

**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
DEBRA KOSAK,	:	
	:	
Appellant	:	No. 889 EDA 2013

Appeal from the Judgment of Sentence February 19, 2013,  
Court of Common Pleas, Delaware County,  
Criminal Division at No. CP-23-CR-0008448-2012

BEFORE: GANTMAN, DONOHUE and OLSON, JJ.

MEMORANDUM BY DONOHUE, J.:

**FILED DECEMBER 10, 2013**

Debra Kosak (“Kosak”) appeals from the February 19, 2013 judgment of sentence entered by the Court of Common Pleas, Delaware County. Counsel for Kosak has filed an **Anders**<sup>1</sup> brief and a motion to withdraw. After review, we affirm the judgment of sentence and grant counsel permission to withdraw.

Police arrested Kosak on October 30, 2012, after receiving a call that she was threatening three men with a butcher knife, waving it around and telling them she was going to kill them. The Commonwealth charged Kosak with one count of possessing an instrument of crime; three counts each of recklessly endangering another person, terroristic threats, harassment and

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

disorderly conduct; and six counts each of simple assault and aggravated assault.<sup>2</sup>

On February 19, 2013, Kosak pled guilty pursuant to a negotiated guilty plea agreement to two counts of recklessly endangering another person. The plea court sentenced her the same day pursuant to the plea agreement to a period of incarceration of time served to 23 months with parole granted once she participated in a psychological evaluation. It further ordered that she follow any recommendations made by the evaluator and that she meet with a psychiatrist within 30 days of her release from jail, as called for by the plea agreement.

Kosak filed a counseled notice of appeal on March 12, 2013. The plea court entered an order requiring counsel to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Counsel filed notice of his intention to file an **Anders** brief in response pursuant to Pa.R.A.P. 1925(c)(4).

Before we address the merits of Kosak'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

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<sup>2</sup> 18 Pa.C.S.A. §§ 907(a), 2705, 2706(a)(1), 2709(a)(1), 5503(a)(1), 2701(a)(1), (3), 2702(a)(1), (4).

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 Kosak, we turn to address the issue raised by counsel: that Kosak's plea was not "knowing, intelligent and voluntary given the

condition of sentence that [Kosak] see a psychiatrist[.]” **Anders** Brief at 3. In the argument section of his **Anders** brief, counsel clarifies that the requirement that Kosak see a psychiatrist raises an issue of her mental competency to plead guilty. **Id.** at 5. Counsel asserts that this issue is frivolous, however, as the record reflects that she participated in both a written and oral colloquy, which detailed the rights she was forfeiting by pleading guilty and explained the nature of the charges to which she was pleading and the sentence she was going to receive. **Id.** at 5. Counsel further states that any claim of ineffective assistance of counsel relating to this issue would be frivolous, as the claim lacks arguable merit. **Id.** at 6.

We agree with counsel that both of these claims are frivolous, albeit on different grounds. Regarding the issue of Kosak’s competency rendering her plea unknowing, unintelligent and involuntary, she waived the issue by failing to raise it before the plea court at the time of her plea or in a post-sentence motion. **Commonwealth v. Tareila**, 895 A.2d 1266, 1270 n.3 (Pa. Super. 2006) (“Where an appellant fails to challenge his guilty plea in the trial court, he may not do so on appeal. In order to preserve an issue related to the guilty plea, an appellant must either object at the sentence colloquy or otherwise raise the issue at the sentencing hearing or through a post-sentence motion.”) (internal citations and formatting omitted).

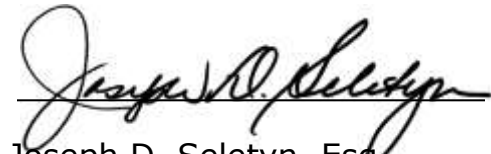
A claim of counsel’s ineffectiveness would also be frivolous in this direct appeal, as our Supreme Court recently held that, absent

circumstances not present in the case at bar, “claims of ineffective assistance of counsel are to be deferred to PCRA review[.]” **Commonwealth v. Holmes**, \_\_ Pa. \_\_, \_\_ A.3d, \_\_, 2013 WL 5827027, \*13 (Oct. 30, 2013).

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

Judgment of sentence affirmed. 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: 12/10/2013