

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

TRAVIS ALLEN MESHYOCK

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1950 MDA 2013

Appeal from the Judgment of Sentence October 9, 2013
In the Court of Common Pleas of Franklin County
Criminal Division at No(s): CP-28-CR-0001895-2012

BEFORE: PANELLA, J., DONOHUE, J., and MUNDY, J.

MEMORANDUM BY MUNDY, J.:

FILED APRIL 15, 2014

Appellant, Travis Allen Meshyock, appeals from the October 9, 2013 judgment of sentence of 16 to 60 months' imprisonment following the revocation of his intermediate punishment sentence. Contemporaneously with this appeal, counsel has filed a brief in accordance with ***Anders v. California***, 386 U.S. 738 (1967), and its progeny. After careful review, we remand for counsel to comply with the technical requirements of ***Anders***.¹

The relevant facts and procedural history, as gleaned from the certified record, can be summarized as follows. On January 2, 2013, as part of a negotiated plea agreement, Appellant pled guilty to possession with the

¹ The Commonwealth has filed a letter noting its intent to not file a brief in this matter.

intent to deliver.² Plea Agreement, 1/2/13, at 2. On that same date, Appellant was sentenced to 60 months' intermediate punishment, the first portion to be served in restrictive intermediate punishment in Franklin County Jail for 12 months and three days' work release. Sentencing Order, 1/2/13, at 1. On August 16, 2013, Appellant was found in violation of the terms and conditions of his pre-release program after testing positive for morphine. Trial Court Order, 8/16/13. On August 26, 2013, a **Gagnon³ I** hearing was held at which Appellant stipulated that he was in violation of his supervision, and waived his right to a **Gagnon II** hearing. Trial Court Order, 9/10/13. On October 9, 2013, a resentencing hearing was held. At said hearing, the trial court resentenced Appellant to 16 to 60 months imprisonment. N.T., 10/9/13, at 7-8; Sentencing Order, 10/9/13.

On October 16, 2013, Appellant filed a timely post-sentence motion, requesting a modification of his sentence. Appellant's Post-Sentence Motion, 10/16/13, at 1, ¶ 3. Additionally, on October 18, 2013, Appellant filed an amended post-sentence motion noting that Appellant was specifically requesting RRRI eligibility. Appellant's Amended Post-Sentence Motion, 10/18/13, at 1, ¶ 3. On October 21, 2013, the trial court denied both

² 35 P.S. § 780-113(a)(30).

³ **Gagnon v. Scarpelli**, 411 U.S. 778, 782 (1973) (holding that a previously sentenced probationer is entitled to a preliminary revocation hearing (a **Gagnon I**) and a final revocation hearing (a **Gagnon II**)).

Appellant's post-sentence motion and amended post-sentence motion. Thereafter, on October 31, 2013, Appellant filed a timely notice of appeal.⁴

In her **Anders** brief, counsel raises the following issue on Appellant's behalf.

- A. Whether there are any issues of arguable merit that could be raised on direct appeal presently before the court?

Anders Brief at 7.

"When presented with an **Anders** brief, this Court may not review the merits of the underlying issues without first passing on the request to withdraw." **Commonwealth v. Titus**, 816 A.2d 251, 254 (Pa. Super. 2003) (citation omitted). Additionally, an **Anders** brief shall comply with the requirements set forth by our Supreme Court in **Commonwealth v. Santiago**, 978 A.2d 349 (Pa. 2009).

[W]e hold that 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.

⁴ Appellant and the trial court have complied with Pa.R.A.P. 1925

Id. at 361. Additionally, counsel must furnish the appellant with a copy of the brief, advise him in writing of his right to retain new counsel or proceed *pro se*, and attach to the **Anders** petition a copy of the letter sent to appellant as required under **Commonwealth v. Millisock**, 873 A.2d 748, 751 (Pa. Super. 2005). **See Commonwealth v. Daniels**, 999 A.2d 590, 594 (Pa. Super. 2010) (holding that, “[w]hile the Supreme Court in **Santiago** set forth the new requirements for an **Anders** brief, ... the holding did not abrogate the notice requirements set forth in **Millisock** that remain binding legal precedent”) (footnote omitted). “After counsel has satisfied these requirements, we must conduct our own review of the trial court proceedings and independently determine whether the appeal is wholly frivolous.” **Titus, supra** (citation omitted).

In the instant matter, while we conclude that counsel’s **Anders** brief complies with the requirements of **Santiago** we conclude that counsel has failed to file a petition to withdraw and has failed to comply with the requirements set forth in **Millisock**. In the absence of these requirements we cannot pass on counsel’s request to withdraw or review the merits of the underlying claims. **See Titus, supra**. As a result, we are constrained to remand for counsel to file a petition to withdraw and to properly comply with the requirements set forth in **Millisock**.

Case remanded. Jurisdiction retained.