

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
JOSHUA JAMES LONGHENRY,	:	
	:	
Appellant	:	No. 941 MDA 2012

Appeal from the Judgment of Sentence entered on May 8, 2012
in the Court of Common Pleas of Centre County,
Criminal Division, No. CP-14-CR-0002141-2011

BEFORE: MUSMANNO, BENDER and COLVILLE*, JJ.

MEMORANDUM BY MUSMANNO, J.:

Filed: February 12, 2013

Joshua James Longhenry (“Longhenry”) appeals from the judgment of sentence entered after he pled guilty to simple assault, 18 Pa.C.S.A. § 2701(a)(1). Additionally, Longhenry’s counsel, Justin Miller, Esquire (“Attorney Miller”), has filed a Petition to withdraw as counsel and a brief pursuant to *Anders v. California*, 386 U.S. 738, 744 (1967). We affirm Longhenry’s judgment of sentence and grant Attorney Miller’s Petition to withdraw as counsel.

On October 23, 2011, Longhenry and his girlfriend (“the complaining witness”) were engaged in a domestic dispute at their residence located in State College. When the police responded to the residence, they encountered the complaining witness and questioned her. According to the police, the complaining witness stated that Longhenry had grabbed her,

*Retired Senior Judge assigned to the Superior Court.

threw her to the floor, and kicked her in her torso. The complaining witness also showed the police red marks on her body, which she attributed to Longhenry's assault. Additionally, the complaining witness provided a written statement regarding the altercation.

After Longhenry was taken into custody, the Commonwealth charged him with simple assault and harassment. In April 2012, Longhenry pled guilty to simple assault, and the harassment charge was *nolle prossed*. On May 8, 2012, the trial court sentenced Longhenry to serve a six-month term of probation, imposed several conditions, and ordered him to pay a \$500 fine. Longhenry, through Attorney Miller, timely filed a Notice of appeal. In response, the trial court ordered Longhenry to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Longhenry timely filed a Concise Statement.

Following the initiation of this appeal, Longhenry and Attorney Miller met in person and corresponded via email, and Longhenry identified several issues that he wished to raise on appeal. In September 2012, Attorney Miller filed with this Court an **Anders** Brief and a Petition requesting permission to withdraw as counsel, asserting his opinion that there are no meritorious issues to raise on appeal. Attorney Miller distilled Longhenry's claims into five points of alleged error:

- (1) Whether the [trial] court erred in accepting [Longhenry's] guilty plea when the allegation that [Longhenry] "pushed her [the complaining witness] down and kicked her in the stomach" was untrue?

- (2) Did the trial court commit an error in not honoring the arresting officer's desire to not see [Longhenry] punished?
- (3) Did the trial court commit an error in not honoring the complaining witness's desire to not see [Longhenry] prosecuted in the first place?
- (4) Did the trial court commit an error in not honoring the complaining witness's desire to not see [Longhenry] punished?
- (5) Whether [Longhenry] should be required to begin probation supervision immediately upon sentencing[,] when he wants to move to another jurisdiction[, Colorado,] and establish a residence there prior to beginning his supervision period?

Anders Brief at 12; **see also** Pa.R.A.P. 1925(b) Concise Statement, 6/6/12 (same issues). Longhenry did not respond to Attorney Miller's Petition to withdraw, nor did he retain alternate counsel for this appeal or file a *pro se* brief.

Before addressing Longhenry's issues, we must determine whether Attorney Miller has complied with the dictates of **Anders** and its progeny in petitioning to withdraw from representation. Pursuant to **Anders**, when counsel believes that an appeal is frivolous and wishes to withdraw from representation, he must do the following:

- (1) petition the court for leave to withdraw stating that after making a conscientious examination of the record and interviewing the defendant, counsel has determined the appeal would be frivolous, (2) file a brief referring to any issues in the record of arguable merit, and (3) furnish a copy of the brief to defendant and advise him of his right to retain new counsel or to raise any additional points that he deems worthy of the court's attention. The determination of whether the appeal is frivolous remains with the [appellate] court.

Commonwealth v. Burwell, 42 A.3d 1077, 1083 (Pa. Super. 2012) (citations omitted).

Additionally, the Pennsylvania Supreme Court has explained that a proper ***Anders*** 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.

Commonwealth v. Santiago, 978 A.2d 349, 361 (Pa. 2009).

Our review of Attorney Miller's ***Anders*** Brief and Petition to withdraw reveals that he has complied with each of the requirements of ***Anders/Santiago***. The record also reflects that Attorney Miller has provided Longhenry with a copy of both the ***Anders*** Brief and Petition to withdraw, and counsel has sent a letter to Longhenry advising him of his right to retain new counsel, proceed *pro se*, or raise any additional points that he deems worthy of this Court's attention.¹ Since Attorney Miller has complied with the procedural requirements for petitioning to withdraw, we will conduct an independent examination of the record and determine whether Longhenry's appeal is, in fact, wholly frivolous.

¹ Attorney Miller attached a copy of this letter to his Petition to withdraw, as required under ***Commonwealth v. Millisock***, 873 A.2d 748, 751-52 (Pa. Super. 2005).

In his first four issues, Longhenry essentially challenges the validity of his guilty plea,² based upon his allegations that (1) the complaining witness never stated to the police that Longhenry had physically assaulted her; and (2) the trial court improperly ignored the opinions of the complaining witness and the arresting officer that they did not want Longhenry to be prosecuted or punished. *See Anders* Brief at 12. In his final issue, Longhenry challenges the sentencing court's exercise of its discretionary power, asserting that the court abused its discretion in ordering Longhenry's term of supervised probation to commence immediately after sentencing, which prevented Longhenry from relocating to Colorado. *See id.*

The standard of review applied in the review of a guilty plea is as follows:

Our law is clear that, to be valid, a guilty plea must be knowingly, voluntarily and intelligently entered. ...

* * *

Our law presumes that a defendant who enters a guilty plea was aware of what he was doing. He bears the burden of proving otherwise. Where the record clearly demonstrates that a guilty plea colloquy was conducted, during which it became evident that the defendant understood the nature of the charges against him, the voluntariness of the plea is established.

Commonwealth v. Rush, 909 A.2d 805, 808 (Pa. Super. 2006) (citations, brackets, and quotation marks omitted). Further, this Court has stated that "the entry of a guilty plea constitutes a waiver of all defenses and defects

² At no time did Longhenry move to withdraw his guilty plea.

except claims of lack of jurisdiction, invalid guilty plea, and illegal sentence.” ***Commonwealth v. Kennedy***, 868 A.2d 582, 593 (Pa. Super. 2005) (citation omitted).

In Attorney Miller’s ***Anders*** Brief, he opines that all of Longhenry’s issues are frivolous, stating as follows:

[] Longhenry received the benefit of his [guilty plea] agreement with the Commonwealth. Entering a guilty plea was a conscious decision, made knowingly, intelligently, and voluntarily after consulting with [Attorney Miller], and in furtherance of [Longhenry’s] agreement with the Commonwealth’s attorney that the [trial] court would impose a sentence of six months of [supervised] probation []. ... The [trial court] Judge’s sentence exhibited leniency as she [] imposed a minimal fine of \$500, and imposed a sentence of six months of probation, which was far less than the two years permitted under the [law]. **See** 18 Pa.C.S.A. § 106(b)(7); 18 Pa.C.S.A. § 2701(a)(1). Furthermore, the [trial] court was under no obligation to be bound by or even consider the wishes of the arresting officer and complaining witness[] when deciding whether to accept or reject a guilty plea and when imposing sentence.

Anders Brief at 12-13; ***see also*** Trial Court Opinion, 6/27/12, at 1 (wherein the trial court opined that since “the record in no way reflects that [Longhenry’s] plea was entered involuntarily or unknowingly, and the [trial c]ourt is bound neither by the wishes of the arresting officer and the complaining witness nor [Longhenry’s] inclination to change [his] residence, ... [Longhenry’s] concerns lack legal merit.”).

Our review of the record, and the oral and written guilty plea colloquies, confirms the trial court’s and Attorney Miller’s assertion that Longhenry knowingly, voluntarily, and intelligently entered his negotiated

guilty plea. Moreover, since Longhenry's guilty plea was valid, he is precluded from arguing on appeal that the sentencing court abused its discretion in imposing a sentence that commenced immediately and prevented him from moving out of the jurisdiction. ***See Commonwealth v. Baney***, 860 A.2d 127, 131 (Pa. Super. 2004) (stating that where an appellant entered into a valid negotiated guilty plea, he is precluded from raising a challenge to the discretionary aspects of sentencing).

Accordingly, since we conclude that all of Longhenry's claims are frivolous, and there are no other meritorious claims that he could raise on appeal, Attorney Miller is entitled to withdraw as Longhenry's counsel under the precepts of ***Anders***.

Judgment of sentence affirmed; Petition for leave to withdraw as counsel granted.