusion that an appeal on Appellant's behalf would be wholly frivolous and explains the reasons underlying that determination. He also supports his rationale by articulating the relevant facts of record and citing to pertinent case law. Finally, in Attorney Barket's petition to withdraw, he certifies that he forwarded to Appellant (and her parents) a copy of his ***Anders*** brief and petition to withdraw. Attorney Barket also attached a letter he sent Appellant (and her parents) stating that Appellant has the right to retain new counsel, proceed *pro se*, or raise any additional issues she deems worthy of consideration. Therefore, we conclude that Attorney Barket has complied with the technical requirements of ***Anders/Santiago***. Accordingly, we will now independently review the merits of Appellant's sufficiency issue, and also determine whether there are any other issues she could arguably present on appeal. ***See Daniels***, 999 A.2d at 594.

To begin, we note:

> When considering a challenge to the sufficiency of the evidence, an appellate court must review the evidence presented and all reasonable inferences drawn therefrom in a light most favorable to the verdict winner and determine whether on the record there is a sufficient basis to support the challenged conviction. This

> Court must determine if the trier of fact could reasonably have concluded that all of the elements of the crime were established beyond a reasonable doubt. The fact finder is free to believe all, part or none of the evidence and the credibility of and the weight to be accorded the evidence produced are matters within the province of the trier of fact. This same standard is used when evaluating an adjudication of delinquency.

In re K.R.B., 851 A.2d 914, 917 (Pa. Super. 2004) (citations and internal quotation marks omitted).

Here, Appellant challenges the sufficiency of the evidence to sustain her conviction of criminal mischief. A person commits that offense when, *inter alia*, he/she "intentionally damages real or personal property of another[.]" 18 Pa.C.S. § 3304(a)(5). The juvenile court concluded that Appellant was guilty of criminal mischief based on the testimony of Ms. Smith, which the court summarized as follows:

> At the hearing, the Commonwealth presented the testimony of Pamela Smith, who resides at 209 Walnut Street in Minersville, Pennsylvania. She knows [Appellant] and was able to make [an] in-court identification. Ms. Smith testified that on July 21, 2013, at approximately 4:45 in the afternoon, she was outside the front of her home on her deck, grilling steaks … with her children, who were outside playing. The children yelled up to their mother that [Appellant] and another female juvenile were at Ms. Smith's car, "keying up the car." Ms. Smith turned her head, looked down and saw [Appellant] and the other girl at the car, which was parked on the road in front of her home, 10 to 15 feet away. Ms. Smith left the deck area, ran downstairs and ran after the two juveniles. Ms. Smith identified both juveniles and indicated that [Appellant] was on the near side of the car, and the other female juvenile, N.G., was on the other side. Ms. Smith was better able to see [Appellant]. After Ms. Smith ran after the girls, who ran up the hill, she returned and found key marks all the way up the side of her car, from the door all the way to the back. The passenger side had two scratches and [Ms. Smith] stated that she saw [Appellant] making the second scratch with a key. Most of the damage was

> on the passenger side, which was the side [Appellant] was on. Ms. Smith testified that prior to this incident, there was no damage to her car. The damage estimate was $985.00.

Juvenile Court Opinion (JCO), 2/27/14, at 1-2.

In addition to Ms. Smith's testimony, the court also noted the following testimony by Appellant, which indicated her possible motive for damaging Ms. Smith's car:

> [Appellant] stated that she knows Ms. Smith and had a prior incident with her concerning Ms. Smith's dog. During the incident, [Appellant] threatened to kick Ms. Smith's dog, if Ms. Smith did not get the dog away from [Appellant]. [Appellant] stated that Ms. Smith grabbed [Appellant] by the throat and tossed her onto the ground and sliced [Appellant's] neck with her fingernails. [Appellant] told her mother, who called the police and made a report and took pictures of [Appellant's] bruises and cuts. [Appellant] stated that this incident occurred about one month prior to the keying incident.

Id. at 3.

The juvenile court acknowledged that prior to Appellant's hearing, her cohort, N.G., had admitted to 'keying' Ms. Smith's car and was adjudicated delinquent for that conduct. ***Id.*** at 2. N.G. also testified at Appellant's hearing "that she alone scratched the car with a rock." ***Id.*** at 3. N.G. testified that "she only scratched the car on one side of the car, and that she only made one long scratch with the rock." ***Id.*** N.G. denied that Appellant ever went to the side of the car that N.G. damaged. ***Id.*** In Appellant's testimony, she also claimed that "N.G. must have done the damage," and that "she did not know that N.G. did it…." ***Id.*** at 2-3.

Ultimately, the juvenile court concluded that "[t]his was clearly a case of credibility." ***Id.*** at 3. The court further stated:

> We found Ms. Smith to be a credible witness. She was clear in her testimony and in her recollection. She had an opportunity to observe the criminal activity first-hand. She was able to identify [Appellant], and knew [Appellant] prior to the incident.
>
> We did not find either [Appellant] or N.G. to be credible witnesses. [Appellant] had a strong interest in the outcome of the matter, and N.G. admitted she was a friend of [Appellant]. N.G.'s story that there was only one scratch, did not agree with Ms. Smith's testimony that there were scratches on both sides of the vehicle, and more than one scratch on the passenger side. Those are objective facts. For these reasons, we conclude that the Commonwealth proved beyond a reasonable doubt that [Appellant] was guilty of the crime charged, and we, therefore, adjudicated her delinquent.

Id. at 4.

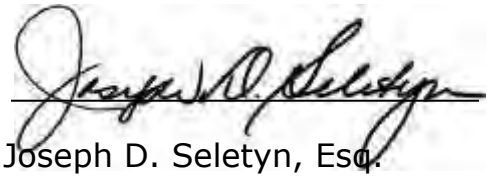
Our review of the record confirms that the juvenile court's credibility determinations are supported by the evidence presented at the delinquency hearing. Accordingly, we will not disturb those findings on appeal. ***See In re B.T.***, 82 A.3d 431, 435 (Pa. Super. 2013) (declining to disturb juvenile court's credibility determinations that were supported by the record) (citation omitted). Because the juvenile court believed Ms. Smith's testimony, which was sufficient to prove that Appellant intentionally caused the damage to Ms. Smith's vehicle, the court's adjudication of delinquency was not error.

Therefore, we agree with Attorney Barket that Appellant's challenge to the sufficiency of the evidence is frivolous. Additionally, our review of the record reveals no other arguably meritorious issues that Appellant could

assert herein. Consequently, we affirm her dispositional order and grant Attorney Barket's petition to withdraw.

Dispositional order affirmed. Petition to withdraw granted.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/28/2014