NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. TIARA ROSE PLEVA, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1940 MDA 2017

Appeal from the Judgment of Sentence Entered November 29, 2017
In the Court of Common Pleas of Schuylkill County
Criminal Division at No(s):
CP-54-CR-0001054-2017
CP-54-CR-0002334-2016
CP-54-CR-0002339-2016

BEFORE: BENDER, P.J.E., MCLAUGHLIN, J., and STRASSBURGER, J.*

MEMORANDUM BY BENDER, P.J.E.: **FILED OCTOBER 10, 2018**

Appellant, Tiara Rose Pleva, appeals from the judgment of sentence of an aggregate term of 6 to 23 months' incarceration, imposed after she pled guilty in three separate cases to retail theft, 18 Pa.C.S. § 3929(a)(1), hindering apprehension or prosecution, 18 Pa.C.S. § 5105(a)(1), and tampering with or fabricating physical evidence, 18 Pa.C.S. § 4910(1). On appeal, Appellant seeks to argue that her plea was involuntary, and that her plea counsel rendered ineffective representation. Additionally, Appellant's counsel, Kent D. Watkins, Esq., has petitioned to withdraw his representation of Appellant pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and

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* Retired Senior Judge assigned to the Superior Court.

Commonwealth v. Santiago, 978 A.2d 349 (Pa. 2009). After careful review, we affirm Appellant's judgment of sentence and grant counsel's petition to withdraw.

The facts underlying Appellant's convictions are not necessary to our disposition of her appeal. We need only note that on November 29, 2017, Appellant entered negotiated guilty pleas to the above-stated offenses. That same day, she was sentenced to a term of 6 to 23 months' incarceration for retail theft, a concurrent term of 6 to 14 months' incarceration for hindering apprehension or prosecution, and a concurrent term of 3 to 12 months' incarceration for tampering with or fabricating physical evidence. Appellant did not file a post-sentence motion. She filed a timely notice of appeal, and timely complied with the court's order to file a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal. In that statement, Appellant set forth the following two issues for our review:

1. Guilty plea was not knowingly and intelligently entered.
2. Defense counsel was ineffective in representation of [Appellant].

Rule 1925(b) Statement, 1/9/18, at 1. The court filed a Rule 1925(a) opinion addressing these issues on February 9, 2018.

Attorney Watkins filed with this Court an ***Anders*** brief and petition to withdraw, asserting that both of Appellant's above-stated issues are frivolous, and there are no other, non-frivolous issues that she could raise on appeal. Accordingly,

> this Court must first pass upon counsel's petition to withdraw before reviewing the merits of the underlying issues presented by [the appellant]. ***Commonwealth v. Goodwin,*** 928 A.2d 287, 290 (Pa. Super. 2007) (*en banc*).
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> 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:
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> > (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. 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. Nischan,*** 928 A.2d 349, 353 (Pa. Super. 2007), *appeal denied*, 594 Pa. 704, 936 A.2d 40 (2007).

Commonwealth v. Orellana, 86 A.3d 877, 879-80 (Pa. Super. 2014). After determining that counsel has satisfied these technical requirements of ***Anders*** and ***Santiago***, this Court must then "conduct an independent review of the record to discern if there are any additional, non-frivolous issues overlooked by counsel." ***Commonwealth v. Flowers***, 113 A.3d 1246, 1250 (Pa. Super. 2015) (citations and footnote omitted).

In this case, Attorney Watkins' ***Anders*** brief substantially complies with the above-stated requirements. For instance, he includes a summary of the relevant factual and procedural history and, while counsel does not refer to portions of the record that could arguably support Appellant's claims, he does set forth his conclusion that her appeal is frivolous. He also explains his reasons for reaching that determination, and supports his rationale with citations to the record and pertinent legal authority. Attorney Watkins also states in his petition to withdraw that he has supplied Appellant with a copy of his ***Anders*** brief, and he demonstrated that he informed Appellant of the rights enumerated in ***Nischan***. Accordingly, counsel has substantially complied with the technical requirements for withdrawal. We will now independently review the record to determine if Appellant's issues are frivolous, and to ascertain if there are any other, non-frivolous issues she could pursue on appeal.

Appellant first seeks to argue that her plea was involuntary and unknowing. We conclude that she has waived this claim for our review. Initially, Appellant failed to identify in her Rule 1925(b) statement any specific reason *why* her plea was invalid. ***See In re A.B.***, 63 A.3d 345, 350 (Pa. Super. 2013) ("[T]his Court may find waiver where a [Rule 1925(b)] concise statement is too vague. 'When a court has to guess what issues an appellant is appealing, that is not enough for meaningful review.'") (citations omitted). Moreover, this Court has declared that, "[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." ***Commonwealth v. Lincoln***, 72 A.3d 606, 609-10 (Pa. Super. 2013) (citing Pa.R.Crim.P. 720(A)(1), (B)(1)(a)(i)). "Failure to employ either measure results in waiver." ***Id.*** (citation omitted).

Here, Appellant never formally moved to withdraw her plea during the plea/sentencing proceedings, or in a post-sentence motion. We recognize that, just after Appellant entered her plea and before she was sentenced, she stated she was "pulling [her] plea[,]" and expressed confusion about the negotiated sentence. N.T. Guilty Plea Hearing, 11/29/17, at 8. Specifically, Appellant explained that she pled guilty believing she would receive "two months [of] house arrest[,]" not a minimum of six months' incarceration. ***Id.*** at 10. However, after the trial court explained the negotiated sentence and the credit for time served that Appellant would receive, Appellant stated that she would "stay with the plea[,]" and agreed to continue with sentencing. ***Id.*** at 9-10. Appellant did not lodge any other objections or orally move to withdraw her plea, and she did not file a post-sentence motion. Based on this record, we conclude that Appellant has waived any challenge to the validity of her plea. ***See Lincoln, supra***.

In any event, even had Appellant not waived this claim, we would deem it meritless. This Court has explained:

> Basic tenets of guilty plea proceedings include the following. "The law does not require that appellant be pleased with the outcome of his decision to enter a plea of guilty: 'All that is required is that [appellant's] decision to plead guilty be knowingly, voluntarily and intelligently made.'" ***Commonwealth v. Yager***, 454 Pa. Super.

428, 685 A.2d 1000, 1004 (1996) (*en banc*), *appeal denied,* 549 Pa. 716, 701 A.2d 577 (1997) (quotation omitted).

> Once a defendant has entered a plea of guilty, it is presumed that he was aware of what he was doing, and the burden of proving involuntariness is upon him. Therefore, where the record clearly demonstrates that a guilty plea colloquy was conducted, during which it became evident that the defendant understood the nature of the charges against him, the voluntariness of the plea is established.... Determining whether a defendant understood the connotations of his plea and its consequences requires an examination of the totality of the circumstances surrounding the plea.
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> [I]n order to determine the voluntariness of the plea and whether the defendant acted knowingly and intelligently, the trial court must, at a minimum, inquire into the following six areas:
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> > (1) Does the defendant understand the nature of the charges to which he is pleading guilty?
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> > (2) Is there a factual basis for the plea?
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> > (3) Does the defendant understand that he has a right to trial by jury?
> >
> > (4) Does the defendant understand that he is presumed innocent until he is found guilty?
> >
> > (5) Is the defendant aware of the permissible ranges of sentences and/or fines for the offenses charged?
> >
> > (6) Is the defendant aware that the judge is not bound by the terms of any plea agreement tendered unless the judge accepts such agreement?

Commonwealth v. McCauley*,* 797 A.2d 920, 922 (Pa. Super. 2001) (citation omitted). This examination may be conducted by defense counsel or the attorney for the Commonwealth, as permitted by the judge. Comment*,* Pa.R.Crim.P. 590. Moreover, the examination does not have to be solely oral. Nothing precludes the use of a written colloquy that is read, completed, and signed by the defendant, made part of the record, and supplemented by some on-the-record oral examination. ***Id.***

Commonwealth v. Moser, 921 A.2d 526, 528-29 (Pa. Super. 2007).

In the present case, the trial court concluded that Appellant's plea was knowing, intelligent, and voluntary based on the following reasons:

> At the time the guilty plea was presented to the [c]ourt[,] it was accompanied by a written guilty plea colloquy consisting of five pages and 38 questions, as well as an attached schedule outlining the maximum penalties that could be imposed in each [of Appellant's three cases]. In addition to the written guilty plea colloquy[,] the trial court conducted an individual colloquy with [Appellant] at the time of the plea [that] establish[ed] [her] knowledge of the written guilty plea colloquy, her acknowledgement of guilt, and voluntariness on her part in entering the plea. Also[, Appellant] was informed of the nature of the charges and the facts underlying each offense. The [c]ourt also informed her of her absolute right to go to trial on the charges, her right to a trial by jury and that the Commonwealth would have to prove her guilty beyond a reasonable doubt. [Appellant] indicated that she understood.
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> The court also asked [Appellant] if she had completed the comprehensive written guilty plea colloquy with the assistance of her attorney, and she stated that she did. In [t]hat document, [Appellant] was notified that if she choose [*sic*] to go to trial, she would be presumed innocent unless and until she was proven guilty beyond a reasonable doubt. Written guilty plea colloquy, 11/29/17[,] at 2 ¶ 18. The written guilty plea also informed [Appellant] of the sentencing guideline range[s] … applicable to her offenses, and of the maximum sentence and fine she faced for each charge. ***Id.*** at "Schedule A." [Appellant] indicated that she fully understood the maximum permissible sentences and/or fines that could be imposed for the crime(s) charged as set forth in Schedule A. ***See*** [***i***]***d.*** at 2 ¶ 13. Additionally[,] the written guilty plea colloquy informed [Appellant] that the trial court was not bound by the plea agreement. ***Id.*** at 2 ¶ 14.
>
> In addition to inquiring into the six required areas, the [c]ourt also asked [Appellant] if she was under the influence of any drugs, alcohol or medication that would impair her ability to understand what she was doing or if she had any mental illness that would impact her ability to enter a knowing, intelligent and voluntary plea. [Appellant] responded no to both questions.

> Although the court had to have a separate inquiry with [Appellant] because she said she consumed a 24 oz. can of beer, [she] and her counsel assured the court that she was okay to proceed and the court made the determination that she was not under the influence and that she fully understood what she was doing. [Appellant] also declared that she was pleading guilty of her own free will, that no one had forced her to enter a plea, and that she was satisfied with the representation of her attorney. After determining that the guilty plea was knowingly and voluntarily offered to the [c]ourt, the guilty plea was accepted and [Appellant] was sentenced in conformance with the agreement reached between [Appellant], her counsel, and the District Attorney.

Trial Court Opinion, 2/9/18, at 5-7.

The record supports the trial court's summary of the written and oral plea colloquies and Appellant's responses. Therefore, even had Appellant preserved for our review her claim that her plea was not voluntary, knowing, and intelligent, we would deem this issue frivolous.

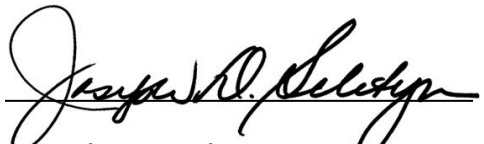
Appellant next contends that her plea counsel rendered ineffective representation. In ***Commonwealth v. Holmes***, 79 A.3d 562 (Pa. 2013), our Supreme Court reaffirmed its prior holding in ***Commonwealth v. Grant***, 813 A.2d 726 (Pa. 2002), that, absent certain circumstances, claims of ineffective assistance of counsel should be deferred until collateral review under the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. ***Holmes***, 79 A.3d at 576. The specific circumstances under which ineffectiveness claims may be addressed on direct appeal are not present in the instant case. ***See id.*** at 577-78 (holding that the trial court may address claim(s) of ineffectiveness where they are "both meritorious and apparent from the record so that immediate consideration and relief is warranted," or where the appellant's

request for review of "prolix" ineffectiveness claims is "accompanied by a knowing, voluntary, and express waiver of PCRA review"). Accordingly, Appellant must wait to raise this claim in a PCRA petition.

For the reasons stated *supra*, we agree with Attorney Watkins that the issues Appellant seeks to raise on appeal are frivolous. Additionally, our independent review of the record does not reveal any other, non-frivolous claims that she could assert herein. Consequently, we affirm her judgment of sentence and grant counsel's petition to withdraw.

Judgment of sentence affirmed. Petition to withdraw granted.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 10/10/2018