

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

WESLEY POLLARD, SR.,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1912 MDA 2012

Appeal from the Judgment of Sentence entered September 20, 2012,
in the Court of Common Pleas of Luzerne County,
Criminal Division, at No(s): CP-40-CR-0003717-2011

BEFORE: PANELLA, ALLEN, and COLVILLE,* JJ.

MEMORANDUM BY ALLEN, J.:

FILED MAY 22, 2013

Wesley Pollard, Sr., ("Appellant") appeals from the judgment of sentence imposed after he was found guilty of failure to comply with sex offender registration requirements.^{1 2} Appellant's appointed counsel seeks to withdraw, citing ***Anders v. California***, 386 U.S. 738 (1967) and ***Commonwealth v. McClendon***, 434 A.2d 1185 (Pa. 1981). We affirm the judgment of sentence and grant counsel's petition to withdraw.

¹ 18 Pa.C.S.A. § 4915(a)(3).

² Pursuant to amendments effective December 20, 2012, 18 Pa.C.S.A. § 4915 expired and was replaced by 18 Pa.C.S.A. § 4915.1. Based on Appellant's offense date of May 11, 2011, the former section 18 Pa.C.S.A. § 4915 applies in this case.

*Retired Senior Judge assigned to the Superior Court.

The pertinent facts and procedural history may be summarized as follows: In 1990, Appellant was convicted of involuntary deviate sexual intercourse, an offense requiring lifetime registration under Megan's Law. N.T., 7/23/12, at 23. On June 30, 2003, Appellant registered as a Megan's Law offender with the Pennsylvania State Police. *Id.* at 24-25. On that date, Appellant received a written notification of his registration obligations, which Appellant signed. Every year thereafter, Appellant registered his address with the Pennsylvania State Police. *Id.* On May 11, 2011, Appellant registered his address as 286 Hazel Street in Wilkes-Barre. *Id.* On August 31, 2011, Trooper Martin Connors, the Megan's Law field liaison and custodian of records for the Pennsylvania State Police, received a call from a probation officer who informed Trooper Connors that he had gone to Appellant's registered address at 286 Hazel Street, and upon speaking with the owner of the residence, learned that Appellant was not living there. *Id.* at 26. Trooper Connors conducted his own investigation and verified that Appellant was not residing at 286 Hazel Street. *Id.* Appellant was subsequently arrested and charged with failure to provide accurate information in compliance with Megan's Law registration requirements.

Following a jury trial on July 23, 2012, Appellant was found guilty of the aforementioned crime. On September 20, 2012, following a hearing, the trial court sentenced Appellant to a term of imprisonment of ten to twenty years. Appellant filed a timely notice of appeal. The trial court directed

Appellant to file a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). Appellant's counsel filed a statement of intent to file an **Anders** brief in lieu of a Pa.R.A.P. 1925(b) statement. See Pa.R.A.P. 1925(c)(4). By order dated December 14, 2012, the trial court indicated that it would not file a Pa.R.A.P. 1925(a) opinion.

Appellant raises the following issue for our review:

- I. Whether the evidence was sufficient to prove beyond a reasonable doubt that [Appellant] was guilty of failing to provide accurate information pursuant to 18 Pa.C.S.A. § 4915(a)(3)?

Anders Brief at 1.

Preliminarily, we note that Appellant's counsel has filed a brief pursuant to **Anders** and its Pennsylvania counterpart, **McClendon**. See **Anders**, 386 U.S. 738; **McClendon**, 434 A.2d at 1187. Where an **Anders/McClendon** brief has been presented, our standard of review requires counsel seeking permission to withdraw pursuant to **Anders** to: (1) petition the court for leave to withdraw stating that after making a conscientious examination of the record it has been determined that the appeal would be frivolous; (2) file a brief referring to anything that might arguably support the appeal, but which does not resemble a "no merit" letter or amicus curiae brief; and (3) furnish a copy of the brief to the defendant and advise him of his right to retain new counsel or raise any additional points that he deems worthy of the court's attention. **Commonwealth v. McBride**, 957 A.2d 752, 756 (Pa. Super. 2008). Counsel is required to

submit to this Court “a copy of any letter used by counsel to advise the appellant of the rights associated with the **Anders** process.” **Commonwealth v. Woods**, 939 A.2d 896, 900 (Pa. Super. 2007). Pursuant to **Commonwealth v. Santiago**, 978 A.2d 349, 361 (Pa. 2009), Appellant’s counsel must state the reasons for concluding that the appeal is frivolous in the **Anders** brief. If these requirements are met, this Court may then review the record to determine whether the appeal is frivolous.

In the instant case, by letter dated February 22, 2013, counsel notified Appellant of her intent to file an **Anders** brief and petition to withdraw with this Court, and informed Appellant of his rights to retain new counsel and raise additional issues. On February 25, 2013, Appellant’s counsel filed an appropriate petition seeking leave to withdraw. Finally, Appellant’s counsel has submitted an **Anders** brief to this Court, with a copy provided to Appellant. We are satisfied that counsel has adhered to the technical requirements set forth in **Anders** and **McClendon**, and proceed to address the substantive issue raised in the **Anders** brief.

In the **Anders** Brief, Appellant challenges the sufficiency of the evidence. **Anders** Brief at 4-6. Our standard of review with regard to such a challenge is as follows:

The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying [the above] test, we may not weigh the evidence and substitute our judgment for

the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the [finder] of fact, while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Devine, 26 A.3d 1139, 1145 (Pa. Super. 2011).

Appellant was convicted of violating 18 Pa.C.S.A. § 4915(a)(3) by failing to provide an accurate address.³ Our Supreme Court recently explained, "Pennsylvania's Megan's Law clearly requires sexually violent

³ **See** 18 Pa.C.S.A. § 4915(a)(3):

Failure to comply with registration of sexual offenders requirements:

- (a) OFFENSE DEFINED.—An individual who is subject to registration under 42 Pa.C.S. § 9795.1(a) (relating to registration) or an individual who is subject to registration under 42 Pa.C.S. § 9795.1(b)(1), (2) or (3) commits an offense if he knowingly fails to:

- (3) provide accurate information when registering under 42 Pa.C.S. § 9795.2 or verifying an address under 42 Pa.C.S. § 9796.

18 Pa.C.S.A. § 4915(a) (expired December 20, 2012).

predators to notify Pennsylvania State Police of all current and intended residences, and to notify police of a change of residence.” **Commonwealth v. Wilgus**, 40 A.3d 1201, 1208 (Pa. 2012). Upon review of the record, we conclude that the evidence supports Appellant’s conviction.

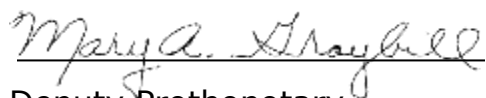
At trial, the Commonwealth presented the testimony of Trooper Connors, who testified that he was informed by Appellant’s probation officer, Mark Kijek, that Appellant was not residing at 286 Hazel Street. Trooper Connors then traveled to 286 Hazel Street and learned that Ellis Bonner, the owner of the residence, knew Appellant, who was in a relationship with Mr. Bonner’s mother. However, Mr. Bonner informed Trooper Connors that Appellant had never resided at 286 Hazel Street, and had only visited the residence one time. N.T., 7/23/12, at 26-27. Both Mr. Kijek and Mr. Bonner corroborated Trooper Connors’ testimony at trial. *Id.* at 37-46, 47-54. Although Appellant presented testimony from Mr. Bonner’s mother that Mr. Bonner permitted Appellant to utilize his address for Megan’s Law registration purposes, this testimony was refuted by Mr. Bonner who stated that he had never given Appellant permission to use his address, and that Appellant never resided at 286 Hazel Street. *Id.* at 47-64. **See Devine, supra** (credibility is for the finder of fact who is entitled to believe all, some or none of the evidence).

Viewing the foregoing evidence in the light most favorable to the Commonwealth as the verdict winner, we conclude that the Commonwealth’s

evidence was sufficient for the jury to find that Appellant failed to register accurate information about his residence with the Pennsylvania State Police. As we explained in **Commonwealth v. Moreno**, 14 A.3d 133, 137 (Pa. Super. 2011), “[s]ection 4915(a)(3) makes it a criminal offense for an individual who is subject to registration to knowingly fail to ‘provide accurate information when registering under 42 Pa.C.S. § 9795.2 or verifying an address under 42 Pa.C.S. § 9796.’” Accordingly, we held in **Moreno** that where the defendant provided to the police an address of a residence at which he did not reside, “in an effort to satisfy his registration requirements under Megan’s Law”, the evidence was sufficient to find Appellant in violation of 18 Pa.C.S.A. § 4915(a)(3). Similarly, in the present case, Appellant’s provision of an address at which he was not residing constitutes a violation of § 4915(a)(3). Upon independent review of the record, we find Appellant’s appeal to be 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