NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
MICHAEL ENCRAPERA	:	
Appellant	:	No. 670 WDA 2025

Appeal from the Judgment of Sentence Entered May 27, 2025
In the Court of Common Pleas of Allegheny County Criminal Division at No(s): CP-02-CR-0000224-2025

BEFORE: KING, J., NEUMAN, J., and BENDER, P.J.E.

MEMORANDUM BY NEUMAN, J.: **FILED: November 5, 2026**

Appellant, Michael Encrapera, appeals from the judgment of sentence of credit for time served, imposed after he pled guilty to one count of disorderly conduct (18 Pa.C.S. § 5503(a)(4)). On appeal, Appellant seeks to challenge the validity of his plea and the effectiveness of his trial counsel. Additionally, Appellant's current attorney, James Vinski, Esq., seeks to withdraw his representation of Appellant pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and ***Commonwealth v. Santiago***, 978 A.2d 349 (Pa. 2009). After careful review, we affirm Appellant's judgment of sentence, but we deny counsel's petition to withdraw and remand this case for the trial court to correct a clerical error in the sentencing order.

We need not set forth a detailed summary of the facts of Appellant's case to resolve the issues he seeks to raise on appeal. We only note that a vehicle in which Appellant and four other individuals were riding was stopped

by police, who observed drug paraphernalia in plain view, and ultimately recovered methamphetamine and heroin from the car. Appellant was arrested and charged with possession with the intent to deliver a controlled substance (PWID) (35 P.S. § 780-113(a)(30)), possession of a controlled substance (35 P.S. § 780-113(a)(16)), and possession of drug paraphernalia (35 P.S. § 780-113(a)(32)).

On May 27, 2025, the court conducted a guilty plea and sentencing proceeding. At the outset thereof, the Commonwealth stated that, in exchange for Appellant's guilty plea, it would amend his PWID charge to a summary count of disorderly conduct and withdraw all other charges. N.T. Plea/Sentencing, 5/27/25, at 2. Appellant and his counsel agreed with the terms of the plea, and Appellant stated he understood the disorderly conduct charge and the maximum penalty he faced, he was pleading guilty to that offense, and he was satisfied with his counsel's representation. ***Id.*** at 3. The court accepted his plea and sentenced him that same day to credit for time served. ***Id.***[1]

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[1] We note the court's written sentencing order appears to contain a clerical error, in that it states Appellant was "[t]o be confined for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) in the Allegheny County Jail." Order, 5/27/25, at 1 (single page). Initially, this sentence of incarceration violates the Sentencing Code's requirement that the court "impose a minimum sentence of confinement which shall not exceed one-half of the maximum sentence imposed." 42 Pa.C.S. § 9756. Additionally, the rest of the written sentencing order, as well as the record of Appellant's plea/sentencing hearing, indicates the court intended to impose a sentence of credit for time served, rather than a 90-day period of incarceration.
(Footnote Continued Next Page)

For instance, the written sentencing order also states, "Defendant is sentenced to time served." Order, 5/27/25, at 1 (single page). Moreover, at the plea/sentencing hearing, Appellant's counsel requested a "sentence of time served, [with] no further penalty[,]" noting Appellant had "been … incarcerated … for almost eight months going back to October 2024." N.T. Plea/Sentencing at 3-4. Most importantly, in imposing Appellant's sentence, the court declared, "at … Count 1 disorderly conduct, credit for time served." ***Id.*** at 6. The court made no mention of 90 days' incarceration.

Our Court has explained:

> In situations where the written sentencing order differs from the sentence orally announced by the trial court at the time of sentencing, this Court has held that a written sentencing order which differs from the "trial court's intentions [that] are clearly and unambiguously declared during the sentencing hearing [demonstrates] a 'clear clerical error' on the face of the record[and is] subject to later correction." ***Commonwealth v. Borrin***, 12 A.3d 466, 473 (Pa. Super. 2011); ***see also Commonwealth v. Kremer***, 206 A.3d 543, 548 (Pa. Super. 2019) (stating, "the signed, written sentencing order controls, where the sentencing transcript is ambiguous; the ambiguity in the transcript must be resolved by reference to the signed, written sentencing order" (citation omitted)).

Commonwealth v. Bartic, 303 A.3d 124, 129 (Pa. Super. 2023). Instantly, the trial court at the sentencing hearing clearly and unambiguously declared that Appellant's sentence was credit for time served, and made no mention of a 90-day term of incarceration. Additionally, the written sentencing order also states Appellant was "sentenced to time served." Order, 5/27/25, at 1 (single page). Accordingly, we conclude the language in the written sentencing order essentially imposing an illegal, flat sentence of 90 days' incarceration is a clerical error. ***See Commonwealth v. Postie***, 110 A.3d 1034, 1044 (Pa. Super. 2015) (concluding a "flat sentence of four months is illegal under [42 Pa.C.S. §] 9756"). Thus, although we affirm Appellant's judgment of sentence for the reasons set forth *infra*, we remand his case for the court to strike this erroneous language from the written sentencing order. ***See Bartic***, 303 A.3d at 139 (affirming Bartic's judgment of sentence, remanding for correction of a clerical error in the written sentencing order, and relinquishing jurisdiction).

Appellant did not file any post-sentence motion. On June 6, 2025, he filed a *pro se* notice of appeal. However, Appellant was still represented by the Allegheny County Public Defender's Office. Accordingly, we ordered counsel to file a docketing statement and brief on behalf of Appellant. After counsel failed to do so, this Court remanded the certified record to determine if counsel had abandoned Appellant. Ultimately, on December 29, 2025, the trial court appointed Attorney Vinski from the Office of Conflict Counsel to represent Appellant.

On March 19, 2026, Attorney Vinski filed a petition to withdraw and accompanying ***Anders*** brief, citing Appellant's failure to file an ordered Pa.R.A.P. 1925(b) concise statement as the reason an appeal on his behalf would be frivolous. The trial court thereafter filed a Rule 1925(a) opinion, claiming Appellant was "representing himself" when he failed to file a Rule 1925(b) statement, thus suggesting Appellant had waived all his claims. Trial Court Opinion, 8/18/26, at unnumbered 1. However, upon review of the record, this Court discovered the trial court's Rule 1925(b) order was filed while the Public Defender was still Appellant's counsel. Additionally, there was no indication counsel had been permitted to withdraw, or that Appellant was served with the Rule 1925(b) order, even though the court considered him to be proceeding *pro se*. There was also no new Rule 1925(b) order issued upon the appointment of Attorney Vinski. Finally, we determined the Rule 1925(b) order that was issued failed to comply with the requirements of Rule 1925(b)(3), as it did not list the address to which Appellant could mail the

concise statement. ***See Commonwealth v. Stroud***, 298 A.3d 1152, 1156 n.4 (Pa. Super. 2023) (remanding for the filing of a concise statement because the trial court's order directing the filing of a concise statement did not strictly comply with Rule 1925(b)).

Consequently, this Court issued an order on April 28, 2026, denying Attorney Vinski's petition to withdraw without prejudice, striking his ***Anders*** brief, and remanding the case for the court to serve Attorney Vinski with a Rule 1925(b)(3)-compliant concise statement order. ***See*** Order, 4/28/26, at 2. We also directed the court to issue a revised Rule 1925(a) opinion after receiving Appellant's concise statement. ***Id.***

On remand, the trial court ordered Attorney Vinski to file a Rule 1925(b) statement. In response, counsel filed a Rule 1925(c)(4) statement of his intent to file an ***Anders*** brief. On June 3, 2026, the court filed an opinion stating it "is unable to speculate as to the issues [Appellant] wishes to raise on appeal[,]" and requesting we affirm Appellant's judgment of sentence. Trial Court Opinion, 6/3/26, at 2.

On July 13, 2026, Attorney Vinski filed an application to withdraw and ***Anders*** brief, discussing the following two issues: (1) whether Appellant's guilty plea was invalid because it was not knowing, intelligent, and voluntary, ***see Anders*** Brief at 9-11, and (2) whether Appellant's plea counsel acted ineffectively, ***id.*** at 11. Attorney Vinski concludes these issues are frivolous, and Appellant has no other, non-frivolous claims he could pursue herein. ***See id.*** at 11-12. Accordingly,

> this Court must first pass upon counsel's petition to withdraw before reviewing the merits of the underlying issues presented by [the appellant]. ***Commonwealth v. Goodwin***, 928 A.2d 287, 290 (Pa. Super. 2007) (*en banc*).
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> Prior to withdrawing as counsel on a direct appeal under ***Anders***, counsel must file a brief that meets the requirements established by our Supreme Court in ***Santiago***. The brief must:
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> > (1) provide a summary of the procedural history and facts, with citations to the record;
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> > (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.
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> ***Santiago***, 978 A.2d at 361. Counsel also must provide a copy of the ***Anders*** brief to his client. Attending the brief must be a letter that advises the client of his right to: "(1) retain new counsel to pursue the appeal; (2) proceed pro se on appeal; or (3) raise any points that the appellant deems worthy of the court[']s attention in addition to the points raised by counsel in the ***Anders*** brief." ***Commonwealth v. Nischan***, 928 A.2d 349, 353 (Pa. Super. 2007)….

Commonwealth v. Orellana, 86 A.3d 877, 879-80 (Pa. Super. 2014). After determining counsel has satisfied these technical requirements of ***Anders*** and ***Santiago***, this Court must then "conduct a simple review of the record to ascertain if there appear[s] on its face to be arguably meritorious issues that counsel, intentionally or not, missed or misstated." ***Commonwealth v. Dempster***, 187 A.3d 266, 272 (Pa. Super. 2018) (*en banc*).

In this case, Attorney Vinski's ***Anders*** brief complies with the above-stated requirements. Namely, he includes a summary of the relevant factual and procedural history, he refers to portions of the record that could arguably support Appellant's claims, and he sets forth his conclusion Appellant's appeal is frivolous. He also explains his reasons for reaching that determination and supports his rationale with citations to the record and pertinent legal authority. Attorney Vinski also attached a letter directed to Appellant to his application to withdraw, in which he informed Appellant of the rights enumerated in ***Nischan***, and indicated he provided Appellant with a copy of his ***Anders*** brief. Accordingly, counsel has complied with the technical requirements for withdrawal. We will now independently review the record to determine if Appellant's issues are frivolous, and to ascertain if there are any other, non-frivolous claims he could pursue on appeal.

First, Appellant seeks to challenge the validity of his guilty plea. However, he has waived this issue by not objecting during the plea proceeding or filing a post-sentence motion to withdraw his plea. ***See*** Pa.R.Crim.P. 720(B)(1)(a)(i) (stating a defendant shall have the right to file a post-sentence motion challenging the validity of a guilty plea); ***Commonwealth v. Lincoln***, 72 A.3d 606, 609-10 (Pa. Super. 2013) ("A defendant wishing to challenge the voluntariness of a guilty plea on direct appeal must either object during the plea colloquy or file a motion to withdraw the plea within ten days of sentencing. Failure to employ either measure results in waiver.").

Accordingly, we agree with Attorney Vinski that raising any challenge to Appellant's guilty plea would be frivolous.

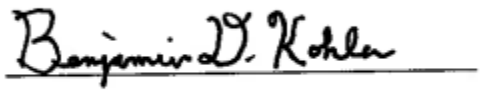
Second, Appellant wishes to argue his plea counsel acted ineffectively. In ***Commonwealth v. Holmes***, 79 A.3d 562, 576 (Pa. 2013), our Supreme Court reaffirmed its prior holding in ***Commonwealth v. Grant***, 813 A.2d 726 (Pa. 2002), that generally, claims of ineffective assistance of counsel should be deferred until collateral review under the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. The ***Holmes*** Court recognized two exceptions to this general rule, whereby claims of ineffective assistance of counsel may be raised and addressed on direct appeal, "both falling within the discretion of the trial judge[:]" (1) there are extraordinary circumstances in which trial counsel's "ineffectiveness is apparent from the record and meritorious to the extent that immediate consideration best serves the interests of justice[;]" or (2) "there is good cause shown" and the defendant knowingly and expressly waives his entitlement to seek subsequent PCRA review of his conviction and sentence. ***Id.*** at 563-64. Additionally, in ***Commonwealth v. Delgros***, 183 A.3d 352, 361 (Pa. 2018), our Supreme Court recognized a third exception, holding a defendant may raise an ineffective-assistance-of-counsel claim in cases where he would be statutorily precluded from raising an ineffectiveness claim on collateral review. The ***Delgros*** Court, however, limited its holding to cases in which the defendant has raised his ineffective assistance of counsel claim in a post-sentence motion. ***Id.*** at 362-63.

Here, there is nothing in the record indicating there is an immediately apparent and meritorious argument that Appellant's plea counsel acted ineffectively. Appellant expressed he was satisfied with counsel's representation at the time of the plea. Additionally, Appellant did not knowingly and expressly waive his right to PCRA review. Finally, although Appellant will be statutorily precluded from filing a PCRA because he has completed serving his sentence, ***see*** 42 Pa.C.S. § 9543(a)(1)(i) (stating to be eligible for relief, a petitioner must plead and prove he is "currently serving a sentence of imprisonment, probation[,] or parole for the crime"), we cannot review his ineffectiveness claim herein, as it was not preserved before the trial court in a post-sentence motion. Accordingly, because none of the above exceptions apply to permit us to address Appellant's ineffectiveness claim on direct appeal, it would be frivolous to raise herein.

In sum, Appellant's issues are both frivolous. However, because there is a clerical error in the court's written sentencing order which must be corrected, we deny counsel's petition to withdraw and remand for correction of that error.

Judgment of sentence affirmed. Case remanded for correction of the clerical error. Petition to withdraw denied. Jurisdiction relinquished.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

11/5/2026