

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

CHRISTOPHER MARCOLONGO,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 299 EDA 2012

Appeal from the Judgment of Sentence Entered January 23, 2009  
In the Court of Common Pleas of Philadelphia County  
Criminal Division at No(s): CP-51-CR-0006215-2007

BEFORE: BENDER, J., BOWES, J., and LAZARUS, J.

MEMORANDUM BY BENDER, J.:

**FILED FEBRUARY 24, 2014**

Appellant, Christopher Marcolongo, appeals *nunc pro tunc* from the judgment of sentence imposed after the trial court found him guilty of robbery, theft, and possessing an instrument of crime (PIC). On appeal, Appellant seeks to challenge the sufficiency of the evidence to sustain his convictions, as well as discretionary aspects of his sentence. For the following reasons, we dismiss this appeal.

Appellant was convicted of the above-stated crimes based on his robbing a pizza delivery man at knifepoint on May 13, 2007. He was sentenced on January 23, 2009, to an aggregate term of four to eight years' incarceration, followed by two years' probation. Appellant did not file post-sentence motions or a direct appeal. However, he filed a timely petition for post conviction relief pursuant to the Post Conviction Relief Act (PCRA), 42

Pa.C.S. §§ 9541-9546, seeking the restoration of his appeal rights *nunc pro tunc*. That petition was granted, counsel was appointed, and the instant appeal followed.

Appellant's counsel, Norman Scott, Esquire, subsequently filed with this Court a petition to withdraw his representation of Appellant pursuant to ***Anders v. California***, 386 U.S. 738 (1967), as elucidated by our Supreme Court in ***Commonwealth v. McClendon***, 434 A.2d 1185 (Pa. 1981), and amended in ***Commonwealth v. Santiago***, 978 A.2d 349 (Pa. 2009). On May 3, 2013, we issued a memorandum decision concluding that Attorney Scott's ***Anders*** brief utterly failed to comply with the requirements of ***Anders/Santiago***. Therefore, we directed that Attorney Scott file either an advocate's brief on Appellant's behalf, or an amended petition to withdraw and brief that complied with ***Anders/Santiago***.

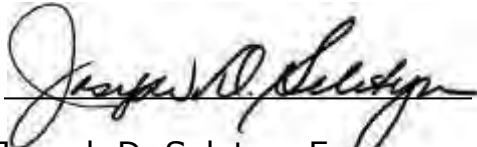
Over seven months have now passed with no action by Attorney Scott. Normally, we would issue another order providing Attorney Scott with a specific number of days to comply with our order before dismissing Appellant's appeal. However, Appellant's right to a direct appeal has already been delayed so substantially that we believe the more appropriate course of action is to dismiss his appeal now. This way, Appellant may forthwith file a PCRA petition asserting Attorney Scott's ineffectiveness and seeking the restoration of his appeal rights *nunc pro tunc*. ***See Commonwealth v. Mikell***, 968 A.2d 779, 781 (Pa. Super. 2009) ("It is well-settled that 'an accused who is deprived entirely of his right of direct appeal by counsel's

failure to perfect an appeal is *per se* without the effective assistance of counsel, and is entitled to a reinstatement of his direct appellate rights.”) (emphasis omitted). Furthermore, under this approach, Appellant will be entitled to new counsel if he ultimately files a *nunc pro tunc* direct appeal, and will be relieved of the incompetent representation afforded by Attorney Scott.

Appeal dismissed.

Judge Bowes files a dissenting statement.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 2/24/2014