

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

JOHN STEWART MANZA,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1830 MDA 2012

Appeal from the Judgment of Sentence of September 5, 2012,
in the Court of Common Pleas of Franklin County,
Criminal Division at No. CP-28-CR-0000600-2011

BEFORE: SHOGAN, MUNDY and COLVILLE*, JJ.

MEMORANDUM BY COLVILLE, J.:

FILED MAY 22, 2013

This is an appeal from a judgment of sentence. 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.

On September 28, 2011, Appellant pleaded guilty to Recklessly endangering another person ("REAP") and Fleeing or attempting to elude police officer ("Fleeing"); he also entered a plea of *nolo contendere* to a charge of possession of drug paraphernalia ("possession"). He was sentenced to 60 months of intermediate punishment for the Fleeing charge (the sentence required 12 months' work release from county jail followed by 2 months' electronic monitoring), 24 months' probation for the REAP charge

*Retired Senior Judge assigned to the Superior Court.

(to be served consecutively to the electronic monitoring portion of the Fleeing sentence), and 12 months' probation on the possession charge, to be served consecutively to the sentence for REAP.

On February 15, 2012, following a hearing, the court found that Appellant had violated a condition of his intermediate punishment sentence and resentenced Appellant, extending the work release portion of his intermediate punishment sentence to 14 months.

The instant judgment of sentence was entered following the court's finding of a second violation of Appellant's intermediate punishment sentence. The sentence for Fleeing is again 60 months of intermediate punishment, but it now requires 20 months of work release from the county jail, followed by 3 months' electronic monitoring and then 2 months' intensive supervision. The REAP sentence is again 24 months' probation, but is now set to begin at the expiration of the Fleeing sentence. The possession sentence is for 12 months' probation following the REAP sentence's expiration.

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. . . .

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 legality of his sentence. As this Court has explained:

. . . [T]he term 'illegal sentence' is a term of art that our Courts apply narrowly, to a relatively small class of cases." This class of cases includes: (1) claims that the sentence fell "outside of the legal parameters prescribed by the applicable statute"; (2) claims involving merger/double jeopardy; and (3) claims implicating the rule in **Apprendi v. New Jersey**, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000). These claims implicate the fundamental legal authority of the court to impose the sentence that it did.

Commonwealth v. Robinson, 931 A.2d 15, 21 (Pa. Super. 2007) (citations omitted).

Appellant evidently believes his sentence is outside of the legal parameters prescribed by 42 Pa.C.S.A. § 9773(b) due to its imposition of increased terms of incarceration, electronic monitoring and intense supervision.¹ We disagree.

That statute provides:

§ 9773. Modification or revocation of county intermediate punishment sentence.

(b) *Revocation*. --The court may revoke a sentence of county intermediate punishment upon proof of a violation of specific conditions of the sentence. Upon revocation and subject to section 9763(d), the sentencing alternatives available to the court shall be the same as the alternatives available at the time of initial sentencing. Upon a revocation of county intermediate punishment for any reason specified by law, the attorney for the Commonwealth may file notice, at any time prior to resentencing, of the Commonwealth's intention to proceed under an applicable provision of law requiring a mandatory minimum

¹ Appellant also evidently believes his sentence is illegal because it is inconsistent with the Sentencing Guidelines. This claim is not a legality-of-sentence claim.

sentence. Consideration shall be given to the time served in the county intermediate punishment program.

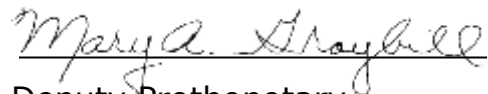
42 Pa.C.S.A. § 9773(b).

There was simply no violation of this statute in the imposition of Appellant's new judgment of sentence. 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.

Judge Mundy concurs in the result.

Judgment Entered.


Deputy Prothonotary

Date: 5/22/2013