

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

V.

ANDREW GEORGE DANKO, V

Appellant

: IN THE SUPERIOR COURT OF
: PENNSYLVANIA

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: No. 2756 EDA 2025

Appeal from the Judgment of Sentence Entered October 9, 2025
In the Court of Common Pleas of Lehigh County Criminal Division at
No(s): CP-39-CR-0000129-2025

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

V.

ANDREW GEORGE DANKO V

Appellant

: IN THE SUPERIOR COURT OF
: PENNSYLVANIA

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: No. 3016 EDA 2025

Appeal from the Judgment of Sentence Entered October 9, 2025
In the Court of Common Pleas of Lehigh County Criminal Division at
No(s): CP-39-CR-0000130-2025

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

MEMORANDUM BY BENDER, P.J.E.:

FILED SEPTEMBER 3, 2026

In these consolidated appeals,¹ Appellant, Andrew George Danko V, appeals from the judgment of sentence imposed following the *nolo contendere* pleas entered in two cases on October 9, 2025. Moreover, Appellant's counsel,

¹ This Court consolidated Appellant's cases *sua sponte* on January 9, 2026, pursuant to Pa.R.A.P. 513.

Matthew Mottola, Esquire, has filed an **Anders**² brief and a petition seeking to withdraw. After careful review, we deny counsel's request to withdraw.

The trial court set forth the facts of this case as follows:

On October 9, 2025, [Appellant] entered *nolo contendere* pleas in Case No. 0129/2025 to Reckless Burning or Exploding (18 Pa.C.S.[] § 3301(d)(2)), as amended, graded as a felony of the third degree, and Risking Catastrophe (18 Pa.C.S.[] § 3302(b)), graded as a felony of the third degree. Also on October 9, 2025, [Appellant] entered a ... plea to Disorderly Conduct Engage in Fighting (18 Pa.C.S.[] §5503(a)(1)), a misdemeanor of the third degree, in Case No. 0130/2025. In exchange for the *nolo contendere* pleas, the Commonwealth agreed that in Case No. 0129/2025 [Appellant] would receive a [c]ounty sentence on the charge of Risking Catastrophe and a five (5) year concurrent probationary sentence on the charge of Reckless Burning or Exploding. In Case No. 0130/2025, the Commonwealth agreed to a probationary sentence concurrent to Case No. 0129/2025. In addition, the Commonwealth agreed not to pursue the other counts of the Criminal Information.

On the same day, this [c]ourt sentenced [Appellant] to the following: in Case No. 0129/2025, on the charge of Reckless Burning or Exploding, [Appellant] was placed on probation for a period of sixty (60) months, and on the charge of Risking Catastrophe, [Appellant] was sentenced to a term of imprisonment in the Lehigh County Jail of not less than twelve (12) months less one (1) day nor more than twenty-four (24) months less one (1) day, followed by three years of probation. The sentences imposed in Case No. 0129/2025 were ordered to run concurrently to each other. In Case No. 0130/2025, [Appellant] was sentence[d] to a term of imprisonment in the Lehigh County Jail of not less than three (3) months nor more than twelve (12) months. This sentence was ordered to run concurrently to the sentences imposed in Case No. 0129/2025. The within appeal followed on October 22, 2025.

On October 23, 2025, this [c]ourt instructed [Appellant] to file of record and serve upon this [c]ourt a concise statement of errors

² **Anders v. California**, 386 U.S. 738 (1967).

complained of on appeal no later than November 13, 2025, in accordance with Pennsylvania Rule of Appellate Procedure 1925(b). In lieu of filing a concise statement of errors complained of on appeal, appellate counsel submitted a statement of intent to file an **Anders/McClendon**^[3] brief, asserting that counsel has determined the appeal to be wholly frivolous.

Trial Court Opinion, 11/24/25 at 1-3 (paragraph formatting altered).

Before addressing the merits of Appellant's appeal, this Court will first consider counsel's request to withdraw. Counsel seeking to withdraw pursuant to **Anders** must satisfy certain procedural and substantive requirements. **Commonwealth v. Tejada**, 176 A.3d 355, 358 (Pa. Super. 2017). Procedurally, counsel will comply with the technical requirements of **Anders** by:

(1) filing a petition for leave to withdraw stating that after making a conscientious examination of the record, counsel has determined that the appeal would be frivolous; (2) providing a copy of the brief to the appellant; and (3) advising the appellant of the right to retain private counsel, proceed *pro se*, or raise additional arguments that the appellant considers worthy of the court's attention.

Commonwealth v. Thompson, 333 A.3d 461, 466 (Pa. Super. 2025). Here, counsel has filed a petition to withdraw which states that he conducted a conscientious review of the record, and concluded that the appeal would be frivolous. Counsel also informed Appellant that he was withdrawing from the case and provided copies of the brief and petition to Appellant. Further, counsel instructed Appellant that he had the right to retain private counsel or

³ **Commonwealth v. McClendon**, 434 A.2d 1185 (Pa. 1981).

represent himself *pro se* in the appeal by filing a supplemental brief. Accordingly, counsel has complied with the procedural aspects of **Anders**.

We now address the substantive aspects of the **Anders** brief. As our Supreme Court explained in **Commonwealth v. Santiago**, 978 A.2d 349 (Pa. 2009), the **Anders** brief 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.

Santiago, 978 A.2d at 361. Once counsel has complied with all requirements, we review the record and render an independent judgment as to whether the appeal is wholly frivolous. **Commonwealth v. Yorgey**, 188 A.3d 1190, 1197 (Pa. Super. 2018) (*en banc*). Moreover, an **Anders** brief remains subject to our Rules of Appellate Procedure. **See Commonwealth v. Curry**, 931 A.2d 700, 702 (Pa. Super. 2007) (providing that an **Anders** brief must conform to the Rules of Appellate Procedure, specifically Pa.R.A.P. 2111(a)).

Notably, the **Anders** brief filed by counsel does not conform to our Rules of Appellate Procedure in that the brief fails to comply with several requirements of Pa.R.A.P. 2111. It contains no separately designated statement of jurisdiction, no statement of the scope and standard of review, statement of questions involved, or summary of argument. **See** Pa.R.A.P. 2111(a)(1), (3), (4), (6). Particularly significant is counsel's omission of a

statement of questions involved, as Rule 2116 provides that “[n]o question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby.” Pa.R.A.P. 2116(a).

More importantly, counsel has not adequately identified the issues Appellant wishes to pursue or referred to matters in the record that arguably support those claims as required by **Santiago**. **See Commonwealth v. Smith**, 700 A.2d 1301, 1304 (Pa. Super. 1997) (“[C]ounsel seeking to withdraw under **Anders** is required to flag any issues that the defendant wishes to raise, as well as any other claims necessary to the effective appellate presentation of those issues.”). Here, there is no indication of what claims Appellant wishes to raise on appeal.

Instead, counsel broadly addresses four subjects – validity of Appellant’s pleas, jurisdiction of the court, sentencing, and ineffective assistance of counsel – but does not clearly identify the particular errors that Appellant claims have occurred.⁴ For example, although counsel addresses the validity of Appellant’s pleas, counsel fails to identify any basis on which Appellant contends that his pleas were invalid. In fact, the **Anders** brief contains no indication of the factual basis, if any, underlying Appellant’s challenge to his pleas. Thus, we cannot conclude that counsel has satisfied his obligation to identify and present Appellant’s arguments which could arguably support this appeal. **Santiago**, 978 A.2d at 361.

⁴ We note that Appellant did not file a post-sentence motion in this case.

Where counsel fails to fulfill the requirements for withdrawal under ***Anders***, the appropriate remedy is to deny withdrawal and direct counsel either to file a compliant ***Anders*** brief or an advocate's brief on Appellant's behalf. ***See Commonwealth v. Wrecks***, 931 A.2d 717, 720-21 (Pa. Super. 2007). Accordingly, we deny counsel's petition to withdraw. Within thirty days of the date of this memorandum, counsel shall file either (1) a new ***Anders*** brief and petition to withdraw that comply with the requirements of ***Anders, Santiago***, and the Pennsylvania Rules of Appellate Procedure; or (2) an advocate's brief on Appellant's behalf.

Petition to withdraw denied. Panel jurisdiction retained.