

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

MONNIE BEARD

Appellant

No. 2239 EDA 2013

Appeal from the Judgment of Sentence July 9, 2013
In the Court of Common Pleas of Montgomery County
Criminal Division at No. CP-46-CR-0002674-2012

BEFORE: FORD ELLIOTT, P.J.E., DONOHUE, J., and JENKINS, J.

MEMORANDUM BY JENKINS, J.:

FILED APRIL 22, 2014

Appellant Monnie Beard appeals from a July 9, 2013 judgment of sentence entered in the Montgomery County Court of Common Pleas following his burglary¹ and criminal trespass² convictions and sentence. Appellant's counsel has filed an **Anders**³ brief, together with a petition to withdraw as counsel. We affirm the judgment of sentence and grant counsel's petition to withdraw.

The relevant facts and procedural history of this case are as follows. An after-hours break-in occurred on December 27, 2011 at a doctor's office

¹ 18 Pa.C.S. § 3502.

² 18 Pa.C.S. § 3503.

³ **Anders v. California**, 386 U.S. 738 (1967).

in Abington Township, Montgomery County, Pennsylvania, and was caught on security videotape. On February 25, 2012, the Appellant identified himself to police as the individual in the surveillance video seen entering the building, entering the doctor's office within the building, and then running away from the doctor's office. Thereafter, on March 1, 2012, police filed a criminal complaint against Appellant charging him with burglary and criminal trespass, and arrested him on March 5, 2012.

At a pre-trial conference on September 10, 2012, the court granted a defense motion for continuance. At the next listing, on November 15, 2012, the defense requested another continuance. The court held a pre-trial conference on January 3, 2013, and scheduled the trial for January 30, 2013, at which time the defense requested another continuance. On February 20, 2013, the court re-scheduled the matter for March 25, 2013,⁴ at which time trial commenced. Prior to trial, Appellant, proceeding *pro se*,⁵ made a motion to dismiss based on Pa.R.Crim.P. 600,⁶ which the trial court

⁴ This was three hundred eighty-nine (389) days after the filing of the criminal complaint.

⁵ At Appellant's request, the Montgomery County Office of the Public Defender acted only as stand-by counsel during trial. N.T. 3/25/2013 at 4-5.

⁶ The instant case was tried under the prior version of Rule 600. On July 1, 2013, the new version of Rule 600 became effective. The new version reorganized and clarified the rule but made no substantive changes for purposes of this case. **See** Pa.R.Crim.P. 600 cmt. Citations herein are to the version of Rule 600 effective before July 1, 2013.

denied. The jury found Appellant guilty of burglary and criminal trespass, and the court sentenced him to an aggregate term of 3 to 10 years' incarceration. This timely appeal followed.⁷

Before addressing the merits of the issue of arguable merit presented in Appellant's brief, we must first pass on counsel's petition to withdraw. **Commonwealth v. Goodwin**, 928 A.2d 287, 290 (Pa.Super.2007) (*en banc*). To obtain permission to withdraw, counsel must file an **Anders** brief that meets the requirements established by our Supreme Court in **Commonwealth v. Santiago**.⁸ 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 must provide the appellant a copy of the **Anders** brief with 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

⁷ Following his conviction, Appellant asked that the Montgomery County Office of the Public Defender represent him for sentencing and beyond, which it has accordingly done. N.T. 3/25/2013 at 181-183.

⁸ 978 Pa. 349 (Pa.2009).

attention in addition to the points raised by counsel in the Anders brief.” **Commonwealth v. Nischan**, 928 A.2d 349, 353 (Pa.Super.2007). Substantial compliance with these requirements is sufficient. **Commonwealth v. Wrecks**, 934 A.2d 1287, 1290 (Pa.Super.2007). “After establishing that the antecedent requirements have been met, this Court must then make an independent evaluation of the record to determine whether the appeal is, in fact, wholly frivolous.” **Commonwealth v. Palm**, 903 A.2d 1244, 1246 (Pa.Super.2006).

Here, counsel’s petition states that he made a conscientious and extensive review of the record and the applicable law and determined there were no non-frivolous issues to be raised on appeal. The petition explains counsel notified Appellant of the withdrawal request, supplied him with a copy of the **Anders** brief, and sent Appellant a letter explaining his right to proceed *pro se* or with new, privately-retained counsel to raise any additional points or arguments that Appellant believed had merit. **See** Letter to Appellant, November 4, 2013, attached as Appendix A to Petition for Leave of Court to Withdraw as Appellate Counsel. In the **Anders** brief, counsel provides a summary of the facts and procedural history of the case with citations to the record, refers to evidence of record that might arguably support the issue raised on appeal and provides citations to relevant case law, and states his conclusion that the appeal is wholly frivolous and his reasons therefor. Accordingly, counsel has substantially complied with the requirements of **Anders** and **Santiago**.

As Appellant filed neither a *pro se* brief nor a counseled brief with new, privately-retained counsel, we review this appeal based on the issue of arguable merit raised in the **Anders** brief:

Did the trial court abuse its discretion when it denied appellant's motion to dismiss the criminal prosecution on the basis of the Commonwealth's alleged violation of the prompt trial rule?

Anders Brief at 4 (all capitals removed).

Our well-settled standard of review and scope of review on Pennsylvania Rule of Criminal Procedure 600 ("Rule 600") cases are as follows:

In evaluating Rule [600] issues, our standard of review of a trial court's decisions is whether the trial court abused its discretion. Judicial discretion requires action in conformity with law, upon facts and circumstances judicially before the court, after hearing and due consideration. An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill will, as shown by the evidence of the record, discretion is abused.

The proper scope of review ... is limited to the evidence on the record of the Rule [600] evidentiary hearing, and the findings of the [trial] court. An appellate court must view the facts in the light most favorable to the prevailing party.

Additionally, when considering the trial court's ruling, this Court is not permitted to ignore the dual purpose behind Rule [600]. Rule [600] serves two equally important functions: (1) the protection of the accused's speedy trial rights, and (2) the protection of society. In determining whether an accused's right to a speedy trial has been violated, consideration must be given to society's right to effective prosecution of criminal cases, both to restrain those guilty of crime and to deter those contemplating it. However, the administrative mandate of Rule [600] was not designed to insulate the criminally accused from

good faith prosecution delayed through no fault of the Commonwealth.

So long as there has been no misconduct on the part of the Commonwealth in an effort to evade the fundamental speedy trial rights of an accused, Rule [600] must be construed in a manner consistent with society's right to punish and deter crime. In considering [these] matters ..., courts must carefully factor into the ultimate equation not only the prerogatives of the individual accused, but the collective right of the community to vigorous law enforcement as well.

Commonwealth v. Ramos, 936 A.2d 1097, 1100 (Pa.Super.2007).

Rule 600 requires trial in criminal cases to commence no later than 365 days from the date on which the criminal complaint is filed. Pa.R.Crim.P. 600(A)(3). The mechanical run date is the date by which the trial must commence under Rule 600. ***Ramos***, 936 A.2d at 1102. It is calculated by adding 365 days to the date of the complaint. ***Id.*** The adjusted run date is the mechanical run date plus any delay caused by the defendant – “excludable delay.” ***Id.***; Pa.R.Crim.P 600(C). If trial begins within the adjusted run date, Rule 600 is not violated, and our analysis need go no further. ***Ramos***, 936 A.2d at 1102. Delays attributable to defendant continuance requests are excludable delay. Pa.R.Crim.P. 600(C)(3)(b).

Here, police filed the criminal complaint on March 1, 2012. The mechanical run date, therefore, was March 1, 2013. However, defense continuance requests accounted for 192 days of excludable delay.⁹ The

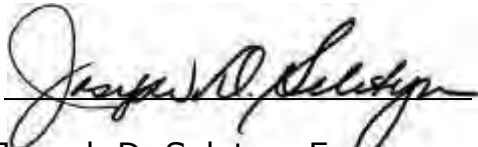
⁹ The defense continuance requests of July 16, 2012, September 10, 2012, and November 15, 2012 accounted for the 171 days between July 16, 2012 (*Footnote Continued Next Page*)

adjusted run date, therefore, was September 9, 2013. The Commonwealth brought Appellant to trial on March 25, 2013, well within the adjusted run date. Accordingly, Appellant's Rule 600 claim fails.

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

Judgment of sentence affirmed. Counsel's petition to withdraw is 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: 4/22/2014

(Footnote Continued) _____

and January 3, 2013. Another defense continuance accounted for the period from January 30, 2013 through February 20, 2013, for a total of 192 days of excludable delay.