

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

CHARLES MAY, II,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 2046 EDA 2012

Appeal from the Judgment of Sentence and Order of June 19, 2012,  
in the Court of Common Pleas of Delaware County,  
Criminal Division, at No. CP-23-CR-0005969-2009

BEFORE: BENDER, LAZARUS and COLVILLE\*, JJ.

MEMORANDUM BY COLVILLE, J.:

Filed: January 24, 2013

Charles May ("Appellant") appeals from the judgment of sentence imposed on him after his probation was revoked and from the order revoking his parole. Appellant wishes to challenge the discretionary aspects of his probation-revocation sentence. It appears he also might wish to challenge the propriety of the court's decision to revoke his parole. Appellant's 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.

While on probation and parole, Appellant was charged with new criminal offenses. He was later convicted thereof. Because of Appellant's

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\* Retired Senior Judge assigned to the Superior Court.

new offenses, the court held a probation/parole revocation hearing on the instant case. During that hearing, Appellant's counsel discussed, *inter alia*, Appellant's family and employment circumstances and, in so doing, mentioned that Appellant had worked as a barber. The court made a number of comments during the revocation hearing, including a remark that, in the court's experience, "people who work in barber shops are also involved in the drug trade" and that the court was not surprised Appellant "would get into trouble like this and then be a barber as well." N.T., 06/19/12, at 13.

The court revoked Appellant's probation and imposed a new sentence of not less than two and a half years and not more than five years in prison. The court also revoked Appellant's parole, recommitted him to serve his full back time and then immediately paroled him. The court ran the probation-revocation sentence consecutively to the parole-revocation recommitment.

Appellant did not object to the court's remark about barbers/barber shops during the revocation hearing and he did not file any motion after that hearing. Appellant then filed this timely appeal.

Counsel's petition and brief substantially comply with the dictates of ***Anders/Santiago*** and, therefore, we have conducted our own review of this matter. ***See Santiago***, 978 A.2d at 354-55, 361 (discussing ***Anders*** process). Having done so, we find this matter to be frivolous for the following reasons.

Appellant's first intended complaint is that the court's remark regarding barbers/barber shops revealed a bias that, in turn, demonstrates the court abused its sentencing discretion when imposing Appellant's probation-revocation sentence. Because Appellant did not preserve this discretionary sentencing claim in the revocation court, he cannot pursue it now and, as such, an attempt to do so would be frivolous. ***Commonwealth v. Kalichak***, 943 A.2d 285, 291 (Pa. Super. 2008).

Appellant might also wish to challenge the propriety of the court's exercise of discretion in revoking his parole in light of the court's aforesaid comment. However, having failed to preserve any objection to the court's decision to revoke parole, Appellant has likewise waived that claim. ***Id.*** at 293. Accordingly, this intended claim is similarly frivolous. ***Id.***

Based on our foregoing discussion, we find this appeal to be frivolous. Consequently, we affirm the judgment of sentence and the order revoking Appellant's parole. We also grant counsel's request to withdraw.

Judgment of sentence affirmed. Order revoking parole affirmed. Counsel's petition to withdraw granted.