

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
RASHEEN D. BLACKWELL,		Nos. 2087, 2088, 2093 EDA 2012
Appellant		

Appeal from the Judgment of Sentence of June 19, 2012,
in the Court of Common Pleas of Delaware County,
Criminal Division at Nos. CP-23-CR-0002655-2010,
CP-23-CR-0006306-2009, CP-23-CR-0006439-2009

BEFORE: BENDER, LAZARUS and COLVILLE*, JJ.

MEMORANDUM BY COLVILLE, J.:

Filed: January 25, 2013

Appellant filed three notices of appeal from a judgment of sentence. In addition, Appellant's counsel has filed a petition to withdraw and a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). We grant counsel's petition and affirm the judgment of sentence.

The background underlying this matter can be summarized in the following manner. At case number CP-23-CR-0006306-2009, Appellant pled guilty to possession of a controlled substance and was sentenced to two years of probation. At case number CP-23-CR-0006439-2009, Appellant pled guilty to criminal conspiracy (trademark counterfeiting) and possession

*Retired Senior Judge assigned to the Superior Court.

of drug paraphernalia. As to the conspiracy conviction, the trial court sentenced Appellant to time served to twenty-three months in prison. As to the possession conviction, the court sentenced Appellant to a concurrent one-year term of probation. At case number CP-23-CR-0002655-2010, Appellant pled guilty to criminal conspiracy to possess a controlled substance and possession of a controlled substance. For the possession conviction, the court sentenced Appellant to time served to twelve months in prison. As to the conspiracy conviction, the court sentenced Appellant to a consecutive one-year term of probation.

While Appellant was on parole, the Commonwealth alleged that he violated the conditions of his probation and parole by committing a robbery. The trial court, therefore, held a revocation hearing on June 19, 2012. At the hearing, Appellant stipulated that he violated the conditions of his probation and parole. The court sentenced Appellant on each violation and each case.

On June 28, 2012, Appellant filed a motion for reconsideration. Then, on July 18, 2012, he filed notices of appeal for each case number noted above. The trial court's docket reflects that the court denied Appellant's motion for reconsideration on August 8, 2012. In addition, Appellant's counsel petitioned this Court for leave to withdraw pursuant to ***Anders***.

The following principles guide our review of this matter:

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). By contrast, if counsel's petition and brief satisfy **Anders**, we will then undertake our own review of the appeal to determine if it is wholly frivolous. If the appeal is frivolous, we will grant the withdrawal petition and affirm the judgment of sentence. However, if there are non-frivolous issues, we will deny the petition and remand for the filing of an advocate's brief.

Commonwealth v. Wrecks, 931 A.2d 717, 720-21 (Pa. Super. 2007) (citations omitted).

Our Supreme Court has clarified portions of the **Anders** procedure:

Accordingly, we hold that in the **Anders** brief that accompanies court-appointed counsel's petition to withdraw, counsel 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. Santiago, 978 A.2d 349, 361 (Pa. 2009).

We conclude that counsel has substantially complied with the *Anders* requirements. We, therefore, will undertake a review of the appeal to determine if it is wholly frivolous.

According to counsel, Appellant wishes to challenge the discretionary aspects of his sentence. To the extent that Appellant wished to present such a challenge in connection to his parole-revocation sentences, such a challenge would be improper. *Commonwealth v. Kalichak*, 943 A.2d 285, 290-91 (Pa. Super. 2008). A defendant can challenge the discretionary aspects of a sentence that follows a probation revocation. *Id.* at 289-90. However, in order to preserve such an issue for appeal, a defendant is required to object to his sentence during the revocation sentencing hearing or by filing a post-sentence motion. *Id.* at 289. Appellant did not object to his sentence at the revocation hearing. Moreover, while Appellant did file a post-sentence motion, he did not challenge the discretionary aspects of his probation-revocation sentences in that motion. Because Appellant failed to challenge the discretionary aspects of his sentences in the trial court, he failed to preserve any such challenge for appellate review.

For these reason, we agree with counsel that this appeal is wholly frivolous. We, therefore, affirm the judgment of sentence and grant counsel's petition to withdraw.

Judgment of sentence affirmed. Petition to withdraw granted.