

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

KWAME ISHANGI,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 3505 EDA 2010

Appeal from the Judgment of Sentence November 30, 2010
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0006415-2010

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

MEMORANDUM BY BOWES, J.:

FILED JULY 23, 2014

Kwame Ishangi appeals from the judgment of sentence of two years probation that was imposed after he was found guilty of simple assault. 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 withdrawal from representation on direct appeal. We grant that petition and affirm.

Appellant's conviction rests upon the following proof presented by the Commonwealth. Corrections Officer David Watson testified that on the

* Former Justice specially assigned to the Superior Court.

morning of December 1, 2009, he was on duty at the Curran-Fromhold Correctional Facility in Philadelphia distributing medication to inmates. The previous day, Officer Watson had performed haircuts on the prisoners. Appellant approached Officer Watson and asked for a haircut, which he had not received the previous day. Officer Watson informed Appellant that he had to return to his housing area, but Appellant instead went to the social worker's office. Officer Watson followed him and repeated to Appellant that he needed to return to his housing unit. Appellant again demanded a haircut, and returned several times to ask Officer Watson to perform one. Officer Watson continued to refuse to do so.

Officer Watson turned to answer a telephone call. While the victim's back was turned toward Appellant, Appellant pushed him and punched him with a closed fist in the head. Officer Watson responded by returning punches while Appellant continued to punch him. Two other officers subdued Appellant. Officer Watson sought medical treatment from a hospital the following day and had a headache and muscle soreness.

Correctional Officer Mary Rybak, a sergeant who was on duty as a supervisor at the prison when the incident occurred, confirmed that version of events. She overheard an argument occurring between Officer Watson and Appellant about whether Appellant could receive a haircut. As she approached the two men, she observed Appellant push Officer Watson from behind and then start to punch him. At trial, Appellant maintained that Officer Watson initiated the physical assault.

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. (citation omitted).

In this case, counsel has satisfied those directives. Within his petition to withdraw, counsel averred that he conducted a conscientious examination of the record and determined that the appeal is wholly frivolous. Counsel notified Appellant of his request to withdraw and furnished a copy of the ***Anders*** brief to Appellant. Additionally, counsel advised Appellant that he could retain new counsel or proceed *pro se* and raise additional issues he deemed worthy of appellate review.

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. Counsel also raises one potential issue, whether the evidence was sufficient to sustain the conviction, and establishes how that contention lacks merit. Hence, we proceed to examine the merits of the issue raised and first outline our standard of review:

Our standard when reviewing the sufficiency of the evidence is whether the evidence at trial, and all reasonable inferences derived therefrom, when viewed in the light most favorable to the Commonwealth as verdict-winner, are sufficient to establish all elements of the offense beyond a reasonable doubt. We may not weigh the evidence or substitute our judgment for that of the fact-finder. Additionally, the evidence at trial need not preclude every possibility of innocence, and the fact-finder is free to resolve any doubts regarding a defendant's guilt 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. When evaluating the credibility and weight of the evidence, the fact-finder is free to believe all, part or none of the evidence. For purposes of our review under these principles, we must review the entire record and consider all of the evidence introduced.

Commonwealth v. Trinidad, 90 A.3d 721, 728 (Pa.Super. 2014) (citation omitted).

To establish commission of the crime of simple assault, the Commonwealth must prove beyond a reasonable doubt that the defendant

“attempt[ed] to cause or intentionally, knowingly or recklessly cause[d] bodily injury to another.” 18 Pa.C.S. § 2701(a)(1). “Bodily injury” is defined by statute as “[i]mpairment of physical condition or substantial pain.” 18 Pa.C.S. § 2301.

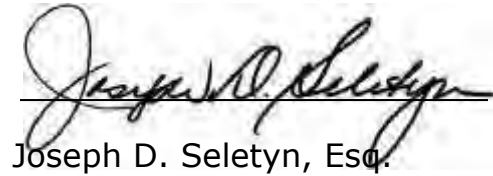
Commonwealth v. Richardson, 636 A.2d 1195 (Pa.Super. 1994), is dispositive of the present appeal. Therein, the defendant punched a police officer in the face. The officer related that he suffered substantial pain for a few days as a result of the punch, but he did not seek medical treatment or miss work. On appeal, we affirmed the defendant’s conviction of simple assault and ruled that the defendant caused the officer bodily injury as well as attempted to cause such injury by striking him in the face. Similarly, we have ruled that a victim suffered bodily injury within the meaning of § 2301 when she was grabbed and shoved and suffered bruising as a result of those actions. ***In the Interest of M.H.***, 758 A.2d 1249 (Pa.Super. 2000); ***see also Commonwealth v. Marti***, 779 A.2d 1177 (Pa.Super. 2001) (bodily injury occurred when victim was struck by a single punch to the jaw, which was sore and swollen as a result of the punch).

Herein, Officer Watson suffered pain and sought medical treatment as a result of Appellant’s assault. We also observe that the trier of fact was not required to credit Appellant’s story that Officer Watson initiated the assault. As Appellant’s conviction is sufficiently proven by the testimony of the two correctional officers, we must affirm.

Having concluded that the issue raised on appeal is frivolous, we conducted our own independent review of the record herein and have determined counsel's assessment of the frivolity of this appeal is correct. ***Anders, supra*** at 744 (after a determination that the proper withdrawal procedure has been followed, "the court—not counsel—then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous. If it so finds, it may grant counsel's request to withdraw and dismiss the appeal[.]"); ***Santiago, supra*** at 355 (citation omitted) ("[U]nder ***Anders***, the procedure for withdrawal from representation by court-appointed appellate counsel consists of two parts. The first concerns the obligations of counsel; the second concerns the role of the court. As to the latter, in Pennsylvania, when counsel meets his or her obligations, it then becomes the responsibility of the reviewing court to make a full examination of the proceedings and make an independent judgment to decide whether the appeal is in fact wholly frivolous.); ***Commonwealth v. Washington***, 63 A.3d 797, 800 (Pa.Super. 2013) (After examining whether counsel complied with requirements of ***Anders/Santiago***, this Court "must then conduct its own review of the proceedings and make an independent judgment to decide whether the appeal is, in fact, wholly frivolous.")

Petition of Owen W. Larrabee to withdraw as counsel is granted.
Judgment of sentence affirmed.

Judgment Entered.

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

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/23/2014