

SUPERIOR COURT OF PENNSYLVANIA

Commonwealth v. Thompson

2025 Pa. Super. 59 · No. 2223 EDA 2023 · Decided March 13, 2025

SUMMARY

The Pennsylvania Superior Court reviewed Elijah Thompson’s appeal from an aggregate sentence imposed after an open guilty plea to aggravated assault, stalking, endangering the welfare of children, and recklessly endangering another person. The court denied appointed counsel’s Anders/Santiago withdrawal petition, vacated the trial court’s later amended judgment of sentence as a legal nullity, and reinstated and affirmed the original July 24, 2023 judgment of sentence.

CASE DETAILS

COURT	Superior Court of Pennsylvania
WRITING FOR THE COURT	Nichols, J.; Murray, J.; Lane, J.
JURISDICTION	Pennsylvania Superior Court
DECIDED	March 13, 2025
DOCKET	2223 EDA 2023
DISPOSITION	vacated
PROCEDURAL POSTURE	Appeal from a judgment of sentence following an open guilty plea; appellate counsel filed a petition to withdraw and an Anders/Santiago brief.
STANDARD OF REVIEW	The court independently reviews the record in an Anders/Santiago appeal to determine whether the appeal is wholly frivolous and whether any additional nonfrivolous issues exist. Challenges to discretionary sentencing aspects require satisfaction of procedural prerequisites, including timeliness, preservation, a Pa.R.A.P. 2119(f) statement, and presentation of a substantial question.
PRECEDENTIAL VALUE	Published and precedential opinion of the Superior Court of Pennsylvania.
PARTIES	Elijah Thompson v. Commonwealth of Pennsylvania

TOPICS

- appellate procedure
- criminal procedure
- sentencing
- preservation of error
- standard of review

PRACTICE AREAS

criminal procedure

appellate procedure

sentencing

QUESTIONS PRESENTED

1. Whether appellate counsel satisfied the procedural requirements for withdrawal under Anders and Santiago.
2. Whether Thompson preserved a challenge to the discretionary aspects of his sentence based on the trial court's alleged failure to consider mitigating factors.
3. Whether the trial court had jurisdiction to amend Thompson's July 24, 2023 judgment of sentence on September 5, 2023, after an appeal had been filed and without notice or Thompson's presence.
4. Whether the appeal presented any additional nonfrivolous issues upon the court's independent review.

HOLDINGS

1. Current counsel satisfied the technical requirements for withdrawal by filing a petition stating that the appeal was frivolous after a conscientious examination, providing Thompson with the brief and advising him of his appellate rights, and filing a brief complying with Santiago.
2. Thompson waived his claim that the trial court failed to consider mitigating factors because he did not raise that claim in his post-sentence motion or otherwise present it to the sentencing court.
3. The trial court lacked jurisdiction to amend the July 24, 2023 judgment of sentence after Thompson filed his notice of appeal, and the September 5, 2023 amended judgment of sentence was a legal nullity.
4. The court found no additional nonfrivolous issues after independently reviewing the record.

KEY QUOTATIONS

“On this record, we conclude that the trial court lacked jurisdiction to amend the July 24, 2023 judgment of sentence, and the September 5, 2023 judgment of sentence is a legal nullity of no effect.” (at 11)

“Amended judgment of sentence entered on September 5, 2023 is vacated. July 24, 2023 judgment of sentence at docket 2059-2020 is reinstated and affirmed.” (at 12)

FACTUAL BACKGROUND

On July 7, 2020, Thompson repeatedly attempted to contact Madeleine Devitis despite an active Protection from Abuse order prohibiting contact. He drove into the side of Devitis's vehicle at a traffic light and chased her vehicle through a parking lot while their approximately one-year-old child was in Devitis's vehicle, placing Devitis, the child, and nearby people at risk of serious bodily injury or death. Thompson later entered an open guilty plea to aggravated assault, stalking, endangering the welfare of children, and recklessly endangering another person.

PROCEDURAL HISTORY

Thompson entered an open guilty plea on January 24, 2023, to aggravated assault, stalking, endangering the welfare of children, and recklessly endangering another person. The Chester County Court of Common Pleas

imposed an aggregate sentence of four and one-half to fourteen years of incarceration on July 24, 2023. After Thompson filed a post-sentence motion and notice of appeal, the trial court purported to amend the sentence on September 5, 2023, without notice, a resentencing hearing, or Thompson's presence. The Superior Court vacated the amended sentence as a legal nullity, reinstated and affirmed the July 24 sentence, and denied current counsel's petition to withdraw.

DISPOSITION

vacated

REMAND INSTRUCTIONS

No remand was ordered. The September 5, 2023 amended judgment of sentence was vacated, the July 24, 2023 judgment of sentence was reinstated and affirmed, counsel's petition to withdraw was denied, and jurisdiction was relinquished.

CASES CITED

- *Anders v. California*, 386 U.S. 738 (1967)
- *Commonwealth v. Santiago*, 978 A.2d 349 (Pa. 2009)
- *Commonwealth v. Wimbush*, 951 A.2d 379, 382 (Pa. Super. 2008)
- *Commonwealth v. Goodwin*, 928 A.2d 287, 290-291 (Pa. Super. 2007) (en banc)
- *Commonwealth v. Millisock*, 873 A.2d 748, 751 (Pa. Super. 2005)
- *Commonwealth v. Flowers*, 113 A.3d 1246, 1250 (Pa. Super. 2015)
- *Commonwealth v. Yorgey*, 188 A.3d 1190, 1197 (Pa. Super. 2018) (en banc)
- *Commonwealth v. Ahmad*, 961 A.2d 884, 886 (Pa. Super. 2008)
- *Commonwealth v. Derry*, 150 A.3d 987, 991 (Pa. Super. 2016)
- *Commonwealth v. Corley*, 31 A.3d 293, 296 (Pa. Super. 2011)
- *Commonwealth v. Malovich*, 903 A.2d 1247, 1251 (Pa. Super. 2006)
- *Commonwealth v. Battles*, 169 A.3d 1086, 1090 (Pa. Super. 2017)
- *Commonwealth v. Grays*, 167 A.3d 793, 816 (Pa. Super. 2017)
- *Commonwealth v. Holmes*, 79 A.3d 562, 576 (Pa. 2013)
- *Commonwealth v. Jette*, 23 A.3d 1032, 1036 (Pa. 2011)
- *Commonwealth v. Nischan*, 928 A.2d 349, 355 (Pa. Super. 2007)
- *Commonwealth v. Concordia*, 97 A.3d 366, 371 (Pa. Super. 2014)
- *Commonwealth v. Ellsworth*, 97 A.3d 1255, 1257 (Pa. Super. 2014)
- *Commonwealth v. Wright*, 494 A.2d 354, 359 (Pa. 1985)
- *Commonwealth v. Eldred*, 207 A.3d 404 (Pa. Super. 2019)
- *Commonwealth v. Hobson*, 452 A.2d 22, 23 (Pa. Super. 1982)
- *Commonwealth v. Horsman*, 361 A.2d 433 (Pa. Super. 1976)

- Commonwealth v. Pastorkovic, 567 A.2d 1089, 1092 (Pa. Super. 1989)
- Commonwealth v. Reed, 386 A.2d 41 (Pa. Super. 1978)
- Commonwealth v. Borrin, 80 A.3d 1219, 1227 (Pa. 2013) (plurality)

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