

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

GABRIEL ALBERTO PERAZZO

Appellant

IN THE SUPERIOR COURT
OF
PENNSYLVANIA

No. 76 EDA 2017

Appeal from the Judgment of Sentence Entered December 1, 2016
In the Court of Common Pleas of Bucks County
Criminal Division at Nos: CP-09-CR-0003340-2009

BEFORE: BOWES, STABILE, and PLATT,* JJ.

MEMORANDUM BY STABILE, J.:

FILED NOVEMBER 20, 2017

Appellant, Gabriel Alberto Perazzo, appeals from the December 1, 2016 judgment of sentence. Counsel has filed a brief and petition to withdraw pursuant to ***Anders v. California***, 386 U.S. 738 (1967) and ***Commonwealth v. Santiago***, 978 A.2d 349 (Pa. 2009). We affirm the judgment of sentence and grant counsel's petition to withdraw.

The trial court summarized the pertinent procedural history:

On August 24, 2009, Appellant pled guilty to theft by deception, receiving stolen property, access device fraud, identity theft and forgery. Appellant was sentenced to twenty-four months' probation. On April 29, 2011, following a hearing, Appellant was found in violation of his probation. Appellant was sentenced to three and one half years to seven years'

* Retired Senior Judge assigned to the Superior Court.

incarceration. Appellant's sentence was suspended and Appellant was sentenced to seven years' probation.

Appellant was subsequently convicted of new offenses in two other counties. A violation of probation hearing was held on December 1, 2016. Appellant admitted he was in direct violation due to the new convictions. Accordingly, the court reinstated the suspended sentence and sentenced Appellant to three and one half to seven years' incarceration. The court found that Appellant was eligible for recidivism risk reduction incentive ("RRRI") relief. The court calculated a RRRI minimum sentence of thirty-five months.

Trial Court Opinion, 2/14/17, at 1-2.

Appellant filed a timely notice of appeal, and counsel filed a Pa.R.A.P. 1925(b) statement alleging that Appellant's RRRI minimum sentence should have been 31 rather than 35 months. The trial court explained its sentence in a brief opinion:

Appellant contends that the Court improperly calculated his RRRI minimum sentence. Upon revocation of probation, the 'sentencing alternatives available to the court shall be the same as were available at the time of initial sentencing.' 42 Pa.C.S.A. § 9771. The RRRI statute provides that, at the time of sentencing, if the court determines that the defendant is RRRI eligible, the court must enter a sentencing order that: (1) imposes the minimum and maximum sentences as required by 42 Pa.C.S.A. § 9752; and (2) imposes the RRRI minimum sentence. See 61 Pa.C.S.A. [§ 4505]. The RRRI minimum sentence 'shall be equal to three-fourths of the minimum sentence imposed when the minimum sentence is three years or less. The [RRRI] minimum shall be equal to five-sixths of the minimum sentence if the minimum sentence is greater than three years.' *Id.*

Here, Appellant was sentenced to undergo imprisonment for not less than three and one half years nor more than seven years. Appellant's minimum sentence is greater than three years, so the RRRI minimum calculation is equal to five-sixths of the minimum sentence. Five-sixths of three and one half years is thirty-five months. The record, the court sheet and the DC-300B State

Commitment Form are consistent and clearly and accurately reflect a RRR minimum of thirty-five months.

Nonetheless, Appellant argues that the Court should have calculated the RRR minimum sentence as thirty-one months. Appellant seems to have simply used the incorrect multiplier in his calculations. In order to arrive at a RRR minimum of thirty-one months, Appellant must have multiplied his minimum sentence of three and one half years by three fourths. However, the statute clearly provides that the RRR minimum is equal to five-sixths of the minimum sentence where, as here, the minimum sentences is greater than three years. Accordingly, the Court properly calculated Appellant's RRR minimum sentence.

Id. at 2-3.

On appeal, counsel has filed an ***Anders*** Brief. Before we turn to the merits, we must consider whether counsel has complied with ***Anders*** and ***Santiago***.

Prior to withdrawing as counsel on a direct appeal under ***Anders***, counsel must file a brief that meets the requirements established by our Supreme Court in ***Santiago***. The brief 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.

Counsel also must provide a copy of the ***Anders*** brief to his client. 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.

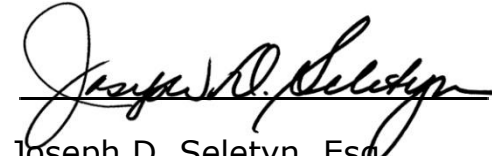
Commonwealth v. Orellana, 86 A.3d 877, 879–80 (Pa. Super. 2014).

Counsel's brief and petition meet the foregoing requirements. We therefore proceed to the merits. The **Anders** Brief indicates that Appellant believes the trial court miscalculated his RRRRI minimum. The **Anders** Brief concedes the validity of the trial court's analysis on that point. Given Appellant's three and one half year (or 42-month) minimum sentence of incarceration, the trial court correctly relied on the five-sixths multiplier. 61 Pa.C.S.A. § 4505(c)(2). One-sixth of 42 months is 7 months, and 7 months multiplied by 5 is 35 months. The trial court's statutory application and math are correct.

We agree with counsel that any challenge to the RRRRI minimum is frivolous. Furthermore, our own review of the record does not reveal any non-frivolous issues available to Appellant. Appellant conceded that he was in direct violation of his probation in this matter, and the trial court did not commit any error in revoking Appellant's probation and imposing a new sentence. We therefore affirm the judgment of sentence and grant counsel's petition to withdraw.

Judgment of sentence affirmed. Petition to withdraw granted.

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 11/20/2017