NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
ROBERTO SANTIAGO	:	
Appellant	:	No. 5 EDA 2026

Appeal from the Judgment of Sentence Entered November 19, 2025
In the Court of Common Pleas of Philadelphia County
Criminal Division at No: CP-51-CR-0006389-2024

BEFORE: OLSON, J., STABILE, J., and KUNSELMAN, J.

MEMORANDUM BY STABILE, J.: **FILED NOVEMBER 25, 2026**

Appellant, Roberto Santiago, appeals from the judgment of sentence imposed on November 19, 2025, by the Court of Common Pleas of Philadelphia County. Counsel has filed an application to withdraw and a brief pursuant to ***Anders v. California***, 386 U.S. 738 (1967). We agree with counsel that there are no non-frivolous issues to be raised on appeal. Therefore, we grant counsel's application to withdraw and affirm the judgment of sentence.

On May 29, 2024, Appellant was charged with manufacture, delivery or possession with intent to manufacture or deliver ("PWID")[1], conspiracy to commit PWID[2], and intentional possession of a controlled substance by a

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[1] 35 P.S. § 780-113(a)(30).

[2] 18 Pa.C.S.A. § 903(c).

person not registered[3]. Appellant filed a motion to suppress, and after a hearing, the motion was denied by the trial court. On September 18, 2025, Appellant pleaded guilty to PWID and conspiracy, and the remaining charge was *nolle prossed*. Sentencing was deferred for the completion of a pre-sentencing investigation ("PSI"), a mental health evaluation and a forensic intensive recovery ("FIR") evaluation.

On November 19, 2025, Appellant was sentenced to an aggregate two to four years' incarceration. Appellant filed a motion for reconsideration of sentence, which was denied. This appeal followed. Both Appellant and the trial court have complied with Pa.R.A.P. 1925. Thereafter, counsel filed an application to withdraw and an ***Anders*** brief, concluding that this appeal was frivolous.

"When faced with a purported ***Anders*** brief, this Court may not review the merits of any possible underlying issues without first examining counsel's request to withdraw." ***Commonwealth v. Goodwin***, 928 A.2d 287, 290 (Pa. Super. 2007). To withdraw pursuant to ***Anders***, counsel must:

> (1) petition the court for leave to withdraw stating that after making a conscientious examination of the record it has determined that the appeal would be frivolous;
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> (2) file a brief referring to anything that might arguably support the appeal, but which does not resemble a "no merit" letter or *amicus curiae* brief; and
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> (3) furnish a copy of the brief to defendant and advise him of his right to retain new counsel, proceed *pro se* or raise any

[3] 35 P.S. § 780-113(a)(16).

> additional points that he deems worthy of the court's attention.

Commonwealth v. Millisock, 873 A.2d 748, 751 (Pa. Super. 2005). The ***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;
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> (3) set forth counsel's conclusion that the appeal is frivolous; and
>
> (4) state counsel's reasons for concluding that the appeal is frivolous.

Commonwealth v. Santiago, 978 A.2d 349, 361 (Pa. 2009). "This Court first considers the issues raised by counsel in the ***Anders*** brief and determines whether they are in fact frivolous." ***Commonwealth v. Weitzel***, 304 A.3d 1219, 1224 (Pa. Super. 2023) (citing ***Commonwealth v. Yorgey***, 188 A.3d 1190, 1196-1197 (Pa. Super. 2018) (*en banc*)). "[I]f the Court finds all of those issues frivolous, this Court conducts a review of the record to ascertain if, on its face, there are other issues of arguable merit overlooked by counsel." ***Id.***

After review, we conclude counsel has satisfied the first requirement of ***Anders*** by filing a motion to withdraw, wherein he asserted that he made a conscientious review of the record and determined the appeal would be frivolous. Likewise, counsel has satisfied the second requirement by filing an ***Anders*** brief that complies with the requirements set forth in ***Santiago,***

supra. Lastly, counsel has attached to the motion to withdraw a copy of the letter sent to Appellant advising of his rights and enclosing a copy of the ***Anders*** brief. Therefore, we conclude that counsel has complied with the ***Anders*** requirements. We therefore may proceed to undertake an independent examination of the record to determine whether the issues raised by counsel are frivolous, and then whether our independent review of the entire record reveals any other non-frivolous issues overlooked by counsel. ***Weitzel, supra.***

On appeal, Appellant argues that this guilty plea was not knowing, voluntary or intelligent. We find this issue waived because Appellant failed to preserve it for our review. ***See Commonwealth v. Lincoln***, 72 A.3d 606, 609-10 (Pa. Super. 2013) (to preserve a challenge to the voluntariness of a plea a defendant must either object during the plea colloquy or file a request to withdraw the plea within 10 days). Appellant neither objected during the plea colloquy nor filed a motion to withdraw his plea. Thus, this claim is waived. ***Id.***

Even if not waived, Appellant would not be entitled to relief. To establish that a guilty plea is voluntary and knowing, the trial court must conduct a colloquy that shows:

> 1) the nature of the charges, 2) the factual basis for the plea, 3) the right to a jury trial, 4) the presumption of innocence, 5) the sentencing ranges, and 6) the plea court's power to deviate from any recommended sentence.

Commonwealth v. Jabbie, 200 A.3d 500, 506 (Pa. Super. 2018).

Appellant's primary language is Spanish, and a certified Spanish interpreter was present for both the guilty plea and sentencing hearings. The oral colloquy set forth the nature of the charges and the sentencing ranges, ***see*** N.T. Plea, 9/18/25, at 5-6; the factual basis for the plea, ***see id.*** at 9-12; and the right to a jury trial, ***see id.*** at 6-7. Appellant confirmed that he understood these rights on the record. ***See id.*** at 4-7. He was also informed of potential collateral consequences, such as deportation. ***See id.*** at 7-8. Additionally, Appellant completed a written plea colloquy in Spanish that explained the right to a jury trial, presumption of innocence, the sentencing ranges, that sentencing is in the court's discretion, and potential collateral consequences of his plea. ***See*** Guilty Plea Colloquy, 9/18/25. Thus, we agree with the trial court that Appellant's plea was voluntary, knowing, and intelligent, and no relief is due.

To the extent Appellant challenges the denial of his motion to suppress, that claim is waived because of his guilty plea. Generally, "by entering a guilty plea, the defendant waives his right to challenge on direct appeal all nonjurisdictional defects except the legality of the sentence and the validity of the plea." ***Lincoln***, 72 A.3d at 609. Thus, by pleading guilty, Appellant waived his right to challenge the denial of his suppression motion. ***See Commonwealth v. Perel***, 107 A.3d 185, 197 n.14 (Pa. Super. 2014);

Commonwealth v. Ware, 2022 WL 17202 at *2 (Pa. Super. filed Jan. 3, 2022) (unpublished memorandum)[4].

To the extent Appellant claims his sentence is illegal or that the trial court abused its discretion in imposing the sentence, the claims are without merit.

In determining the legality of a sentence, our standard of review is *de novo* and our scope of review is plenary. ***Commonwealth v. Verma***, 334 A.3d 941, 951 (Pa. Super. 2025). "If no statutory authorization exists for a particular sentence, that sentence is illegal and subject to correction." ***Id.*** (citation omitted).

Here, Appellant pleaded guilty to PWID (crack cocaine and fentanyl) and conspiracy to commit PWID, both are ungraded felonies. The maximum PWID sentence is 15 years for fentanyl, ***see*** 35 P.S. § 780-113(f)(1), and 10 years for crack cocaine, ***see*** 35 P.S. § 780-113(f)(1.1). Conspiracy is graded the same as the underlying offense. 18 Pa.C.S.A. § 905(a). Thus, conspiracy to commit PWID is an ungraded felony, which carries a maximum sentence of seven years. ***See*** 18 Pa.C.S.A. § 106(b)(4), (5). Appellant's aggregate sentence of two to four years is well below the statutory maximum for either offense; therefore, it is legal. ***Verma***, ***supra***.

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[4] ***See*** Pa.R.A.P. 126(b) (unpublished non-precedential decisions of the Superior Court filed after May 1, 2019, may be cited for their persuasive value).

A defendant who entered an open guilty plea may challenge the discretionary aspects of the sentence imposed. ***Commonwealth v. Steager***, 357 A.3d 137, 148 (Pa. Super. 2026) (citation omitted). However, issue preservation rules still apply, and a defendant must invoke our jurisdiction by (1) filing a timely notice of appeal; (2) properly preserving the issue at sentencing or in a post-sentence motion; (3) complying with Pa.R.A.P. 2119(f), which requires a concise statement of the reasons relied upon for allowance of appeal; and (4) presenting a substantial question. ***Commonwealth v. Leatherby***, 116 A.3d 73, 83 (Pa. Super. 2015).

Here, Appellant filed a timely notice of appeal and a motion to reconsider sentence. The ***Anders*** brief did not include a Rule 2119(f) statement. However, the Commonwealth did not object to this omission; therefore, we decline to find waiver and will determine whether a substantial question exists. ***See Commonwealth v. Perzel***, 291 A.3d 38, 49 (Pa. Super. 2023) ("when the appellant has not included a Rule 2119(f) statement and the appellee has not objected, this Court may ignore the omission and determine if there is a substantial question . . . or enforce the requirements of Pa.R.A.P. 2119(f)[.]").

> A substantial question will be found where an appellant advances a colorable argument that the sentence imposed is either inconsistent with a specific provision of the Sentencing Code or is contrary to the fundamental norms which underlie the sentencing process. At a minimum, the Rule 2119(f) statement must articulate what particular provision of the code is violated, what fundamental norms the sentence violates, and the manner in which it violates that norm.

Commonwealth v. Zirkle, 107 A.3d 127, 132 (Pa. Super. 2014).

The ***Anders*** brief is devoid of any argument that the sentence imposed violated a fundamental sentencing norm or was inconsistent with a specific provision of the sentencing code. Therefore, we conclude Appellant has not raised a substantial question and failed to invoke our jurisdiction.[5]

Accordingly, we agree with counsel's determination that the issues presented in the ***Anders*** brief are meritless. In addition, our independent review of the record reveals no non-frivolous issues to be raised on appeal. ***Weitzel***, ***supra***. We therefore grant counsel's application to withdraw and affirm the judgment of sentence.

Application to withdraw as counsel granted. Judgment of sentence affirmed.

Judge Kunselman joins the memorandum.

Judge Olson concurs in the result.

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[5] Even if Appellant had raised a substantial question, Appellant would not be entitled to relief. Appellant's prior record score was 2, and the offense gravity score was 17; thus, the standard guideline range was 54-66 months, plus or minus 9 months. Appellant's sentence of two to four years (24 to 48 months) is below the mitigated range. The record shows that the trial court imposed a sentence below the mitigated range of the guidelines light of the circumstances of the offenses and Appellant's background. Accordingly, the trial court did not abuse its sentencing discretion.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/25/2026