

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
KENYATTA WALKER,	:	
	:	
Appellant	:	No. 2491 EDA 2011

Appeal from the Judgment of Sentence August 16, 2011,
Court of Common Pleas, Philadelphia County,
Criminal Division at No. CP-51-CR-0007046-2011

BEFORE: GANTMAN, DONOHUE and PLATT*, JJ.

MEMORANDUM BY DONOHUE, J.:

Filed: January 4, 2013

Kenyatta Walker (“Walker”) appeals from the judgment of sentence entered on August 16, 2011, by the Court of Common Pleas, Philadelphia County, following the entry of a negotiated guilty plea. Concomitantly, counsel for Walker filed an *Anders*¹ brief and a motion to withdraw. After review, we affirm the judgment of sentence and grant counsel permission to withdraw.

The facts summarized by the Commonwealth at the guilty plea hearing are as follows:

[T]he Commonwealth would present the testimony of Tameeka Moody []. She would testify that [Walker] is her ex-boyfriend. She would further testify that on June 12th of 2010, at approximately 2:00 a.m., she had walked over towards her mother’s house in

¹ *Anders v. California*, 386 U.S. 738 (1967); *Commonwealth v. Santiago*, 602 Pa. 159, 978 A.2d 349 (2009).

*Retired Senior Judge assigned to the Superior Court.

the vicinity of 809 North Markoe [] Street in Philadelphia.

She would further testify that she saw [Walker] driving a silver Lexus sedan. And [*sic*] that [Walker] observed her through the windshield and drove the car across the intersection of 46th and Brown Streets in an attempt to hit her with the car. She was able to jump out of the way and the car missed by a couple of feet.

She then – there was a female witness who saw this happen, who yelled for the victim to come into her house. [Walker] got out of his car and banged on the door demanding that she come out, saying ‘I’m going to knock you the f[]ck out.’ This was [*sic*] several times, heard by both the victim and the resident of the home. [Walker] stayed out there for approximately an hour until police were called and intervened.

N.T., 8/16/11, at 9-10.

On August 16, 2011, Walker, represented by counsel, pled guilty to simple assault and terroristic threats,² and acknowledged the accuracy of the facts as recited by the Commonwealth. Walker reviewed and signed a written colloquy with plea counsel and the trial court engaged in a lengthy oral colloquy, both of which revealed that Walker knowingly, voluntarily, and intelligently entered his plea of guilty. The trial court sentenced Walker the same day to the negotiated sentence of four years of probation supervised by the Mental Health Unit. Plea counsel explained Walker’s appellate rights

² 18 Pa.C.S.A. §§ 2701, 2706.

on the record. Walker did not file any post-sentence motions or request to withdraw his guilty plea.

On September 15, 2011, Walker filed a *pro se* notice of appeal. The trial court appointed counsel and issued an order requiring the filing of a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). Counsel for Walker filed notice of his intention to file an ***Anders*** brief in response.

Before we address the merits of Walker's appeal, we must discern whether counsel has complied with ***Anders*** and ***Santiago***. ***Anders*** requires the following of counsel and this Court:

To be permitted to withdraw pursuant to ***Anders***, counsel must: (1) petition the court for leave to withdraw stating that after making a conscientious examination of the record, counsel has determined the appeal would be frivolous; (2) file a brief referring to any issues that might arguably support the appeal, but which does not resemble a no-merit letter; and (3) furnish a copy of the brief to the defendant and advise him of his right to retain new counsel, proceed *pro se*, or raise any additional points he deems worthy of this Court's attention. Once counsel has satisfied the above requirements, it is then this Court's duty to conduct its own review of the trial court's proceedings and render an independent judgment as to whether the appeal is, in fact, wholly frivolous.

Commonwealth v. Wright, 846 A.2d 730, 736 (Pa. Super. 2004) (citations omitted).

Counsel's brief must comply with the requirements our Supreme Court set forth in ***Santiago***:

[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, 602 Pa. at 178-79, 978 A.2d at 361.

Our review of counsel's **Anders** brief and petition to withdraw confirms that he complied with the foregoing requirements. Having received no additional filings from Walker, we turn to address the issue raised by counsel.

Initially, we observe that "[t]he entry of a guilty plea constitutes a waiver of all defects and defenses except lack of jurisdiction, invalidity of the plea, and illegality of the sentence." **Commonwealth v. Main**, 6 A.3d 1026, 1028 (Pa. Super. 2010). In his **Anders** brief, counsel for Walker addresses each of these issues, and concludes that there are no non-frivolous issues to be raised:

The court had jurisdiction as the offenses were committed in Philadelphia and the judge was a duly elected judge of the Court of Common Pleas.

[Walker] pled guilty to simple assault and terroristic threats. Terroristic threats is a first degree misdemeanor that carries a maximum incarceration penalty of five years. The sentence imposed was four years [of] probation. Simple assault is a second

degree misdemeanor that carries a maximum incarceration penalty of two years. No further penalty was imposed. Both sentences were within the statutory maximum for the offense.

A guilty plea must be knowing, intelligent, and voluntary. In determining whether a defendant's plea was knowing, intelligent, and voluntary, the appellate courts of this Commonwealth must consider the totality of the circumstances. ***Commonwealth v. Fears***, 836 A.2d 52 (Pa. 2003); ***Commonwealth v. Morrison***, 878 A.2d 102 (Pa. Super. 2005).

The lower court conducted an oral colloquy on the record. [Walker] and his attorney also completed a written form.

There are six elements which the Supreme Court has maintained are essential to a valid plea colloquy in order to ensure that a plea is knowing, intelligent, and voluntary. Inquiry into the six areas is mandatory. ***Commonwealth v. Willis***, 369 A.2d 1189, 1190 (Pa. 1977); ***Commonwealth v. Dilbeck***, 353 A.2d 824 (Pa. 1976); ***Commonwealth v. Flanagan***, 854 A.2d 489 (Pa. 2004). These six points are outlined in the comment to Pa.R.Crim.P. 590(A) (2):

- (1) Does the defendant understand the nature of the charges to which he or she is pleading guilty or *nolo contendere*?
- (2) Is there a factual basis for the plea?
- (3) Does the defendant understand that he or she has the right to trial by jury?
- (4) Does the defendant understand that he or she is presumed innocent until found guilty?

(5) Is the defendant aware of the permissible range 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?

Pa.R.Crim.P. 590(A)(2) (comment).

The oral colloquy conducted reveals: that a factual basis for the plea was recited by the prosecutor (N.T. 8/16/11[, at] 9-10); that [Walker] understood that he had a right to a jury trial (N.T. 8/16/11[, at] 6-7); that [Walker] was informed of the permissible range of sentences and fines for the offenses charged (N.T. 8/16/11[, at] 5-6); that [Walker] was informed that the burden of proof was on the prosecution (N.T. 8/16/11[, at] 7); that [Walker] was informed that he would be presumed innocent until found guilty (N.T. 8/16/11[, at] 7) . In addition, [Walker] completed a written guilty plea form (N.T. 8/16/11[, at] 5).

Anders Brief at 8-10.

Our review of the record and relevant law comports with that of counsel for Walker. We observe that although the trial court failed to inquire into one of the six mandatory subjects – whether Walker was aware that the judge was not bound by the terms of the plea agreement unless the judge accepted the agreement – this failure would not warrant reversal in this case. The record reflects the trial court otherwise engaged in a thorough oral colloquy (*see* N.T., 8/16/11, at 3-10), and the totality of the circumstances presented reveals that Walker knowingly, voluntarily, and

intelligently entered the plea. *Commonwealth v. Flanagan*, 578 Pa. 587, 606-07, 854 A.2d 489, 500-01 (2004). The record further reflects that this information was contained in Walker's written colloquy. Written Guilty Plea Colloquy, 8/16/11, at 1. Moreover, the trial court accepted the plea agreement, and thus Walker was not prejudiced by the absence of this area of inquiry. **See** N.T., 8/16/11, at 15.

After a thorough review of the record, we discern no additional, non-frivolous issues that could have been raised on Walker's behalf. As such, we affirm the judgment of sentence.

Judgment of sentence affirmed. Motion to withdraw granted.