**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

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| COMMONWEALTH OF PENNSYLVANIA<br><br>Appellee<br><br>v.<br><br>ALTON Z. BLAKLEY<br><br>Appellant | IN THE SUPERIOR COURT OF PENNSYLVANIA<br><br><br><br><br><br>No. 2152 MDA 2011 |

Appeal from the Judgment of Sentence March 31, 2010
In the Court of Common Pleas of Dauphin County
Criminal Division at No(s): CP-22-CR-0004539-2004

BEFORE: STEVENS, P.J., OTT, J., and COLVILLE, J.*

MEMORANDUM BY OTT, J. Filed: February 8, 2013

Alton Z. Blakley appeals, *pro se*,[1] the judgment of sentence entered against him following his guilty plea to charges of: homicide by vehicle while under the influence, homicide by vehicle, reckless endangerment (REAP), aggravated assault by vehicle while under the influence, two counts of driving under the influence (DUI), two counts of accident involving death or personal injury[2] and four summary traffic offenses. After reviewing Blakley's presentence report, the Honorable Lawrence F. Clark sentenced Blakley to

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* Retired Senior Judge assigned to the Superior Court.

[1] Blakley's counsel has filed an ***Anders*** brief and motion to withdraw as counsel. Blakley has exercised his right to file a *pro se* appellant's brief. The full procedural history will be related, ***infra***.

[2] 75 Pa.C.S. §§ 3735, 3732; 18 Pa.C.S. § 2705, and 75 Pa.C.S. §§ 3735.1, 3802, 3742-3742.1, respectively.

an aggregate term of eight and one-half to thirty-seven years' incarceration, fines and 5,000 hours of community service. Blakley claims the trial court erred in imposing an unreasonably excessive sentence. After a thorough review of the submissions by the parties, relevant law, and the official record, we affirm and grant counsel's motion to withdraw.[3]

The record reflects that on October 23, 2003, at approximately 1:13 p.m., Blakley was driving a car with his stepson as a passenger. Blakley drove his car into the oncoming lane of traffic, striking a car driven by Charlene Pendelton, carrying her daughter, Tia Pendleton, and Tia's friend, Amber Johnson, as passengers. Charlene Pendleton was killed and Tia and Amber were injured and taken to the hospital. Tia required two days' hospitalization. Amber suffered more serious injuries, including a torn spleen, and required approximately two weeks' hospitalization. Additionally, her nascent modeling career was ended due to the keloid scarring she suffered on her face.

Prior to the police arriving at the accident scene, Blakley left for the hospital.[4] After the police located him there, he initially told them his stepson was driving the car. However, shortly thereafter he admitted to being the driver. He submitted to a blood alcohol test, which determined his

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[3] Additionally, Blakely has filed a motion for permission to file a reduced number of appellant's briefs. We grant that motion.

[4] It is unclear who took Blakley to the hospital.

BAC at .159, almost twice the legal limit. At the time of the accident, Blakley's driver's license was suspended due to a prior DUI conviction.

Based on these facts, on October 13, 2005, Blakley pled guilty to the charges mentioned above. Following the receipt of a presentence investigation, and the victim impact testimony from victims Tia Pendleton and Amber Johnson, as well as testimony from several family members and friends and one witness on behalf of Blakley, Judge Clark imposed sentence.

A direct appeal was filed, but was dismissed due to the requested Pa.R.A.P. 1925(b) statement having been filed two days late. However, PCRA relief was granted and Blakley was allowed *nunc pro tunc* relief, which included the ability to file a post-sentence motion. Blakley's motion to modify sentence was partially granted, lowering the amount of his fines by approximately $5,000.00. The trial court also recognized a merger of crimes had not been taken into account and accordingly reduced the sentence to eight to thirty-two years' incarceration.

Blakley filed this timely direct appeal and counsel filed an ***Anders***[5] brief. However, counsel inadvertently omitted the required letter to his client informing his of his rights. This panel remanded the matter for proper notification. Counsel notified Blakley and Blakely filed his permitted *pro se*

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[5] ***Anders v. California***, 386 U.S. 738 (1967); ***Commonwealth v. McClendon***, 434 A.2d 1185 (Pa. 1981).

brief. All procedural elements having been met, the matter is now ripe for disposition.[6]

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[6] When presented with an ***Anders*** brief, this Court may not review the merits of the underlying issues without first passing on the request to withdraw. ***Commonwealth v. Goodwin***, 928 A.2d 287, 290 (Pa. Super. 2007)( *en banc* ) (citation omitted).

> In order for counsel to withdraw from an appeal pursuant to ***Anders*** certain requirements must be met, and counsel 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;
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> > (3) set forth counsel's conclusion that the appeal is frivolous; and
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> > (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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> ***Commonwealth v. Santiago***, 602 Pa. 159, 178-179, 978 A.2d 349, 361 (2009).
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> We note that the holding in ***Santiago*** altered prior requirements for withdrawal under ***Anders***. ***Santiago*** now requires counsel to provide the reasons for concluding the appeal is frivolous. The Supreme Court explained that the requirements set forth in ***Santiago*** would apply only to cases where the briefing notice was issued after the date that the opinion in ***Santiago*** was filed, which was August 25, 2009. Here, the briefing notice that was sent to the parties was dated September 11, 2009, requiring Appellant's brief to be filed on or before October 21, 2009, pursuant to Pennsylvania Rule of Appellate Procedure 2185. As the briefing notice in the case at bar

*(Footnote Continued Next Page)*

Blakley presents a solitary claim. He argues the trial court imposed an excessive sentence in that it failed to consider his rehabilitative needs, and focused instead, solely upon retribution.

Blakely has challenged a discretionary aspect of his sentence.

> It is well settled that there is no automatic right to appeal the discretionary aspects of a sentence. ***Commonwealth v. McNabb***, 819 A.2d 54, 55 (Pa. Super. 2003); 42 Pa.C.S.A. § 9781(b). Rather, before this Court will address the merits of a challenge to the discretionary aspects of a sentence, an appellant must meet two requirements. ***Commonwealth v. Titus***, 816 A.2d 251, 255 (Pa. Super. 2003). First, an appellant "must set forth in his brief a concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of a sentence." ***Commonwealth v. L.N.***, 787 A.2d 1064, 1071 (Pa. Super. 2001) (citing Pa.R.A.P. 2119(f)). Second, an appellant must demonstrate that there is a substantial question that the sentence imposed is inappropriate under the Sentencing Guidelines. ***Id***.
>
> A substantial question exists where an appellant "advances a colorable argument that the trial court's actions were inconsistent with a specific provision of the sentencing code, or contrary to the fundamental norms underlying the sentencing process." ***Id***. In determining whether a substantial question exists, "[o]ur inquiry must focus on the *reasons* for which the appeal is sought in contrast to the *facts* underlying the appeal, which are necessary only to decide the appeal on the merits." ***McNabb***, supra at 56 (citation omitted) (emphasis in original).

***Commonwealth v. Provenzano***, 50 A.3d 148, 154 (Pa. Super. 2012).

*(Footnote Continued)* ––––––––––––––––––––

> followed the filing of ***Santiago*** its requirements are applicable here.

***Commonwealth v. Daniels***, 999 A.2d 590, 593 (Pa. Super. 2010).

Blakley has included the required Pa.R.A.P. 2119(f) statement and his claim raises a substantial question. *See generally*, ***Commonwealth v. Riggs***, 2012 PA Super 187 (9/16/12).

> Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion. In this context, an abuse of discretion is not shown merely by an error in judgment. Rather, the appellant must establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision.

***Commonwealth v. Coulverson***, 34 A.3d 135, 143 (Pa. Super. 2011).

Our review of the notes of testimony from the sentencing hearing confirms the trial court properly considered Blakley's rehabilitative needs in fashioning the sentence.

> THE COURT: . . . [T]he Court, having previously ordered a presentence investigation report, having received the report, having read the report cover to cover three times and portions of it more than that, having considered the comments of the victims and the family members, the comments of the Commonwealth's attorney, defense counsel and the defendant, the Court finds that the defendant is definitely in need of treatment, care and counseling for substance abuse.
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> He is also directly responsible for the death of Miss Pendleton and the serious injury to the child – well, both children in this matter. He's had multiple opportunities for treatment, care and counseling at the county level.
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> We, therefore, find there are no appropriate resources at the county level to meet his needs. There is also clearly a significant issue of punishment that is appropriate and is mandated by the General Assembly of this Commonwealth in cases such as this.

> As the defendant stands here now with regard to the issue of his drinking, drug abuse and the operation of a motor vehicle he presents a clear and present danger to the citizens of this Commonwealth.

N.T. Sentencing, 12/12/05, at 42-43.

Additionally,

> THE COURT: Mr. Blakley, clearly your conduct and your criminal history would have warranted aggravated range sentences that could have pushed up your minimum time by several years. The Court resisted that temptation. . .

***Id***. at 49.

Our review proves not only did the trial court properly consider Blakley's rehabilitative needs; it properly considered all relevant factors. Therefore, we agree with defense counsel that Blakley's claim is frivolous. Additionally, we find the trial court did not abuse its discretion in sentencing Blakley.

Judgment of sentence affirmed. Motion to withdraw as counsel is granted. Motion for leave to file a reduced number of appellant's brief is granted.

Colville, J., concurs in the result.