

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

ROBERT LEWIS

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 43 EDA 2013

Appeal from the Judgment of Sentence of December 6, 2012  
In the Court of Common Pleas of Delaware County  
Criminal Division at No.: CP-23-CR-0005107-2012

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

ROBERT LEWIS

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 62 EDA 2013

Appeal from the Judgment of Sentence of December 6, 2012  
In the Court of Common Pleas of Delaware County  
Criminal Division at No.: CP-23-CR-0000259-2012

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

MEMORANDUM BY WECHT, J.:

**FILED DECEMBER 20, 2013**

Robert Lewis ("Appellant") appeals from his two December 6, 2012 judgments of sentence. Appellant's counsel has filed a petition to withdraw

as counsel, together with an “**Anders/Santiago**” brief.<sup>1</sup> We grant counsel’s petition to withdraw, and we affirm Appellant’s judgments of sentence.

The trial court aptly set forth the facts and procedural history of this case as follows:

As to Transcript Number 259 of 2012, on or about July 1, 2011, at approximately 2215 Hours, Harrah’s Casino security guards contacted Trooper John F. Niles of the Pennsylvania State Police . . . . The Harrah’s security guards advised Trooper Niles that there was a Seven Hundred and Two Dollar (\$702.00) voucher theft on the gaming floor. The victim[,] James Cartlidge[,] related to Trooper Niles that he had won money at the slot machines and that when he went to “cash-out” his winnings, he realized that one (1) of his voucher slips . . . was missing.

As a result of the foregoing, video surveillance tapes were reviewed and revealed that a black male later identified as [Appellant] . . . pick-pocketed James Cartlidge and took the voucher. The video surveillance also revealed that Appellant Lewis then immediately left the Casino via [Southeastern Pennsylvania Transportation Authority] [t]ransportation. However, on August 27, 2011, Harrah’s Casino security guards spotted Appellant Lewis on the casino gaming floor and took him into their custody. Subsequently, the State Police were called and [Appellant] was charged with theft by unlawful taking as a misdemeanor of the first degree.<sup>[2]</sup> . . . Thereafter, due to the fact that Appellant Lewis failed to appear at his Pre-Trial Arraignment, a bench warrant was issued for his apprehension. Appellant Lewis was apprehended on the bench warrant and appeared before this Court on December 6, 2012 for a Rule 150 hearing.

As to Transcript Number 5107 of 2012, on August 19, 2011, Appellant Lewis was again at the Harrah’s Casino in the City of

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<sup>1</sup> **See Anders v. California**, 386 U.S. 738 (1967); **Commonwealth v. Santiago**, 978 A.2d 349 (Pa. 2009).

<sup>2</sup> 18 Pa.C.S. § 3921(a).

Chester[,] Pennsylvania and stole the sum of Two Hundred Dollars (\$200.00) from the victim being Rosemary Bernadette Simpser. As a result of this second incident, Appellant Lewis was once again charged with theft by unlawful taking as a misdemeanor of the first degree. Thereafter, Appellant Lewis again failed to appear for his Pre-Trial arraignment scheduled for February 16, 2012. As a result, on Friday, February 17, 2012, a bench warrant was issued for his apprehension.

\* \* \*

[On December 6, 2012,] Appellant Lewis entered into a negotiated guilty plea on Transcript Number 259-12 to the charge of theft by unlawful taking graded as a misdemeanor of the first degree and was sentenced to twenty-three (23) months of intermediate punishment, during which time he was to serve forty-three (43) periods of forty-eight (48) hours of incarceration commencing on December 14, 2012; perform twenty four (24) hours of community service; pay restitution in the amount of Seven Hundred Two Dollars (\$702.00); have no contact with the victim; and stay away from Harrah's Casino in the City of Chester during this Court's period of supervision.

With respect to transcript 5107-12, the Assistant District Attorney stated on the record

That's going to be a negotiated guilty plea to Count 1, Theft by Unlawful Taking, graded as a misdemeanor of the first degree. The recommended sentence is two (2) years probation, and that will run consecutive to transcript 259-12. [Appellant] will complete 24 hours of community service and he'll pay restitution in the amount of \$200.00 to Rosemary Simpser . . . . He will stay away from Harrah's Casino and Race Track and he'll have no contact with Rosemary Simpser.

\* \* \*

[T]his Court reviewed with Appellant Lewis, the Post-Sentence and Appeal Rights Form and asked him if his attorney went over with him said form in detail, paragraph by paragraph, all the rights, information and protections contained in the six-page Guilty Plea Statements, to which Appellant Lewis responded "Yes" . . . . Appellant Lewis was asked whether he understood all the rights, information and protections contained in the Guilty Plea Statements and that he was waiving his rights to trial and

entering pleas of guilty and that his decision to waive his right to a trial was based upon his own free and knowing choice, to which Appellant Lewis responded "Yes". Lastly, Appellant Lewis's attorney was asked, based upon this Court's colloquy and based upon his advice of counsel, whether he believed his client was making a knowing and intelligent waiver of his trial rights and knowingly and voluntarily entering pleas of guilty, to which his counsel replied "Yes, Sir." Based upon the answers provided by Appellant Lewis [and his counsel] to the foregoing questions . . . the Guilty Plea Statements were made part of the record, the Affidavits of Probable Case were made the factual basis for the pleas, and the judgments of sentence were duly imposed.

On January 3, 2013, Appellant Lewis filed Notices of Appeal to the judgments of sentence imposed upon him in Transcript Numbers 259-2012 and 5107-[20]12. Consequently, this Court issued Orders pursuant to Pa.R.A.P. 1925(b), directing Appellant Lewis to file concise statements of [errors] complained of on appeal. Appellant Lewis's attorney timely filed concise statements of [errors] complained of on appeal, wherein he indicated in both cases that "In accordance with Pennsylvania Rule of Appellate Procedure 1925(c)(4), counsel informs the Court that he intends to file an *Anders* brief with the Superior Court." Subsequently, by virtue of a Court Order entered on April 17, [2013], the Superior Court consolidated both appeals pursuant to the provisions of Pa. R.A.P. 513.

Trial Court Opinion ("T.C.O."), 5/14/2013, at 1-6. (citations to notes of testimony omitted; capitalization modified).

As noted above, Appellant's counsel has filed an application seeking to withdraw his representation pursuant to ***Anders*** and ***Santiago***. Before addressing the merits of the underlying issue presented by Appellant, we first must pass upon counsel's petition to withdraw. ***Commonwealth v. Goodwin***, 928 A.2d 287, 290 (Pa. Super. 2007) (*en banc*). 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:

(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 the appellant. Attending the brief must be a letter that advises the appellant of his or her 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).

Our review of counsel's petition to withdraw and the accompanying brief demonstrates that counsel substantially has complied with the **Santiago** requirements. Counsel has provided a procedural history detailing the events relevant to this appeal with appropriate citations to the record. Appellant's Brief at 4-5. Counsel has identified one question of arguable merit: "Whether the sentences imposed on [Appellant] were harsh and excessive in light of the circumstances of the case?" **Id.** at 3. Counsel addresses the applicable principles of law and facts, ultimately concluding that the claim would be frivolous. **Id.** at 6. In his motion to withdraw,

counsel again certified that he made a thorough review of the cases and did not find any non-frivolous issues. **See** Application to Withdraw Appearance 7/23/13, ¶¶2-3 (unpaginated).

Additionally, in accord with **Nischan**, counsel has sent Appellant a letter dated July 23, 2013 informing Appellant that counsel did not discover any non-frivolous issues and that he had filed a petition to withdraw as counsel. Counsel's letter also informed Appellant that he could proceed *pro se* and submit his own brief to this Court, or that Appellant could hire a new attorney. Application with Withdraw Appearance, 7/23/2013, at Exh. A. Therefore, we conclude that counsel substantially has complied with the requirements set forth in **Nischan**. 928 A.2d at 353.

We now must conduct an independent review of the record to determine whether any available issues in this appeal are, as counsel claims, wholly frivolous, or if there are any other meritorious issues present in this case. **Santiago**, 978 A.2d at 354 (quoting **Anders**, 386 U.S. at 744)("[T]he court—not counsel—then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous. If it so finds it may grant counsel's request to withdraw . . . .").

Counsel has stated that the only arguably meritorious issue on appeal is whether the sentences imposed upon Appellant were harsh and excessive

in light of his circumstances.<sup>3</sup> This claim would be a challenge to the discretionary aspects of Appellant's sentence. A challenge to the discretionary aspects of sentence must be preserved before the trial court by raising the issue at sentencing or in a post-sentence motion. **Nischan**, 928 A.2d at 355. Appellant did neither. Thus, the issue is waived and, therefore, frivolous. **Id.**

Even if the issue was not waived, Appellant's sentence was the result of a negotiated guilty plea. We previously have held that an appellant who pleads guilty and receives a negotiated sentence may not then seek discretionary review of that sentence. **Commonwealth v. O'Malley**, 957 A.2d 1265, 1267 (Pa. Super 2008); **Commonwealth v. Dalberto**, 648 A.2d 16, 20 (Pa. Super. 1994).

The only other available grounds on which Appellant could conceivably challenge his sentence would be to assert that the guilty plea was not intelligent, voluntary, and knowing, or that the court lacked jurisdiction over the party or the case. **Commonwealth v. Owens**, 467 A.2d 1159, 1163 (Pa. Super. 1983). A review of the on-the-record colloquy and the signed guilty plea statements demonstrates that Appellant was given sufficient warnings of the rights he would waive by pleading guilty. Notes of Testimony ("N.T."), 12/6/2012, at 7-10.; Guilty Plea Statements,

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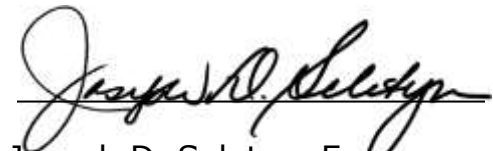
<sup>3</sup> Appellant has not submitted a *pro se* petition, nor has new counsel continued his appeal.

12/6/2012. The trial court reviewed the content of the guilty pleas with Appellant on the record, and confirmed that Appellant's counsel had explained the implications of pleading guilty and the rights Appellant would be waiving. N.T. at 7-9. In addition, the trial court confirmed that both Appellant and his counsel believed the plea to be knowing and voluntary. N.T. at 9-10. The totality of the circumstances establishes that the plea was knowing and voluntary. ***See Commonwealth v. Morrison***, 878 A.2d 102, 109 (Pa. Super. 2005). This issue also would be frivolous if pursued by Appellant. Finally, we detect no basis upon which to challenge the trial court's jurisdiction.

We have conducted an independent review of the record. We agree with counsel that the issues that Appellant seeks to litigate in this appeal are wholly frivolous. Additionally, we have discovered no other issues of arguable merit that would sustain a non-frivolous appeal in this case.

Judgments of sentence affirmed. Counsel's motion to withdraw granted.

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: 12/20/2013