

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

TRAVIS TAIA WASHINGTON, SR.,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 532 MDA 2013

Appeal from the Judgment of Sentence August 27, 2012
in the Court of Common Pleas of York County
Criminal Division at No.: CP-67-CR-0006836-2011

BEFORE: PANELLA, J., MUNDY, J., and PLATT, J.*

MEMORANDUM BY PLATT, J.

FILED JANUARY 28, 2014

Appellant, Travis Taia Washington, Sr., appeals from the judgment of sentence entered following his guilty plea to attempted homicide and terroristic threats. Specifically, Appellant challenges the denial of his post sentence motion to withdraw his guilty plea. Appellant's counsel has filed a brief and a petition to withdraw substantially compliant with ***Anders v. California***, 386 U.S. 738 (1967) and ***Commonwealth v. Santiago***, 978 A.2d 349 (Pa. 2009),¹ alleging that the appeal is without merit. (**See**

* Retired Senior Judge assigned to the Superior Court.

¹ Appellant's counsel erroneously titles his motion to withdraw and brief as a "***Turner/Finley*** Brief for Appellant." However as this is an appeal from the judgment of sentence, not from the denial of a PCRA petition, Appellant should have titled his filing as an ***Anders*** brief. **See *Commonwealth v.*** (Footnote Continued Next Page)

Anders Brief, at 4 n. 1.). We affirm the judgment of sentence and grant counsel's petition to withdraw.

The record reflects that, on June 26, 2012, Appellant entered an open guilty plea to the above-mentioned charges. At sentencing, the trial court gave Appellant the opportunity to withdraw his guilty plea because Appellant made statements in the pre-sentence report claiming that he had viable defenses to the charges that were inconsistent with a guilty plea. (**See** N.T. Sentencing, 8/27/12, at 1-2). Appellant declined. (**See id.**). After a thorough hearing, the sentencing court imposed an aggregate sentence of not less than ten nor more than twenty years of incarceration. On August 31, 2012, Appellant filed a *pro se* motion to withdraw his guilty plea. Following a February 27, 2013 hearing, the trial court denied the motion. The instant, timely appeal followed on March 26, 2013. On April 5, 2013, the trial court ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). On April 11, 2013, Appellant timely filed his statement. On May 7, 2013, the trial court filed an opinion. **See** Pa.R.A.P. 1925(a).

(Footnote Continued) _____

Wrecks, 934 A.2d 1287, 1289 (Pa. Super. 2007). The distinction is an important one because **Anders** provides more protection to a defendant than does **Turner/Finley**. **See Commonwealth v. Widgins**, 29 A.3d 816, 817 n. 2 (Pa. Super. 2011). However, as discussed below, the brief substantially complies with the requirements of **Anders**. Therefore, we will treat it as an **Anders** brief. **See Wrecks, supra** at 1289 (determining that petition to withdraw as counsel should be treated as **Anders** brief rather than **Turner/Finley** letter and permitting counsel to withdraw).

On appeal, Appellant raises the following question for our review:

I. Whether the court abused its discretion when it denied Appellant's post sentence motion to withdraw his guilty plea when the guilty plea was not tendered knowingly, intelligently and voluntarily?

(**Anders** Brief, at 4).

Here, Appellant's court-appointed counsel has petitioned this Court for permission to withdraw and has submitted an **Anders**-compliant brief, as is required for counsel seeking to withdraw on direct appeal. **See Anders, supra**. Court-appointed counsel who seeks to withdraw from representing an appellant on direct appeal on the basis that the appeal is frivolous 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. When we receive an **Anders** brief, we first rule on the petition to withdraw and then review the merits of the underlying issues.

See Commonwealth v. Garang, 9 A.3d 237, 240-41 (Pa. Super. 2010).

In addition, "[p]art and parcel of **Anders** is our Court's duty to review the record to insure no issues of arguable merit have been missed or misstated."

Commonwealth v. Vilsaint, 893 A.2d 753, 755 (Pa. Super. 2006).

In the instant matter, counsel has substantially complied with all the requirements of **Anders** and **Santiago**. Specifically, he has petitioned this

Court to withdraw on grounds that Appellant's issue is without merit. In addition, after his review of the record, he filed a brief with this Court that provides a summary of the procedural history and facts with citations to the record, refers to any facts or legal theories that arguably support the appeal, and explains why he believes the appeal is without merit. (**See Anders** Brief, at 7-11). The record reflects that counsel averred that he provided Appellant a letter giving notice of his rights, and including a copy of the **Anders** and the petition. **See Commonwealth v. Millisock**, 873 A.2d 748, 749 (Pa. Super. 2005). Appellant has not responded.² Because counsel has substantially complied with the dictates of **Anders**, **Santiago**, and **Millisock**, we will examine the issue set forth in the brief that counsel believes has arguable merit. **See Garang, supra**, at 240-41.

Appellant claims that his guilty plea was not knowing, intelligent, and voluntary. Specifically, he claims that he received ineffective assistance of plea counsel and that he believed he would receive a lesser sentence than that the trial court imposed. (**See** N.T. Motion Hearing, 2/27/13, at 5). Appellant, while not proclaiming his actual innocence, also alleges that he had meritorious defenses to the charges. (**See id.** at 7). We disagree.

² The record reflects that by order of July 11, 2013, this Court granted Appellant's request to file a response to counsel's submission. However, Appellant failed to file said response.

“[A] defendant who attempts to withdraw a guilty plea after sentencing must demonstrate prejudice on the order of manifest injustice before withdrawal is justified. A showing of manifest injustice may be established if the plea was entered into involuntarily, unknowingly, or unintelligently.” ***Commonwealth v. Yeomans***, 24 A.3d 1044, 1046 (Pa. Super. 2011) (citation omitted). “The law does not require that appellant be pleased with the outcome of his decision to enter a plea of guilty[.]” ***Commonwealth v. Yager***, 685 A.2d 1000, 1004 (Pa. Super. 1996) (*en banc*), *appeal denied*, 701 A.2d 577 (Pa. 1997) (citation and internal quotation marks omitted). Further, when a defendant has entered a guilty plea, we presume that he was aware of what he was doing; it is his burden to prove that the plea was involuntary. ***See Commonwealth v. McCauley***, 797 A.2d 920, 922 (Pa. Super. 2001). Accordingly, where the record clearly shows the court conducted a guilty plea colloquy and that the defendant understood the nature of the charges against him, the plea is voluntary. ***See id.*** In examining whether the defendant understood the nature and consequences of his plea, we look to the totality of the circumstances. ***See id.*** At a minimum, the trial court must inquire into the following six areas:

- (1) Does the defendant understand the nature of the charges to which he is pleading guilty?
- (2) Is there a factual basis for the plea?
- (3) Does the defendant understand that he has a right to trial by jury?

- (4) Does the defendant understand that he is presumed innocent until he is found guilty?
- (5) Is the defendant aware of the permissible ranges 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?

Id. (citation omitted). This examination may be conducted by defense counsel or the attorney for the Commonwealth, as permitted by the Court. **See** Pa.R.Crim.P. 590, Comment. Moreover, the examination may consist of both a “written colloquy that is read, completed, signed by the defendant, and made part of the record,” and an on-the-record oral examination. **Id.**

The entry of a guilty plea results in a waiver of all defects and defenses except for those that challenge the jurisdiction of the court, the validity of the guilty plea, or the legality of the sentence. **See Commonwealth v. Syno**, 791 A.2d 363, 365 (Pa. Super. 2002). Because Appellant filed his challenge to the validity of his guilty plea following the imposition of sentence, he must make a showing of manifest injustice. **See Commonwealth v. Gunter**, 771 A.2d 767, 771 (Pa. 2001).

Initially, we note that Appellant’s claim that he received ineffective assistance of counsel throughout the proceedings (**see** N.T. Motion Hearing, 2/27/13, at 5-8), is less a claim that his guilty plea was not voluntary than a claim of ineffective assistance of plea counsel. Such a claim should be raised

on collateral review, rather than on direct appeal. **See Commonwealth v. Grant**, 813 A.2d 726, 738 (Pa. 2002).

In any event, the record in the instant matter amply demonstrates that Appellant's guilty plea was knowing, intelligent and voluntary. Specifically, Appellant signed an eleven-page written plea colloquy in which he agreed that there were no promises as to his sentence and that he was satisfied with the advice by, and representation of, counsel. (**See** Written Guilty Plea Colloquy, 6/23/12, at 8-9). The trial court then engaged in a detailed oral plea colloquy, which covered all six grounds discussed above. (**See** N.T. Guilty Plea, 6/26/12, at 2-8). The trial court obtained Appellant's explicit admission three times that there was no agreement as to his sentence. (**See id.** at 4-5). Appellant affirmed that he was guilty of the charged offenses. (**See id.** at 8). Further, there was an over-two-month delay between the entry of the guilty plea and sentencing, and at no time during that period did Appellant seek to withdraw his guilty plea. Additionally, when offered the opportunity at sentencing to withdraw his guilty plea, Appellant declined. (**See** N.T. Sentencing, 8/27/12, at 1-2). Also, to the extent that Appellant claims that he lied when entering his guilty plea and that counsel induced that lie,

The longstanding rule of Pennsylvania law is that a defendant may not challenge his guilty plea by asserting that he lied while under oath, even if he avers that counsel induced the lies. A person who elects to plead guilty is bound by the statements he makes in open court while under oath and may not later assert

grounds for withdrawing the plea which contradict the statements he made at his plea colloquy.

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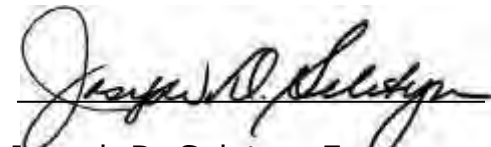
[A] defendant who elects to plead guilty has a duty to answer questions truthfully. We [cannot] permit a defendant to postpone the final disposition of his case by lying to the court and later alleging that his lies were induced by the prompting of counsel.

Yeomans, supra at 1047 (internal citation omitted). Accordingly, Appellant's claim lacks merit, and the trial court did not commit manifest injustice by denying Appellant's post-sentence motion to withdraw his guilty plea.

Appellant's issue does not merit relief. Further, this Court has conducted an independent review of the record as required by **Anders** and **Santiago** and finds that no meritorious issues exist.

Petition to withdraw as counsel granted. Judgment of sentence affirmed. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 1/28/2014