

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

ROBERT JAMES MONROE

Appellant

No. 1945 MDA 2013

Appeal from the Judgment of Sentence September 25, 2013
In the Court of Common Pleas of Lebanon County
Criminal Division at No(s): CP-38-CR-0001261-2012

BEFORE: BENDER, P.J.E., BOWES, J., and PANELLA, J.

MEMORANDUM BY PANELLA, J.:

FILED JULY 29, 2014

Appellant, Robert James Monroe, appeals from the judgment of sentence entered September 25, 2013, by the Honorable Samuel A. Kline, Court of Common Pleas of Lebanon County. Additionally, Monroe's court-appointed counsel, Harry W. Fenton, Esquire, has filed an application to withdraw as counsel pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and ***Commonwealth v. Santiago***, 602 Pa. 159, 978 A.2d 349 (2009). After careful review, we affirm Monroe's judgment of sentence and grant counsel's petition to withdraw.

On July 30, 2012, at approximately 11 p.m., Cornwall Borough Police Officer Ryan Sweigart observed a vehicle exiting the Pennsylvania Turnpike, at which point the vehicle did not use its turn signal to indicate a lane change. N.T., Jury Trial, 7/12/13 at 4-5. Officer Sweigart activated the

lights on his police vehicle, but the vehicle did not stop. **Id.** at 5. After approximately one mile, the vehicle pulled over into a Sheetz parking lot and came to a stop. **Id.** at 6. Patricia Boltz was driving the vehicle and Monroe was the passenger. **Id.** When Sergeant Brett Hopkins arrived at the scene and questioned Monroe and Boltz where they were travelling from, both indicated that they were returning from Lancaster. **Id.** at 43-44. Under suspicion that the Monroe and Boltz had travelled to Philadelphia to purchase drugs, Sergeant Hopkins asked Boltz where the drugs were. **Id.** at 44. Boltz then indicated that while the vehicle was being pulled over Monroe tossed a quantity of drugs over to her and told her that they were hers, and to tell police that they were travelling from Lancaster. **Id.** Boltz then pulled a knotted baggy containing a white chunky substance and a small quantity of loose marijuana from her front pocket. **Id.** The white substance was later determined to be crack cocaine. **Id.** at 45.

Monroe and Boltz were subsequently arrested. Monroe was charged with Possession with Intent to Deliver a Controlled Substance (PWID),¹ Possession of a Controlled Substance,² Possession of Marijuana,³ and three counts of Conspiracy, one for each drug offense.⁴ Following a jury trial on July 12, 2013, at which Boltz testified, Monroe was convicted of all charges

¹ 35 P.S. 780-113(a)(30).

² 35 P.S. 780-113(a)(16).

³ 35 P.S. 780-113(a)(31)(i).

⁴ 18 Pa.C.S. § 903(a)(1).

except for PWID. On September 25, 2013, the trial court sentenced Monroe to an aggregate term of 2 ½ to 10 years' imprisonment. This timely appeal followed.

As noted, Attorney Fenton has requested to withdraw and has submitted an **Anders** brief in support thereof contending that Monroe's appeal is frivolous. The Pennsylvania Supreme Court has articulated the procedure to be followed when court-appointed counsel seeks to withdraw from representing an appellant on direct appeal:

[I]n 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 arguably believes 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, 602 Pa. 159, 178-79, 978 A.2d 349, 361 (2009).

We note that Attorney Fenton has complied with all of the requirements of **Anders** as articulated in **Santiago**. Additionally, Attorney Fenton confirms that he sent a copy of the **Anders** brief to Monroe as well as a letter explaining to Monroe that he has the right to proceed *pro se* or the right to retain new counsel. A copy of the letter is appended to Attorney Fenton's petition, as required by this Court's decision in **Commonwealth v. Millisock**, 873 A.2d 748 (Pa. Super. 2005), in which we held that "to

facilitate appellate review, ... counsel *must* attach as an exhibit to the petition to withdraw filed with this Court a copy of the letter sent to counsel's client giving notice of the client's rights." ***Id.*** at 749 (emphasis in original).

We will now proceed to examine the issue counsel set forth in the ***Anders*** brief.⁵ Therein, counsel asserts that there are no non-frivolous issues to be found on the record. Counsel argues specifically that the verdict was not against the weight of the evidence. We review a challenge to the weight of the evidence as follows:

A claim alleging the verdict was against the weight of the evidence is addressed to the discretion of the trial court. Accordingly, an appellate court reviews the exercise of the trial court's discretion; it does not answer for itself whether the verdict was against the weight of the evidence. It is well settled that the [jury] is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses, and a new trial based on a weight of the evidence claim is only warranted where the [jury's] verdict is so contrary to the evidence that it shocks one's sense of justice. In determining whether this standard has been met, appellate review is limited to whether the trial judge's discretion was properly exercised, and relief will only be granted where the facts and inferences of record disclose a palpable abuse of discretion.

Commonwealth v. Brown, 71 A.3d 1009, 1013 (Pa. Super. 2013), ***appeal denied***, 77 A.3d 635 (Pa. 2013). "[A] weight of the evidence claim must be preserved either in a post-sentence motion, by a written motion before sentencing, or orally prior to sentencing." ***Commonwealth v. Thomson***, --

⁵ Monroe has not filed a response to Attorney Fenton's petition to withdraw.

- A.3d ---, 2014 WL 2131965 at *9 (Pa. Super., filed May 22, 2014) (citing Pa.R.Crim.P. 607). Failure to do so will result in waiver of the claim on appeal. **See id.**

Instantly, Monroe failed to raise a challenge to the weight of the evidence to support his conviction either at sentencing or in a post-sentence motion. Therefore, this claim is waived. **See Thomson, supra.** Regardless, we would nonetheless still find this claim to be without merit. At trial, Patricia Boltz testified that at Monroe's request she drove him to South Philadelphia. N.T., Jury Trial, 7/12/13 at 11. Once there, Monroe left to "speak with somebody" while Boltz filled up her car with gasoline. **Id.** at 12. When Monroe returned five to ten minutes later, Boltz made a few more stops for Monroe and they then headed back to Lebanon. **Id.** at 12. When she noticed a police vehicle had activated its lights upon her return, Boltz testified that Monroe reached into his pocket and threw a baggie of what appeared to be crack cocaine on her lap and said that it was hers. **Id.** at 14. Monroe also told Boltz to tell police they were travelling from Lancaster, and not Philadelphia. **Id.** at 16.

In reaching its verdict, the jury clearly credited Boltz's testimony that Monroe had possession of the drugs until he threw them at her at the last minute before the vehicle was pulled over. As noted, the jury was free to determine the credibility of witnesses and we are powerless to overturn those credibility determinations on appeal. **Commonwealth v. Lopez**, 57 A.3d 74, 81 (Pa. Super. 2012) ("An appellate court cannot substitute its

judgment for that of the jury on issues of credibility.”), **appeal denied**, 619 Pa. 678, 62 A.3d 379 (2013). Based on the foregoing testimony, we do not find that the jury’s verdict “shocks one’s sense of justice” so that a new trial is warranted. Accordingly, we would still find Monroe’s challenge to the weight of the evidence to be without merit.

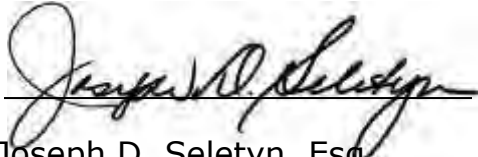
After examining the issue contained in the **Anders** brief and undertaking our independent review of the record, we concur with counsel’s assessment that the appeal is wholly frivolous.⁶

Judgment of sentence affirmed. Permission to withdraw as counsel is granted. Jurisdiction relinquished.

⁶ We would be remiss if we did not address some of the personal opinions counsel has asserted regarding the Appellant herein and the merits of instant appeal. For instance, in the letter sent to Monroe and attached to counsel’s Motion to Withdraw pursuant to our decision in **Millisock**, counsel interjects that he believes this appeal is a “silly waste of time.” Application for Relief in the Nature of A Motion to Withdraw as Counsel, filed 3/12/14. Counsel further asserts in his **Anders** brief that he “considers this appeal process to be a complete and frivolous waste of time, foisted on multiple persons by Appellant who selfishly has nothing to lose by doing so.” **Anders** Brief at 5. We remind counsel that a person convicted of a crime is guaranteed a right to an appeal under the Pennsylvania Constitution. **See** PA. CONST. ART. 5, § 9. In the future, we advise counsel to refrain from interjecting his personal opinions on the nature of the appeals process and belittling Appellants who chose to assert their constitutional rights thereto.

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Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/29/2014