NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. PARIS TOOKS, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1108 WDA 2011

Appeal from the Judgment of Sentence May 31, 2011
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0005435-2009

BEFORE: BOWES, JENKINS, and FITZGERALD,* JJ.

MEMORANDUM BY BOWES, J.: **FILED APRIL 15, 2014**

Paris Tooks appeals from the judgment of sentence of three to six years imprisonment that was imposed after he pled guilty to possession of a controlled substance with intent to deliver ("PWID"). Appellate counsel has filed a petition seeking to withdraw his representation and a brief pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and ***Commonwealth v. Santiago***, 978 A.2d 349 (Pa. 2009), which govern a withdrawal from representation on direct appeal. We grant the petition to withdraw and affirm.

Appellant was charged with two counts of PWID, two counts of possession of a controlled substance, tampering with evidence, possession of

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* Former Justice specially assigned to the Superior Court.

an instrument of crime, and possession of drug paraphernalia after a search warrant was executed at his residence. The record indicates that police obtained the search warrant on March 16, 2009, based upon the following events. Pittsburgh police were contacted by a confidential informant and told that crack cocaine was being sold from Apartment 257, 2543 Chauncy Drive, Pittsburgh, by a man who was known as Mont. Appellant's full name is Paris Lamont Lee Tooks. On March 12, 2009, and March 16, 2009, police conducted two controlled buys at that location using the CI, who told them that Mont had sold him crack cocaine.

The warrant was executed on March 17, 2009. After knocking and announcing their purpose, police waited and heard movement inside the apartment. They opened the door and saw Appellant placing clear plastic bags down the kitchen sink. Police recovered multiple baggies containing crack cocaine behind the television set, additional baggies of that controlled substance in the kitchen, and bags of marijuana in the bedroom. After being given his ***Miranda*** warnings, Appellant was asked if the drugs belonged to him. He responded, "Yes, it's all mine, my girl goes to work, my kid goes to school, and when they're gone I bag up and sell from here!" Police Complaint, Affidavit of Probable Cause, 3/17/09, at 2. Appellant then showed police a scale hidden in the closet.

After the charges were filed, Appellant presented both an unsuccessful motion to obtain the identity of the CI and motion to suppress the evidence seized pursuant to the warrant. With respect to the latter motion,

Appellant's sole complaint was that the search warrant was not supported by probable cause. Appellant then proceeded to a negotiated guilty plea to a single count of PWID on May 31, 2011. All the other charges were withdrawn. Appellant "agreed to be subject to a period of incarceration of three to six years pursuant to a mandatory," which was applicable "due to the weight of the controlled substance" as well as Appellant's "prior convictions for possession with the intent to distribute." N.T. Plea and Sentencing, 5/31/11, at 2. The Commonwealth indicated that the laboratory confirmed that "the substance that was found within the Defendant's apartment was 6.2 grams of crack cocaine." ***Id***. at 3. After Appellant signed a written colloquy and the court conducted an oral colloquy, Appellant's guilty plea was accepted, and he was sentenced in accordance with its terms.

Appellant then moved to withdraw his guilty plea based upon the following allegation. He found a discrepancy between the handwritten search warrant inventory and the one that was typed and claimed that the discrepancy could affect the weight of crack cocaine found in his home and application of the mandatory minimum sentence. This appeal followed denial of the motion to withdraw. The issue raised in the brief is: "Whether trial counsel was ineffective in unlawfully inducing appellant to enter a guilty plea." Appellant's brief at 4.

Before we address the question raised on appeal, we first must resolve appellate counsel's request to withdraw. ***Commonwealth v. Cartrette***, 83

A.3d 1030 (Pa.Super. 2013) (*en banc*). There are procedural and briefing requirements imposed upon an attorney who seeks to withdraw on appeal. The procedural mandates are that counsel must

> 1) petition the court for leave to withdraw stating that, after making a conscientious examination of the record, counsel has determined that the appeal would be frivolous; 2) furnish a copy of the brief to the defendant; and 3) advise the defendant that he or she has the right to retain private counsel or raise additional arguments that the defendant deems worthy of the court's attention.

Id. at 1032 (citation omitted).

In this case, counsel has satisfied those directives. In a petition to withdraw, counsel averred that he conducted a thorough review of the record, consulted with Appellant, and researched the law. Counsel opined that there are no non-frivolous issues that he can advance and that an appeal would be frivolous due to the lack of any meritorious issues to raise. Certificates of service establish that counsel sent a copy of the ***Anders*** brief and petition to withdraw upon Appellant. Counsel also sent Appellant a letter, a copy of which is attached to the petition to withdraw. In the letter, counsel advised Appellant that he could secure private counsel or prepare his own brief to argue any issues on appeal.

We now examine whether the brief satisfies the Supreme Court's dictates in ***Santiago***, ***supra***, which provide 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.

Cartrette, ***supra*** at 1032 (quoting ***Santiago, supra*** at 361).

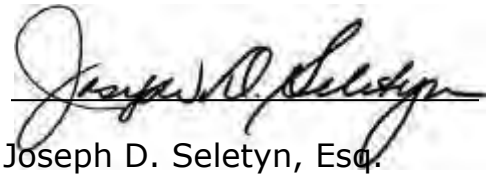
Counsel's brief is compliant with ***Santiago***. It sets forth the factual and procedural history of this case and outlines pertinent case authority. It indicates that the issue in question is waived, and we agree with that position. At the guilty plea, Appellant admitted that the weight of the drugs recovered rendered the mandatory minimum sentence applicable. The only contention that can be raised is whether counsel was ineffective for permitting Appellant to enter that guilty plea when a discrepancy between the handwritten and typed warrant inventories indicated that the weight of drugs was less than that set forth in the guilty plea. However, it is well established that claims of ineffective assistance of counsel cannot be raised in this Commonwealth on direct appeal, and, instead, must be deferred to collateral review. ***Commonwealth v. Stollar***, 84 A.3d 635, 651 (Pa. 2014) (citing ***Commonwealth v. Grant,*** 813 A.2d 726, 738 (Pa. 2002)). Hence, we concur that the issue does not warrant relief in this direct appeal.

We now must independently review the record in order to determine if counsel's assessment about the frivolity of the present appeal is correct. ***Anders***, ***supra***; ***Santigao***; ***supra***; ***Cartrette***, ***supra***. We have conducted

that review, and there are no other preserved issues. We thus agree with counsel's assessment that the present appeal is wholly frivolous.

Petition of George A. Mizak, Esquire, to withdraw as counsel is granted. Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/15/2014