

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
JERMAINE RIVERA	:	
	:	
Appellant	:	No. 1841 MDA 2017

Appeal from the Judgment of Sentence October 31, 2017
 In the Court of Common Pleas of Cumberland County Criminal Division at
 No(s): CP-21-CR-0004077-2016

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

MEMORANDUM BY MURRAY, J.:

FILED JUNE 26, 2018

Jermaine Rivera (Appellant) appeals from the judgment of sentence entered after he pled guilty to attempted obstruction of the administration of law or other governmental function.¹ Appellant’s counsel (“Counsel”)² seeks to withdraw from representation pursuant to ***Anders v. California***, 386 U.S. 738, 87 S. Ct. 1396 (1967) and ***Commonwealth v. Santiago***, 978 A.2d 349, 361 (Pa. 2009). Upon review, we affirm Appellant’s judgment of sentence and grant Counsel’s petition to withdraw.

The underlying facts are as follows:

On October 31, 2016 . . . [Appellant’s girlfriend] was actively resisting [being arrested]. [Appellant] was pulling her toward the [couple’s] residence with his hands around her waist and got her

¹ 18 C.S.A. §§ 901, 5101.

² Counsel represented Appellant both at the trial court and on appeal.

into the stairway by the door before [a police officer] could pin [Appellant] to the stairs enough to get [the girlfriend] out of the residence. After pulling [the girlfriend] out[, Appellant] stood back up and made an aggressive movement toward where [the police officer] had [the girlfriend] in custody and had to be tazed for officer safety.

Affidavit of Probable Cause, 11/1/16.

The trial court summarized the procedural posture that followed:

[On October 31, 2017,] Appellant pled guilty to Criminal Attempt to Obstruction of Administration of Law or Other Governmental Functions. At the time of his guilty plea, Appellant appeared with his appointed defense counsel, read and signed a guilty plea colloquy form, and entered his plea after a further colloquy by this Court on the record. As part of the plea, Appellant admitted to facts as related by the Commonwealth pursuant to the criminal complaint prepared by the Affiant, Patrol Officer Nagy; namely, that on October 31, 2016, Appellant interfered with the ability of police to take his girlfriend into custody. The sentence that was imposed in this case, pursuant to the agreement between Appellant and the Commonwealth, was for fines and costs. The maximum sentence for this offense is up to a \$5,000 fine and two years' imprisonment, and the guideline sentence is RS-1.

Trial Court Opinion, 2/6/18, at 2 (footnotes omitted).

Appellant did not file a post-sentence motion. On November 30, 2017, Appellant filed a timely appeal. On December 13, 2017, the trial court ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Rule 1925(b) of the Pennsylvania Rules of Appellate Procedure. On January 3, 2018, Counsel filed a statement of intent to file an **Anders**

brief.³ On April 6, 2018, Counsel petitioned for leave to withdraw with this Court, and in support referenced, *inter alia*, the **Anders** brief she filed on March 22, 2018.

There are particular mandates that counsel seeking to withdraw pursuant to **Anders** must follow. These mandates and the significant protection they provide to an appellant arise because a criminal defendant has a constitutional right to a direct appeal and to counsel on that appeal. **Commonwealth v. Woods**, 939 A.2d 896, 898 (Pa. Super. 2007). We have summarized these requirements as follows:

Direct appeal counsel seeking to withdraw under **Anders** must file a petition averring that, after a conscientious examination of the record, counsel finds the appeal to be wholly frivolous. Counsel must also file an **Anders** brief setting forth issues that might arguably support the appeal along with any other issues necessary for the effective appellate presentation thereof.

Anders counsel must also provide a copy of the **Anders** petition and brief to the appellant, advising the appellant of the right to retain new counsel, proceed *pro se* or raise any additional points worthy of this Court's attention.

If counsel does not fulfill the aforesaid technical requirements of **Anders**, this Court will deny the petition to withdraw and remand the case with appropriate instructions (*e.g.*, directing counsel either to comply with **Anders** or file an advocate's brief on Appellant's behalf).

Id. (citations omitted).

³ In averring that Appellant's appeal was "wholly frivolous," Counsel misstated her intent to file a brief under "**Turner/Finley**" rather than **Anders**. Counsel corrected this misstatement in her subsequent filings with this Court in which she since has asserted that Appellant's appeal is frivolous under **Anders**.

Additionally, there are requirements as to precisely what an **Anders** brief must contain:

[T]he Anders brief that accompanies court-appointed counsel's petition to withdraw ... 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.

Santiago, 978 A.2d at 361. When faced with a purported **Anders** brief, we may not review the merits of the underlying issues without first deciding whether counsel has properly requested permission to withdraw. **Commonwealth v. Wimbush**, 951 A.2d 379, 382 (Pa. Super. 2008) (citation omitted). If counsel meets these obligations, "it then becomes the responsibility of the reviewing court to make a full examination of the proceedings and make an independent judgment to decide whether the appeal is in fact wholly frivolous." **Santiago**, 978 A.2d at 354 n.5.

Instantly, we conclude that Counsel has complied with the technical requirements of **Anders**. Counsel has filed a petition to withdraw with this Court. In conformance with **Santiago**, Counsel has also filed a brief which includes summaries of the facts and procedural history of the case, and discusses the issue which might arguably support Appellant's appeal, *i.e.*, "whether [Appellant's] plea was knowingly and voluntarily entered." **See Anders** Brief at 3 (unpaginated). Counsel's brief additionally sets forth her

conclusion that the appeal is frivolous and includes citation to relevant authority. **See id.** at 3-5. Finally, Counsel provided this Court with a copy of the letter that she sent to Appellant, which enclosed Counsel's petition and **Anders** brief and advised Appellant of his right to proceed *pro se* or with private counsel and to raise any additional issues that he deems worthy of this Court's consideration. **See** Letter, 4/13/18.

As noted above, the issue presented by Counsel in the **Anders** brief is whether Appellant's plea was knowingly and voluntarily entered. We have reviewed the written plea colloquy as well as the notes of testimony from the October 31, 2017 hearing, both of which indicate that Appellant entered his plea knowingly, intelligently, and voluntarily. Moreover, Appellant did not seek to withdraw his guilty plea at the hearing, nor did he file a post-sentence motion to withdraw his guilty plea within ten days of sentencing. We have explained:

A defendant wishing to challenge the voluntariness of a guilty plea on direct appeal must either object during the plea colloquy or file a motion to withdraw the plea within ten days of sentencing. Pa.R.Crim.P. 720(A)(1), (B)(1)(a)(i). Failure to employ either measure results in waiver. Historically, Pennsylvania courts adhere to this waiver principle because it is for the court which accepted the plea to consider and correct, in the first instance, any error which may have been committed.

Commonwealth v. Lincoln, 72 A.3d 606, 609-610 (Pa. Super. 2013) (citations and quotations omitted).

Based on the foregoing, Appellant waived any challenge to the validity of his plea, and Counsel is thus correct that raising this issue on appeal would

be frivolous. In addition, our review of the record comports with the trial court's determination:

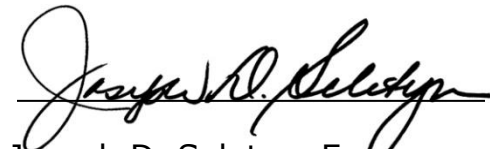
Considering that the Appellant admitted to facts as related by the Commonwealth, that we found that Appellant entered the guilty plea knowingly and voluntarily after our own colloquy of the Appellant, and that our judgment of sentence was within the sentencing guidelines for this offense . . . [w]e can deduce nothing from the record that would cause the Appellant to complain, and therefore see no basis for error in our ruling.

Trial Court Opinion, 2/6/18, at 3.

Accordingly, after conducting our own independent review of the record, we have determined that there are no issues of merit and agree with Counsel's assessment that Appellant's direct appeal is frivolous. We thus find this appeal wholly frivolous and permit Counsel to withdraw.

Judgment of sentence affirmed. Petition to withdraw granted.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/26/2018

