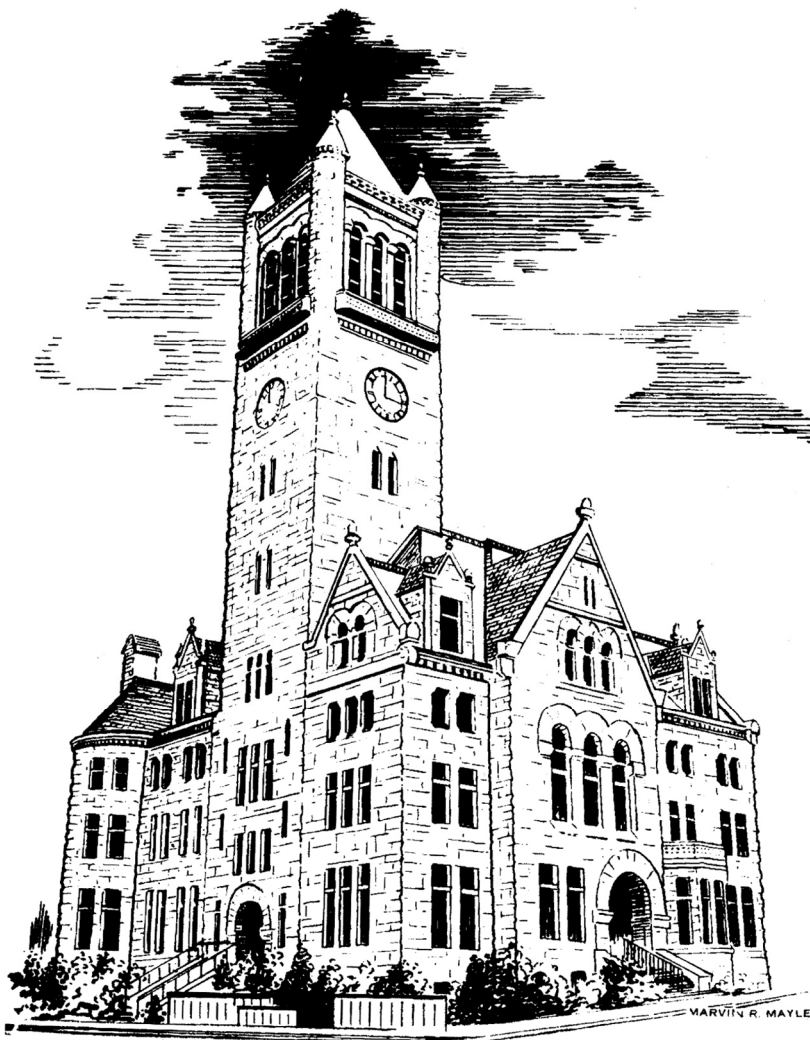


FAYETTE LEGAL JOURNAL

VOL. 88

JANUARY 11, 2025

NO. 2



FAYETTE LEGAL JOURNAL

The FAYETTE LEGAL JOURNAL is published weekly by the Fayette County Bar Association, 45 East Main Street, Suite 100, Uniontown, Pennsylvania 15401, 724-437-7994. Legal advertisements should be submitted online at www.fcbar.org no later than 12:00 noon on Friday for publication the following Saturday. No date of publication is promised, however. Legal notices are published exactly as submitted by the advertiser. Copyright 2001 Fayette County Bar Association. All rights reserved.

Co-Editors: Garnet L. Gordon and Melinda Deal Dellarose

Cover Design by Marvin R. Mayle, 207 Lick Hollow Road, Hopwood, PA

FAYETTE COUNTY BAR ASSOCIATION Board of Directors

President: Sheryl R. Heid
President Elect: Michelle L. Kelley
Vice-President: Jeffrey S. Proden
Secretary: Anne N. John
Treasurer: Louise D. Monaghan
Past President: Gretchen A. Mundorff
Executive Director: Garnet L. Gordon

Directors
 Michael A. Aubele
 Rachel A. Clark
 Sarah E. Connelly
 James E. Higinbotham, Jr.
 Sean M. Lementowski
 Daniel D. Taylor

ETHICS HOTLINE

The Ethics Hotline provides free advisory opinions to PBA members based upon review of a member's prospective conduct by members of the PBA Committee on Legal Ethics and Professional Responsibility. The committee responds to requests regarding, the impact of the provisions of the Rules of Professional Conduct or the Code of Judicial Conduct upon the inquiring member's proposed activity. All inquiries are confidential.

Call (800) 932-0311, ext. 2214.

LAWYERS CONCERNED FOR LAWYERS

Our assistance is confidential,
non-judgmental, safe, and effective

To talk to a lawyer today, call:
 1-888-999-1941
 717-541-4360

ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

WAYNE SHERMAN BAIR, SR., late of Nicholson Township, Fayette County, PA (3)

Administrator: Rebecca Jean Angelo
146 Grandview Avenue
Point Marion, PA 15474
c/o Goodwin Como, P.C.
108 North Beeson Boulevard, Suite 400
Uniontown, PA 15401
Attorney: Benjamin F. Goodwin

VAN A. DEAN, a/k/a VAN ALAN DEAN, late of Henry Clay Township, Fayette County, PA (3)

Administratrix: Sharon L. Dean
272 Clover Top Road
Markleysburg, PA 15459
c/o Jones Gregg Creehan & Gerace
20 Stanwix Street, Suite 1100
Pittsburgh, PA 15222
Attorney: Branden A. Fulciniti

JOHN M. DILWORTH, late of Connellsville, Fayette County, PA (3)

Executor: Jonathan C. Dilworth
2541 Springfield Pike
Connellsville, PA 15425
c/o 420 Fort Duquesne Boulevard,
16th. Floor
Pittsburgh, PA 15222
Attorney: Raymond P. Parker

JULIUS J. FRANKS, late of Uniontown, Fayette County, PA (3)

Co-Executors: Ralph Franks and
Patricia A. Gulino
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Anthony S. Dedola, Jr.

KATHLEEN A. MCLAUGHLIN, late of North Union Township, Fayette County, PA (3)

Executor: Malic J. Kulenovic
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Gary J. Frankhouser

DALE R. MCQUILLIS, late of Newell Borough, Fayette County, PA (3)

Executrix: Tina Louise Staley
P.O. Box 197
Newell, PA 15466
c/o 300 Fallowfield Avenue
Charleroi, PA 15022
Attorney: Richard C. Mudrick

EMMA JANE MEANS, late of Bullskin Township, Fayette County, PA (3)

Co-Executors: Glenda Miller and
Gilbert Means, Jr.
c/o Adams Law Offices, PC
55 East Church Street, Suite 101
Uniontown, PA 15401
Attorney: Jason Adams

**DWIGHT M. SISLER, a/k/a DWIGHT
MARCUS SISLER**, late of Uniontown, Fayette County, PA (3)

Executor: Richard A. Sisler
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

Second Publication

EARL FRANKLIN BAILY, a/k/a EARL F. BAILY, late of Uniontown, Fayette County, PA

Executor: Brandon Joe Bailey (2)
c/o Proden & O'Brien
99 East Main Street
Uniontown, PA 15401
Attorney: Sean M. Lementowski

**EVELYN MARLENE BROSKEY, a/k/a
EVERYLYN M. BROSKEY**, late of Keisterville, Fayette County, PA (2)

Executor: William L. Broskey
c/o Proden & O'Brien
99 East Main Street
Uniontown, PA 15401
Attorney: Wendy L. O'Brien

First Publication

GLENN F. GHRIST, JR., late of Dunbar Township, Fayette County, PA ⁽¹⁾
Administrator: William P. Ghrist
c/o 208 South Arch Street, Suite 2
Connellsville, PA 15425
Attorney: Richard A. Husband

KEITH A. GREENAWALT, late of Connellsville, Fayette County, PA ⁽¹⁾
Executrix: Andrea G. Greenawalt McFadden
c/o Casini & Geibig, LLC
815B Memorial Boulevard
Connellsville, PA 15425
Attorney: Jennifer M. Casini

BRENDA LEE MINER, a/k/a BRENDA L. MINER, late of Fairchance Borough, Fayette County, PA ⁽¹⁾
Executrix: Kathryn L. Propes
c/o Higinbotham Law Offices
68 South Beeson Boulevard
Uniontown, PA 15401
Attorney: James E. Higinbotham, Jr.

JAMES SMITH, late of Fayette County, PA ⁽¹⁾
Administrator: James Brown
3905 Mewswood Lane
Baltimore, Maryland 21236
c/o Fieschko & Associates, Inc.
300 Cedar Boulevard, Suite 202
Pittsburgh, PA 15228
Attorney: Joseph Fieschko

MARY WILSON, a/k/a MARY C. WILSON, late of Fayette County, PA ⁽¹⁾
Executor: Douglas S. Sepic
c/o Sepic Law
892 Vanderbilt Road
Connellsville, PA 15425

LEGAL NOTICES

*** NO LEGAL NOTICES ***

WARMAN ABSTRACT & RESEARCH LLC

JOHN F. WARMAN

518 Madison Drive

Smithfield, PA 15478

724-322-6529

johnfranciswarman@gmail.com

COMMERCIAL/RESIDENTIAL/CURRENT OWNER/MINERAL TITLE

A DECADE OF EXPERIENCE E&O INSURED WILL TRAVEL ACCEPTING NEW CLIENTS



DiBella Weinheimer
Geer McAllister Best Coco Lloyd Whalen



Holly Whalen ◊ Amy Coco ◊ Bethann Lloyd

INSIST UPON OUR EXPERIENCED TEAM

LAWYERS DEFENDING LAWYERS

- Disciplinary Board
- Legal Malpractice
- Security Fund / IOLTA
- Ethics & Conflict Analysis
- Subpoena Assistance
- Licensure
- Conflict Resolution

WWW.DIBELLA-WEINHEIMER.COM 412 261-2900

JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :
v. :
JOHN LLEWELLYN DAVIS, : No. 451 of 2021
DEFENDANT. : Honorable John F. Wagner, Jr.

ORDER OF COURT

Wagner, SJ.

December 13, 2024

Before the Court is the appeal filed by the Appellant, John Llewellyn Davis. In response to the Appellant's prose filing a Notice of Appeal, the Defendant's court appointed appellate counsel filed a motion to withdraw from representation and an accompanying Anders brief. After a trial by jury, the Appellant was convicted of Burglary, 18 Pa. C.S. § 3592(A)(4); Criminal Trespass, 18 Pa. C.S. § 3503(a)(1); and Theft by Unlawful Taking, 18 Pa. C.S. § 3921(a). The Appellant was sentenced on April 5, 2022 to a period of incarceration of eighteen (18) to thirty- six (36) months.

FACTS OF THE CASE

In the middle of the night of November 7, 2020, a man entered the laundry room at the Yogi Bear Campground and vandalized several lottery machines, a change machine, and a soap dispenser. The man turned off the lights, smashed a fake camera, and then damaged the other machines. The man was viewed on an operating camera beating on the machines with bolt cutters, taking twenty-seven dollars (\$27.00) from the lotter machines and causing nine thousand dollars (\$9,000.00) worth of damage to the machines in the room. The operating surveillance camera showed a man with a mustache, wearing a black ball cap, converse sneakers and had a tattoo on his right hand.

Two days prior to the damage at the campground, a man who identified himself as John Davis, was involved in a theft at a nearby gas station. The cashier was able to identify the man in the laundry room from the video as the same man who was involved in the theft at his station. The vehicle used at the gas station was identified as belonging to the Appellant's father. The manager at the campgrounds was able to identify the man as the Appellant had been a previous guest at the campgrounds.

PROCEDURAL BACKGROUND

The Appellant was represented by Gregory T. Kunkle an attorney with the Fayette County Office of the Public Defender. O April 5, 2022 after a trial by jury, the Appellant was convicted on all charges, i.e. Burglary, Criminal Mischief, and Theft by Unlawful Taking. That same day, the Appellant was sentenced to a period of incarceration of eighteen (18) to thirty-six (36) months.

Counsel filed a post sentence motion on May 14, 2022 and it was denied after a hearing on May 31, 2022. Prior to that, on April 25, 2022, the Appellant filed a prose Notice of Appeal at Superior Court Number 454 WDA 2022. The Superior Court in a

non-precedential opinion denied the direct appeal and upheld the judgment of sentence.

The Appellant filed a Motion for Post Conviction Collateral Relief. Counsel amended the motion. After a hearing on the motion, the Court denied the motion. The Appellant filed a prose Notice of Appeal. Counsel filed a Motion to Withdraw as Counsel Pursuant to *Anders v. California*, 366 U.S. 264 (U.S. 1967), and *Commonwealth v. Santiago*, 978 A.2d 349 Pa. 2009). Although represented by counsel, the Appellant filed his own list of concise issues. As hybrid representation is not permitted in Pennsylvania, the issues were forwarded to his counsel. Counsel's motion is now before the Court.

DISCUSSION

The Defendant's counsel filed a motion requesting to withdraw citing to *Anders*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967) and *Santiago*, 978 A.2d 349 (Pa. 2009). In his *Anders*'s brief, counsel presented the issues counsel "presumes that the Defendant intends to raise...".

Prior to any substantive analysis of the motion, the court must review defense counsel's *Anders* brief and motion to withdraw. *Commonwealth v. Bennett*, 124 A.3d 327, 330 (Pa. Super. 2015). These requirements and the significance protection they provide to an *Anders* appellant arise because a criminal defendant has a constitutional right to a direct appeal and to counsel on that appeal. *Id*

Under *Anders*, the procedure for withdrawal from representation by court appointed appellate counsel consists of two parts, the first of which concerns the obligation of counsel; the second concerns the role of the court. When counsel meets his obligations, it then becomes the responsibility of the court to make a full examination of the proceedings and make an independent judgment to decide whether the appeal is in fact wholly frivolous. *Commonwealth v. Hankerson*, 118 A.3d 415 (Pa. Super. 2015).

In the brief that accompanies a court appointed appellate counsel's petition to withdraw from representation of an Appellant, counsel must provide the appellant with a copy of the *Anders* brief along with a letter that advises the appellant 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 brief. *Commonwealth v. Vanderpool*, 2018 WL 2295851 citing to *Commonwealth v. Nischan*, 928 A.2d 349, 353 (Pa. Super. 2007). Substantial compliance with these requirements is sufficient. *Commonwealth v. Wreaks*, 934 A.2d 1287, 1290 (Pa. Super. 2007). In this case, counsel has complied with these procedural requirements.

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) Sets forth counsel's conclusion that the appeal is frivolous, and
- (4) States counsel's reasons for concluding that the appeal is frivolous.

Commonwealth v. Santiago, 978 A.2d 349 (Pa. 2008).

When stating the reasons for concluding that an appeal is frivolous, as required in an Anders brief that accompanies a court appointed appellate counsel's petition to withdraw from representation of the Appellant, counsel should detail the relevant facts of record, case law, or statutes that have led to the conclusion that the appeal is frivolous.

In the instant case, counsel has petitioned to withdraw, has stated that after making a conscientious examination of the record, he has determined that the appeal is frivolous. Counsel has listed the areas in the record which could be utilized to support the Appellant's position but based on the court's decision are without merit. Counsel further determines that there are no other issues of merit that he has found in the case that would support the Superior Court's appeal. Counsel has not cited to the record in his summary of the procedural history or the facts of the case. Counsel has cited to the record the testimony that supported the appellant's argument but then also cites to the portions of the testimony that contradicts the appellant's position. Counsel concludes that the third issue is without arguable merit. Counsel does not allege the issue is frivolous as is required for an Anders brief. While the motion does mimic a no-merit letter, counsel's evaluation appears to be neutral.

A claim is "frivolous" if it is clearly and palpably without merit, presenting no debatable question. To be frivolous, the claim must lack any basis in law or fact and is not arguable on any reasonable grounds. *Commonwealth v. Box*, 451 A.2d 252 (Pa.Super. 1982). A claim that is "without merit" may still have some arguable basis but ultimately fails to meet the legal standards required for relief. A claim without merit does not necessarily lack all support but is insufficient to warrant the relief sought. *Commonwealth v. Kelsey*, 206 A.3d 1135 (2019). This distinction is important because if a claim is without merit but not frivolous, the appellant may still be entitled to further legal process, such as representation by counsel or a more thorough review by the court. *Commonwealth v. Glover*, 738 A.2d 460 (1999). Frivolous claims are clearly baseless and not arguable, while "without merit" claims may have some arguable basis but ultimately fail to meet the necessary legal standard.

An initial review of the issues raised by the Appellant seem to be citing to portions of transcripts of hearings but the information on the pages cited are not consistent with what is actually contained on those pages. After a review of all documentation, the Court has determined that the Appellant is actually citing to the pages of the transcript of the PCRA hearing held on June 24, 2024. In his Anders brief, counsel concludes that the issues are without merit, meritless or frivolous. As only frivolous issues are to be contained in an Anders brief, the combination of conclusive language indicates that an Anders brief is not appropriate for an appeal in this case. Counsel should clarify the language in his brief or file an appellate brief on behalf of the Appellant.

BY THE COURT,
WAGNER, S.J.

ATTEST:
Clerk of Courts

*Quality... Experience... Results...
It's what your clients deserve.*

Medical Malpractice • Auto Accidents • Personal Injury



GISMONDI

& ASSOCIATES

412-281-2200

www.gislaw.com

700 Grant Bldg., 310 Grant St., Pgh., PA 15219