

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

KENNETH REICHART,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1803 MDA 2012

Appeal from the Judgment of Sentence of September 4, 2012,
in the Court of Common Pleas of Luzerne County,
Criminal Division at No. CP-40-CR-0003500-2011

BEFORE: SHOGAN, MUNDY and COLVILLE*, JJ.

MEMORANDUM BY COLVILLE*, J.:

FILED MAY 22, 2013

This is an appeal from the judgment of sentence entered following Appellant's conviction, at a nonjury trial, of retail theft. In addition, Appellant's counsel has filed a petition to withdraw and a brief pursuant to ***Anders v. California***, 386 U.S. 738 (1967). We grant counsel's petition and affirm the judgment of sentence.

The following principles guide our review of this matter:

Direct appeal counsel seeking to withdraw under ***Anders*** must file a petition averring that, after a conscientious examination of the record, counsel finds the appeal to be wholly frivolous. Counsel must also file an ***Anders*** brief setting forth issues that might arguably support the appeal along with any other issues necessary for the effective appellate presentation thereof. . . .

*Retired Senior Judge assigned to the Superior Court.

Anders counsel must also provide a copy of the **Anders** petition and brief to the appellant, advising the appellant of the right to retain new counsel, proceed *pro se* or raise any additional points worthy of this Court's attention.

If counsel does not fulfill the aforesaid technical requirements of **Anders**, this Court will deny the petition to withdraw and remand the case with appropriate instructions (*e.g.*, directing counsel either to comply with **Anders** or file an advocate's brief on Appellant's behalf). By contrast, if counsel's petition and brief satisfy **Anders**, we will then undertake our own review of the appeal to determine if it is wholly frivolous. If the appeal is frivolous, we will grant the withdrawal petition and affirm the judgment of sentence. However, if there are non-frivolous issues, we will deny the petition and remand for the filing of an advocate's brief.

Commonwealth v. Wrecks, 931 A.2d 717, 720-21 (Pa. Super. 2007) (citations omitted).

Our Supreme Court has clarified portions of the **Anders** procedure:

Accordingly, we 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.

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

We conclude that counsel has substantially complied with the **Anders** requirements. We, therefore, will undertake a review of the appeal to determine if it is wholly frivolous.

According to counsel, Appellant wishes to challenge the sufficiency of the evidence supporting his conviction.

We review sufficiency challenges as follows:

When evaluating a sufficiency claim, our standard is whether, viewing all the evidence and reasonable inferences in the light most favorable to the Commonwealth, the factfinder reasonably could have determined that each element of the crime was established beyond a reasonable doubt. This Court considers all the evidence admitted, without regard to any claim that some of the evidence was wrongly allowed. We do not weigh the evidence or make credibility determinations. Moreover, any doubts concerning a defendant's guilt were to be resolved by the factfinder unless the evidence was so weak and inconclusive that no probability of fact could be drawn from that evidence.

Commonwealth v. Kane, 10 A.3d 327, 332 (Pa. Super. 2010) (citation omitted).

Appellant was convicted of violating 18 Pa.C.S.A. § 3929(a)(1), which provides:

§ 3929. Retail theft.

(a) *Offense defined.* --A person is guilty of a retail theft if he:

(1) takes possession of, carries away, transfers or causes to be carried away or transferred, any merchandise displayed, held, stored or offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the possession, use or benefit of such merchandise without paying the full retail value thereof . . .

18 Pa.C.S.A. § 3929(a)(1).

At the nonjury trial, a CVS employee testified as follows. She observed Appellant carrying, in his bag, a box from a portable television like

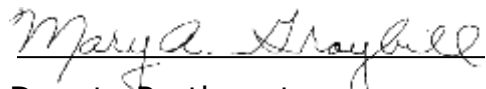
those sold at CVS. She observed Appellant carry the box and bag through the security sensors at the exit of the store where the alarm went off. She asked Appellant to reenter the store, which he did. The store manager asked Appellant for a receipt for the television, which Appellant did not produce. In his testimony, the manager confirmed that the television had a sensor on it.

Appellant also testified, largely confirming the events as described above; however, he claimed that he did not intend to take the television; rather, he testified, while he was attempting to ascertain the price of the television, he went to the door of the store to yell to his friends who were waiting for him outside.

Viewing this evidence in the light most favorable to the Commonwealth, as we must, we easily find sufficient evidence to support Appellant's conviction. Thus, we agree with counsel that this appeal is wholly frivolous. We, therefore, affirm the judgment of sentence and grant counsel's petition to withdraw.

Judgment of sentence affirmed. Petition to withdraw granted.

Judgment Entered.


Deputy Prothonotary

Date: 5/22/2013