

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
KAIWAN LA MONTGOMERY JR.	:	
	:	
Appellant	:	No. 832 WDA 2025

Appeal from the Judgment of Sentence Entered June 18, 2025
In the Court of Common Pleas of Fayette County Criminal Division at
No(s): CP-26-CR-0001226-2024

BEFORE: PANELLA, P.J.E., KING, J., and LANE, J.

MEMORANDUM BY PANELLA, P.J.E.:

FILED: October 26, 2026

Kaiwan La Montgomery Jr. appeals from the judgment of sentence, an aggregate term of fifteen to thirty years' incarceration, entered in the Court of Common Pleas of Fayette County after he pled guilty to various offenses. Additionally, appellate counsel seeks to withdraw from representation pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and ***Commonwealth v. Santiago***, 978 A.2d 349 (Pa. 2009). After careful review, we vacate Montgomery's judgment of sentence and deny counsel's petition to withdraw.

On June 4, 2025, Montgomery entered a general guilty plea to the charges of attempted homicide, aggravated assault, persons not to possess firearms, simple assault, recklessly endangering another person, driving

without a license, and careless driving.¹ Prior to entering his plea, Montgomery completed a written plea colloquy with the assistance of Travis Rhodes, Esq. (“plea counsel”) of the Fayette County Public Defender’s Office, and the court conducted an oral plea colloquy on the record during which Montgomery admitted to the following:

[O]n or about May 22, 2024, [Montgomery] intentionally, knowingly, recklessly, or negligently attempted to cause the death of another human being by shooting Ian Murphy with a firearm and striking him twice[. Montgomery was] in possession of that firearm and [was] not permitted to be in possession of a firearm due to a prior felony conviction[.]

N.T. Plea Hearing, 6/4/25, at 8 (unpaginated). Upon determining that Montgomery’s plea was knowing, intelligent, and voluntary, the court accepted his plea and deferred sentencing to a later date. ***See id.*** at 9 (unpaginated).

On June 11, 2025, the court held Montgomery’s sentencing proceedings, the entirety of which consisted of the following:

[Prosecutor]: Your Honor, ... the defendant previously entered a general plea to charges including attempted homicide. He is present in the courtroom with his attorney, Travis Rhodes, from the Public Defender’s Office. This is the time and place for sentencing.

The Court: Mr. Rhodes—

[Montgomery]: Excuse me, Your Honor.

¹ 18 Pa.C.S.A. §§ 901(a), 2702(a)(1), 6105(a)(1), 2701(a)(1), 2705, 75 Pa.C.S.A. §§ 1501(a) and 3714(a), respectively.

The Court: Yes?

[Montgomery]: I'm here to fire my attorney for ineffective counsel.

The Court: We're here for sentencing.

[Montgomery]: Yeah. But I'm not taking that.

The Court: You already plead guilty.

[Montgomery]: I'm not taking that, Your Honor.

The Court: Okay, so—

[Montgomery]: Ineffective—

The Court: You can make a motion after we're done but you entered a plea of guilty, we told you we were sentencing you today. So, the guidelines are, offense gravity score is twenty-six, prior record score is a four, standard range 132 to the statutory limit so you can make any motions you want when this is over but you entered a guilty plea, a general plea, so we're going to impose a sentence.

[Montgomery]: He didn't ... look through my case thoroughly enough to accept this.

The Court: That's going to be afterwards. We already took the plea[,] and we made a determination that you entered a knowing and voluntary waiver of your right to go to trial. Remember when I asked you those questions?

[Montgomery]: Yes, sir.

The Court: You said you wanted to enter a general plea. So anything else you want to say before we impose sentence, then you can file any motions you want afterwards. Post sentence, PCRA, fire your attorney, all that stuff.

[Montgomery]: I'm not ready to take this plea right today though.

The Court: You already took the plea. ... You asked me to come back in person so we could do the sentence—

[Montgomery]: He didn't—

The Court: And I said okay.

[Montgomery]: —get a chance to tell you I need new counseling for my case. I'm not ready to take this plea, Your Honor.

The Court: As I said. We already entered a plea, we made a determination that you made a knowing, intelligent and a voluntary waiver of your right to go to trial. I remember telling you, we got a jury picked, you can go to trial if you want.

[Montgomery]: Can I go to trial then? I would like to go to trial.

The Court: So, as we indicated, we will review the guidelines. We have a 132 to statutory limit and we are going to impose a sentence in the middle of the standard range of not less than fifteen years nor more than thirty years. This is Count 1. Credit for time served from [May 30, 2024] to the present date, standard fines, costs, fees. All other counts, no further penalty.

You are to be transported to SCI Greene for compliance with this sentence. You could file any motions you wish to. You have ten days to file any post-sentence motions, thirty days to file any appeal to the Superior Court and then we'll entertain those motions to withdraw a plea, fire your attorney, and all that stuff.

[Montgomery]: So I got—

The Court: For now, we're doing the sentence. Defendant will stand committed. He's good to go.

N.T. Sentencing Hearing, 6/11/25, at 1-3 (unpaginated; unnecessary capitalization omitted). The court subsequently entered a sentencing order imposing a term of fifteen to thirty years' incarceration on the count of attempted homicide and no further penalty on the remaining charges. On June 16, 2025, Montgomery *pro se* filed a "Motion to Withdraw Plea on Said

Grounds” in which he generally disputed the trial court’s denial of his oral motion to withdraw his guilty plea, based upon counsel’s alleged ineffective assistance, at his sentencing hearing.²

On June 18, 2025, without holding an additional hearing and outside of Montgomery’s presence, the trial court entered an amended sentencing order, which included the following handwritten language under the section titled “Remarks/Comments/Additional Conditions”:

[T]he defendant shall serve the mandatory state reentry supervision of twelve months as outlined in [204 Pa. Code § 303.12(f)(2)] in regards to aggregate minimum sentences of four (4) years or more[.] [A]ll original provisions remain in full effect.

Amended Sentencing Order, 6/18/25 (unnecessary capitalization omitted). Montgomery timely filed a *pro se* notice of appeal.³ On July 2, 2025, the court entered an order directing Montgomery to file a concise statement of errors complained of on appeal, pursuant to Pa.R.A.P. 1925(b), by July 23, 2025. On July 28, 2025, the trial court filed a statement in lieu of filing an opinion

² Based on our review of the certified record, it does not appear that the court entered an order ruling on Montgomery’s post-sentence motion to withdraw his guilty plea.

³ Because “a defendant has no right to hybrid representation, this Court will not accept *pro se* motions while that defendant is represented by counsel. However, this Court is required to docket a *pro se* notice of appeal even when the defendant is represented by counsel[,] as a notice of appeal protects a constitutional right and is distinguishable from other filings that require counsel to provide legal knowledge and strategy in creating a motion, petition, or brief.” ***Commonwealth v. Moore***, 307 A.3d 95, 99 (Pa. Super. 2023) (citations, internal quotation marks, and brackets omitted).

pursuant to Pa.R.A.P. 1925(a) in which it determined that Montgomery had waived all appellate issues by failing to timely file a 1925(b) statement. On August 1, 2025, plea counsel filed a “Motion for **Grazier**^[4] Hearing,” and Montgomery filed a *pro se* 1925(b) statement. On August 12, 2025, the court entered an order permitting plea counsel to withdraw and appointing current counsel, Brent E. Peck, Esq., to represent Montgomery on direct appeal.

Prior to reviewing the merits of Montgomery’s appeal, we must first determine whether counsel has complied with the requirements set forth in **Anders** and its progeny.

To withdraw from representation pursuant to **Anders**, 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 **Anders** brief to the appellant; and 3) advise the appellant that he or she has the right to retain private counsel or raise additional arguments that the appellant deems worthy of the court’s attention.

With respect to the third requirement of **Anders**, that counsel inform the appellant of his or her rights in light of counsel’s withdrawal, this Court has held that counsel must attach to their petition to withdraw a copy of the letter sent to their client advising him or her of their rights.

Further, an **Anders** brief must comply with the following requirements:

- (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;

⁴ **See Commonwealth v. Grazier**, 713 A.2d 81 (Pa. 1998).

(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.

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.

Commonwealth v. Steager, 357 A.3d 137, 142-43 (Pa. Super. 2026) (brackets and citation omitted). "This includes an independent review of the record to discern if there are any additional, non-frivolous issues overlooked by counsel." **Commonwealth v. Thompson**, 333 A.3d 461, 466 (Pa. Super. 2025) (internal quotation marks and citations omitted).

In his petition to withdraw, counsel indicates that he reviewed the entire record and determined that there are no non-frivolous grounds for an appeal. Counsel furnished Montgomery with a copy of his **Anders** brief and advised Montgomery of his right to retain new counsel or proceed *pro se* and to raise any additional arguments he deems worthy of this Court's attention. Furthermore, counsel's **Anders** brief contains an adequate factual and procedural summary of the case and discusses the applicable law on which he bases his conclusion that there are no non-frivolous issues to be raised on Montgomery's behalf. Thus, counsel has substantially complied with the technical and substantive requirements set forth in **Anders** and its progeny. Accordingly, we proceed to conduct an independent review to determine whether the appeal is wholly frivolous.

In his **Anders** brief, counsel identifies potential issues concerning the validity of Montgomery's guilty plea⁵ and his purported attempts to withdraw his plea based upon the claims of error Montgomery raised in his *pro se* 1925(b) statement. **See Anders** Brief, at 6 (unpaginated).⁶

⁵ To the extent counsel's **Anders** brief purports to raise a claim of plea counsel's ineffectiveness, **see Anders** Brief, at 6 (unpaginated), the issue is premature and must await collateral review. **See Commonwealth v. Crosby**, 844 A.2d 1271, 1271-72 (Pa. Super. 2004).

⁶ We note our disagreement with both the trial court's and counsel's conclusion that Montgomery waived all potential appellate issues by failing to file a timely 1925(b) statement. **See** Statement in Lieu of Opinion, 7/28/25; **Anders** Brief, at 7 (unpaginated). "Ordinarily, the failure to file a 1925(b) statement would constitute waiver of all issues and *per se* ineffectiveness." **Commonwealth v. Stroud**, 298 A.3d 1152, 1156 (Pa. Super. 2023) (quotation marks, unnecessary capitalization, and citation omitted). Upon learning of counsel's failure to file a concise statement on Montgomery's behalf, the trial court should have issued a 1925(a) opinion that "not[ed] the ineffectiveness of counsel, permit[ted] counsel to file a statement *nunc pro tunc*[,] and address[ed] the issues in a subsequent Rule 1925(a) opinion." **Id.** at 1157 (citation omitted). The trial court was also permitted to "appoint new counsel if original counsel fail[ed] to comply with the order[.]" **Id.** (citation omitted). However, the court failed to take these steps, and, instead, filed its Rule 1925(a) statement finding all issues waived, after which Montgomery filed the untimely *pro se* 1925(b) statement. We acknowledge that, in addition to being untimely, Montgomery's *pro se* concise statement was a legal nullity, as it was filed when he was still represented by plea counsel. **See Commonwealth v. Bradley**, 326 A.3d 982, 985 (Pa. Super. 2024) ("As our courts do not permit hybrid representation, *pro se* filings submitted by counseled defendants are generally treated as legal nullities.") (internal quotation marks and citation omitted). Nevertheless, we decline to find waiver of all potential appellate issues based on plea counsel's failure to comply with the court's order and Montgomery's untimely filing of a *pro se* 1925(b) statement because this case involves an application to withdraw as counsel, which requires this Court to conduct an independent review of the complete record to determine whether there are any nonfrivolous issues. **See Thompson**, 333 A.3d at 466.

“Generally, a plea of guilty amounts to a waiver of all defects and defenses except those concerning the jurisdiction of the court, the legality of the sentence, and the validity of the guilty plea.” ***Commonwealth v. Alameda***, 339 A.3d 504, 511 (Pa. Super. 2025) (citation omitted).

The law governing pre-sentence plea withdrawals is well-settled. Rule 591 permits withdrawal of a plea as follows: “At any time before the imposition of sentence, the court may, in its discretion, permit, upon motion of the defendant, ... the withdrawal of a plea of guilty ... and the substitution of a plea of not guilty.” Pa.R.Crim.P. 591(A). Thus, the standard for pre-sentence plea withdrawal is a very liberal one, governed by the following considerations:

(1) there is no absolute right to withdraw a guilty plea; (2) trial courts have discretion in determining whether a withdrawal request will be granted; (3) such discretion is to be administered liberally in favor of the accused; and (4) any demonstration by a defendant of a fair-and-just reason will suffice to support a grant, unless withdrawal would work substantial prejudice to the Commonwealth.

The trial courts in exercising their discretion must recognize that before judgment, the courts should show solicitude for a defendant who wishes to undo a waiver of all constitutional rights that surround the right to trial—perhaps the most devastating waiver possible under our constitution. We will not reverse a trial court’s decision absent abuse of discretion.

Commonwealth v. McLendon, 293 A.3d 658, 663-64 (Pa. Super. 2023) brackets, footnote, case citations, and quotation marks omitted). When determining whether to permit a defendant to withdraw his guilty plea prior to the imposition of his sentence, “the proper inquiry ... is whether the accused has made some colorable demonstration, under the circumstances, such that permitting withdrawal of the plea would promote fairness and justice.”

Commonwealth v. Norton, 201 A.3d 112, 120-21 (Pa. 2019) (citation omitted).

Furthermore:

To withdraw a plea after sentencing, a defendant must make a showing of prejudice amounting to “manifest injustice.” A plea rises to the level of manifest injustice when it was entered into involuntarily, unknowingly, or unintelligently. A defendant’s disappointment in the sentence imposed does not constitute “manifest injustice.”

To ensure a voluntary, knowing, and intelligent plea, trial courts are required to ask the following questions in the guilty plea colloquy:

- 1) Does the defendant understand the nature of the charges to which he or she is pleading guilty or *nolo contendere*?
- 2) Is there a factual basis for the plea?
- 3) Does the defendant understand that he or she has the right to a trial by jury?
- 4) Does the defendant understand that he or she is presumed innocent until found guilty?
- 5) Is the defendant aware of the permissible ranges of sentences and/or fines for the offenses charged?
- 6) Is the defendant aware that the judge is not bound by the terms of any plea agreement tendered unless the judge accepts such agreement?

[Pa.R.Crim.P. 590, *Comment*.] The guilty plea colloquy must affirmatively demonstrate that the defendant understood what the plea connoted and its consequences. Once a defendant has entered a plea of guilty, it is presumed that he was aware of what he was doing, and the burden of proving involuntariness is upon him. In determining whether a guilty plea was entered knowingly and voluntarily, a court is free to consider the totality of the circumstances surrounding the plea. Furthermore, nothing in the rule precludes the supplementation of the oral colloquy by a

written colloquy that is read, completed, and signed by the defendant and made a part of the plea proceedings.

Commonwealth v. Felix, 303 A.3d 816, 820 (Pa. Super. 2023) (citations omitted).

The totality of the circumstances surrounding the entry of Montgomery's guilty plea supports the court's determination that it was valid, as it was knowingly, intelligently, and voluntarily tendered. During his oral plea colloquy and in his written colloquy, Montgomery indicated that he understood the English language, was entering the plea under his own free will, and was not under the influence of any intoxicants. **See** N.T. Plea Hearing, 6/4/25, at 6, 7-8, 9 (unpaginated); Guilty Plea Petition, 6/4/25, at ¶¶ 3, 7, 5. Montgomery further indicated that he understood the nature of the crimes to which he was pleading guilty and admitted to the underlying factual basis for the charges. **See** N.T. Plea Hearing, 6/4/25, at 8 (unpaginated); Guilty Plea Petition, 6/4/25, at ¶¶ 12, 13. Furthermore, Montgomery indicated that he understood the permissible range of sentences and acknowledged that the court retained the discretion to fashion a sentence within that range. **See** N.T. Plea Hearing, 6/4/25, at 8 (unpaginated); Guilty Plea Petition, 6/4/25, at ¶ 14. Montgomery confirmed that he understood the rights he would forgo in entering his guilty plea, including the right to a jury trial and the presumption of innocence. **See** N.T. Plea Hearing, 6/4/25, at 6-7 (unpaginated); Guilty Plea Petition, 6/4/25, at ¶¶ 10, 11. Montgomery further confirmed that his plea was not a product of force or threat and that he was not promised anything in exchange for

tendering it. **See** N.T. Plea Hearing, 6/4/25, at 7-8 (unpaginated); Guilty Plea Petition, 6/4/25, at ¶ 7. Finally, Montgomery confirmed that he had an adequate opportunity to discuss his plea with plea counsel and that he was satisfied with the services rendered by plea counsel. **See** N.T. Plea Hearing, 6/4/25, at 9 (unpaginated).

Thus, any challenge to the validity of Montgomery's plea would fail, as "[a] person who elects to plead guilty is bound by the statements he makes in open court while under oath and he may not later assert grounds for withdrawing the plea which contradict the statements he made at his colloquy." **Alameda**, 339 A.3d at 510 (citation omitted). Accordingly, we conclude that the trial court did not abuse its discretion in declining to permit Montgomery to withdraw his plea at the time of sentencing based on the alleged ineffective assistance of counsel and agree with counsel's conclusion that any challenge to the validity of Montgomery's plea is frivolous.

Nevertheless, following our review of the certified record, we disagree with counsel's conclusion that Montgomery's appeal is wholly frivolous, where both the original and amended sentences imposed by the court were illegal and must be vacated. In **Commonwealth v. Mumford**, 353 A.3d 247 (Pa. Super. 2026), a panel of this Court recently considered the sentencing provisions implicated in the case *sub judice*:

Pennsylvania law sets forth a requirement for mandatory imposition of reentry supervision in Section 6137.2, which "applies to persons committed to the department with an aggregate minimum sentence of total confinement under 42 Pa.C.S.A. §

9756(b) (relating to sentence of total confinement) of 4 years or more.” 61 Pa.C.S.A. § 6137.2(a). The statute mandates that “any person under subsection (a) shall be sentenced to a period of reentry supervision of 12 months consecutive to and in addition to any other lawful sentence issued by the court.” 61 Pa.C.S.A. § 6137.2(b).

This Court considered the implications of Section 6137.2 in ***Commonwealth v. Santiago***, 768 MDA 2023, 2024 WL 1462304 (Pa. Super. filed Apr. 4, 2024) (unpublished memorandum).^[7] There, the trial court sentenced the appellant to an aggregate term of 7½ to 15 years of incarceration. ***Id.*** at *7. This Court concluded that the “appellant was subjected to the mandatory reentry supervision requirements of 61 Pa.C.S.A. § 6137.2” and the trial court’s original sentence, which omitted the requirement for reentry supervision, was an illegal sentence. ***Id.*** Accordingly, this Court concluded that the trial court possessed the authority to mold a new, statutorily correct sentence. ***Id.*** Nevertheless, this Court held that the trial court’s amended sentence was also an illegal sentence, where there was no indication that the trial court held a resentencing hearing or that [the] appellant was otherwise present in court when the amended sentence was imposed. ***Id.***

[We] considered a similar issue in ***Commonwealth v. Norris***, 1439 WDA 2022, 2023 WL 6458962 (Pa. Super. filed Oct. 4, 2023) (unpublished memorandum), when we considered *sua sponte* whether the “trial court entered an illegal sentence when it amended the appellant’s sentence outside his presence.” ***Id.*** at *6. This Court explained that because the trial court imposed an aggregate sentence of more than four years, Section 6137.2 required that the court impose a term of one year of reentry supervision. ***See id.*** at *7. Although the trial court issued an amended sentence adding the term of reentry supervision,

there [was] no indication on the trial court docket that the trial court held a resentencing hearing or that the appellant was present in court when the amended sentence was imposed. ***See*** Pa.R.Crim.P. 602 (“The defendant shall be present at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the

⁷ We may rely upon the non-precedential memorandum decisions of this Court filed after May 1, 2019 for their persuasive value. ***See*** Pa.R.A.P. 126(b).

imposition of sentence.”). As such, the trial court entered an illegal sentence.

Id. Therefore, this Court vacated the amended sentence and remanded for resentencing.

Mumford, 353 A.3d 247 at 261-62 (brackets, footnote, and unnecessary capitalization omitted; some citation formatting altered). Thus, the panel determined that Mumford’s aggregate sentence of 7½ to 15 years’ incarceration implicated the mandatory reentry supervision requirements set forth in section 6137.2 and that Mumford’s original sentence, which did not include a term of reentry supervision, was illegal. **See id.** at 262. Although Mumford’s amended sentence included the mandatory term of reentry supervision, the panel further concluded that “the trial court entered an illegal sentence by amending [Mumford’s] sentence outside of his presence” where there was “no indication that the trial court conducted a resentencing hearing or that [Mumford] was present when the amended sentence was imposed[.]” **Id.**

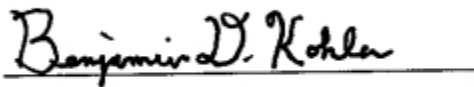
The case *sub judice* presents identical circumstances to those in **Mumford**. Here, the court sentenced Montgomery to an aggregate term of fifteen to thirty years’ incarceration, thereby implicating section 6137.2’s mandatory reentry supervision requirements. However, the trial court’s initial sentence did not provide for a term of reentry supervision, **see** Sentencing Order, 6/11/25, and was therefore illegal. **See Mumford**, 353 A.3d at 262. Although the trial court subsequently entered an amended sentencing order

to provide for the mandatory term of reentry supervision, **see** Amended Sentencing Order, 6/18/25, the certified record is devoid of any indication that the court held a resentencing hearing or that Montgomery was present when his amended sentence was imposed. Accordingly, the court's amended sentence is likewise illegal. **See *Mumford***, 353 A.3d at 262.

Based on the foregoing, we are constrained to vacate both Montgomery's June 11, 2025 judgment of sentence and his June 18, 2025 amended judgment of sentence as legal nullities, remand for resentencing, and deny counsel's petition to withdraw. Unless granted permission to withdraw by the trial court, counsel shall remain counsel of record through the completion of Montgomery's direct appeal process following resentencing. This memorandum is entered without prejudice to current counsel's right to request the trial court's permission to withdraw and request substitute counsel.

Judgment of sentence vacated. Petition to withdraw denied. Case remanded for resentencing consistent with this decision. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 10/26/2026