

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
JOHN GREEN,		
Appellant		No. 508 EDA 2012

Appeal from the Judgment of Sentence January 24, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0012481-2011

BEFORE: STEVENS, P.J., BOWES, and FITZGERALD,* JJ.

MEMORANDUM BY BOWES, J.:

Filed: March 11, 2013

John Green appeals from the judgment of sentence of four to twelve months imprisonment to be followed by twelve months probation imposed after he entered a negotiated guilty plea to simple assault. Counsel has filed a petition to withdraw from representation and a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *Commonwealth v. Santiago*, 978 A.2d 349 (Pa. 2009). We grant counsel's petition to withdraw and affirm.

The Commonwealth originally charged Appellant with simple assault and recklessly endangering another person after he struck his niece in the face, cutting her right eye. Later, the charge was amended to aggravated assault. Appellant and the Commonwealth entered into plea negotiations,

* Former Justice specially assigned to the Superior Court.

resulting in a negotiated plea to simple assault. The court sentenced Appellant pursuant to the agreement. This timely appeal ensued. The court ordered Appellant to file and serve a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal. Counsel submitted a Rule 1925(c)(4) statement of intention to file an **Anders** brief.¹ The trial court did not file an opinion. Counsel now files the instant **Anders** brief and petition to withdraw.

Initially, we note that we may not address the merits of the issue raised on appeal without first reviewing the request to withdraw. **Commonwealth v. Rojas**, 874 A.2d 638, 639 (Pa.Super. 2005). Therefore, we review counsel's petition at the onset. Our Supreme Court's decision in **Santiago, supra**, did not alter the procedural requirements counsel must satisfy in requesting to withdraw from representation. Counsel must: 1) petition the court for leave to withdraw stating that, after making a conscientious examination of the record, counsel has determined that the appeal would be frivolous; 2) furnish a copy of the brief to the defendant; and 3) advise the defendant that he or she has the right to retain private counsel or raise additional arguments that the defendant deems worthy of the court's attention. **Commonwealth v. Lilley**, 978 A.2d 995, 997 (Pa.Super. 2009).

¹ Two separate judges issued Pa.R.A.P. 1925(b) orders. Counsel filed a statement of his intention to file an **Anders** brief in response to both orders.

Herein, counsel's petition to withdraw from representation states that he made a conscientious review of the record and concluded that the appeal is wholly frivolous. Additionally, counsel notified Appellant that he was withdrawing and furnished Appellant with copies of the petition to withdraw and **Anders** brief, and advised Appellant of his right to retain new counsel or proceed *pro se* to raise any points he believes worthy of this Court's attention. Accordingly, counsel has satisfied the procedural requirements of **Anders**.

Having concluded that counsel has complied with the procedural mandates of **Anders**, we now determine whether counsel's **Anders** brief meets the substantive dictates of **Santiago**. According to **Santiago**:

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.

Santiago, supra at 361. Herein, counsel thoroughly discussed the procedural and factual background of this matter, provided applicable case law and authority, stated that he was unable to find any argument that would support his appeal, and concluded that Appellant's appeal is frivolous. Thus, we proceed to the merits of Appellant's issues: "Was the defendant's guilty plea valid?; Was the defendant's sentence legal?" **Anders** brief at 3.

Where a defendant pleads guilty, he is limited on direct appeal to asserting that his plea was invalid, that his sentence was illegal, or that the court lacked jurisdiction. ***Commonwealth v. Main***, 6 A.3d 1026, 1028 (Pa.Super. 2010). In determining the validity of a guilty plea, we look to the totality of circumstances, including any written and oral colloquies. ***Commonwealth v. Fears***, 836 A.2d 52 (Pa. 2003). In accepting a guilty plea, a trial court is required to ensure inquiry into the following areas:

- (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?

Comment to Pa.R.Crim.P. 590; ***Commonwealth v. Pollard***, 832 A.2d 517, 522-523 (Pa.Super. 2003).

Instantly, the plea court directed the prosecutor to explain the charge of simple assault, the factual basis for the plea, and the maximum possible punishment for the crime. The court also accepted a signed written guilty plea colloquy. Appellant, on-the-record, acknowledged reading and

answering the written colloquy. Within that colloquy, Appellant was informed of his right to a jury trial, that he was presumed innocent until proven guilty, and that he could withdraw his plea if the court elected not to agree with the plea deal. It is settled that a defendant is bound by statements he makes during his guilty plea. *Commonwealth v. Stork*, 737 A.2d 789, 790-791 (Pa.Super. 1999). Appellant was therefore advised of the relevant information before the court imposed the agreed-upon sentence. Thus, we agree that the guilty plea was valid.

Next, since no post-sentence motion was filed relating to the sentence imposed, we consider the legality of Appellant's sentence. The court imposed a sentence of four to twelve months incarceration to be followed by twelve months probation. The crime of simple assault for which Appellant pled guilty is a misdemeanor of the second-degree, and the maximum possible sentence is two years imprisonment. Of course, the probationary term in combination with the prison term cannot exceed the statutory maximum. *Commonwealth v. Crump*, 995 A.2d 1280 (Pa.Super. 2010). Since Appellant's sentence did not exceed two years, it was legal.

Finally, we note that our independent review of the certified record confirms that there are no other non-frivolous issues that can be properly raised on direct appeal. Accordingly, we grant counsel's petition to withdraw and affirm.

Judgment of sentence affirmed. Counsel's petition to withdraw is granted.