

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
RYAN RADFORD	:	
	:	
	:	
Appellant	:	No. 132 MDA 2023

Appeal from the Judgment of Sentence Entered October 24, 2022  
In the Court of Common Pleas of Lackawanna County Criminal Division at  
No(s): CP-35-CR-0001059-2021

BEFORE: PANELLA, P.J., McLAUGHLIN, J., and COLINS, J.\*

MEMORANDUM BY McLAUGHLIN, J.:

**FILED: JANUARY 22, 2024**

Ryan Radford appeals from the judgment of sentence imposed following his convictions for terroristic threats, simple assault, and indecent assault – without consent.<sup>1</sup> He challenges his Sexually Violent Predator (“SVP”) classification and the discretionary aspects of his sentence. Radford’s counsel has filed an **Anders**<sup>2</sup> brief and petition to withdraw as counsel. We affirm Radford’s judgment of sentence and grant counsel’s request to withdraw.

We restate the relevant facts and procedural history as summarized by the trial court.<sup>3</sup>

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\* Retired Senior Judge assigned to the Superior Court.

<sup>1</sup> 18 Pa.C.S.A. §§ 2706(a)(1), 2701(a), and 3126(a), respectively.

<sup>2</sup> **Anders v. California**, 386 U.S. 738 (1967).

<sup>3</sup> The trial transcript is not included in the certified record. However, neither party challenges the court’s summation of the facts and procedural history.

The instant matter . . . stems from an incident that took place on April 10, 2021, wherein the Commonwealth alleged that [Radford] sexually assaulted his long-time friend. . . .

At trial, the [v]ictim in the case, . . . , testified . . . that on [April 10, 2021], [Radford] appeared at her home in Taylor, Pennsylvania, around ten o'clock in the evening (10:00 p.m.) to visit and repay her twenty dollars (\$20.00) that she previously loaned him. [The victim] recalled that she and [Radford] decided to visit [the victim's] neighbor, Bonnie, who lived nearby. [The victim] stated that as the two walked toward Bonnie's house, [Radford] attempted to kiss her but she stopped him. [The victim] stated that not even a minute later [Radford] pushed her up against a fence that ran along their route. She further indicated at that same time, [Radford] attempted to put his hands down her pants and up her shirt. [The victim] recalled that [Radford] touched her breasts and attempted to rip her shirt off. She also stated that he touched her beneath her underwear. [The victim] stated that she pushed him away, told him to stop, and then ran towards Bonnie's house. After she made it to Bonnie's house, [the victim] told Bonnie that [Radford] was acting very strange and explained to Bonnie what just occurred between her and [Radford].

Shortly after [the victim] arrived at Bonnie's home, [Radford] appeared at the back door to the home. [The victim] explained that Bonnie agreed to attempt to distract [Radford] so that she could leave through another exit. [The victim] testified that while she attempted to leave, Bonnie's five year-old granddaughter followed her out of the home and at the same time, Bonnie's dog ran out of the house through the door where [Radford] was located. [The victim] stated that she then stayed to ensure that Bonnie brought her granddaughter back into the house safely.

[The victim] testified that after everyone was back inside Bonnie's house, she began to walk home and as she did so, [Radford] knocked her to the ground. She stated that she "got back up and [] started running" but [Radford] grabbed her by her ankle and [she] fell again and began fighting [Radford] off while telling him to stop. [The victim] testified that she was able to land a punch to [Radford's] face that stunned him and allowed her to get to her feet and attempt to run away. However, [the victim] explained that [Radford]

again knocked her down again and dragged her along the ground. She further stated that as [Radford] dragged her toward a fence near the area, [Radford] stated "once he gets [her] behind that fence . . . he's going to fuck the shit out of [her]." [The victim] testified that she continued to plead with [Radford] to stop and was eventually able to escape and run back to Bonnie's house. While at Bonnie's, [the victim] explained what just occurred and Bonnie walked [the victim] back to her home.

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On October 24, 2022, at [Radford's] sentencing hearing, the Commonwealth elicited testimony from Paula Brust, who is a member of the Pennsylvania Sexual Offender Assessment Board. Ms. Brust was qualified and accepted as an expert in the area of sexual deviancy and predatory tactics. Ms. Brust testified that she conducted [Radford's] Sexually Violent Predator Assessment. Ms. Brust indicated that she reviewed multiple items as part of her assessment. Specifically, Ms. Brust indicated that she reviewed the following items:

- Sexual Offender Assessment Board investigator report
- Lackawanna County Court Order for Assessment
- Defense Attorney Nonresponse
- Criminal Information Regarding 1059 of 2021
- Police Criminal Complaint and Affidavit of Probable [C]ause
- TR Statement
- BJ Statement
- Victim Statement
- JL Statement
- The Verdict Slip
- Lackawanna County PSI
- Pennsylvania Board of Probation and Parole Record
- Department of Corrections Records

- Transcripts of Proceedings from April 6, 2022 and April 7, 2022

Through her review of [Radford's] case, Ms. Burst indicated that she learned the factual basis and description of the offenses [Radford] committed. Specifically, that while walking to a friend's house

[Radford] put his hands up [the victim's] shirt, down her pants. She tried to get away from him and went into a neighbor's house and was leaving in a different door than she went i[n]. And followed her against and he dragged her into the bushes and she tried to get up from him – away from him. And he again knocked her down causing bruising. And he told her he was going to quote, "F" the shit out of her, end of quote. And she kept telling him no. And he kept trying to assault her.

Ms. Brust testified that upon her review of the relevant documents and information, she diagnosed [Radford] with Antisocial Personality Disorder. She further stated that the said diagnosis for [Radford] was a chronic condition, which "predisposes him towards committing certain types of offenses," including sexual offenses. Ms. Brust testified that based on her assessment, she determined that [Radford's] behavior, related to the offenses at issue, "was predatory in nature." Specifically, Ms. Brust testified, during cross-examination, that [Radford] "took advantage of the relationship he had with the victim in order to satisfy his sexual demands.["] Ms. Brust further stated that [Radford] "had established relationship with the victim[,]" and "seized the opportunity because he felt like getting his sexual needs met." She also explained that "[Radford's] actions were predatory because he chose to alter that relationship." She further testified that she reached her "opinion within a reasonable degree of professional certainty that [Radford met] the criteria set forth in Pennsylvania law to be classified as a sexually violent predator."

Rule 1925(a) Opinion, filed 4/24/23, at 1-6 (citations to record omitted).

Following Brust's testimony, the court determined that the Commonwealth met its burden that Radford was a SVP. It sentenced him to

an aggregate term of 40 to 84 months of incarceration followed by two years reporting probation. **See** N.T. Sentencing, 10/24/22, at 39. Radford filed a petition for reconsideration of sentence claiming that the court imposed a harsh and excessive sentence. **See** Petition for Reconsideration of Sentence, filed 11/3/22, at ¶ 2. The court denied the petition and this timely appeal followed.

Before we assess the merits of Radford's claims, we must first address counsel's request to withdraw from representation. **See Commonwealth v. Goodwin**, 928 A.2d 287, 290 (Pa.Super. 2007) (*en banc*). An **Anders** brief is filed "when counsel believes an appeal is frivolous and wishes to withdraw from representation[.]" **Commonwealth v. Watts**, 283 A.3d 1252, 1254 (Pa.Super. 2022). In such a case, counsel must:

- (1) petition the court for leave to withdraw stating that after making a conscientious examination of the record, counsel has determined the appeal would be frivolous; (2) file a brief referring to any issues that might arguably support the appeal, but which does not resemble a no-merit letter; and (3) furnish a copy of the brief to the defendant and advise him of his right to retain new counsel, proceed *pro se*, or raise any additional points he deems worthy of this Court's attention.

**Commonwealth v. Edwards**, 906 A.2d 1225, 1227 (Pa.Super. 2006) (citation omitted).

Additionally, counsel's **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) 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.

**Commonwealth v. Santiago**, 978 A.2d 349, 361 (Pa. 2009). If counsel satisfies all the requirements, then we conduct “a full examination” of the record “to decide whether the case is wholly frivolous.” **Commonwealth v. Dempster**, 187 A.3d 266, 271 (Pa.Super. 2018) (*en banc*) (quoting **Anders**, 386 U.S. at 744).

Here, counsel has complied with the requirements of **Anders** and **Santiago**. In the **Anders** brief, counsel states she made a conscientious examination of the record and she summarizes the history and facts of the case. She refers to three issues that might arguably support the appeal and states her reasons for concluding that these issues are frivolous. Counsel’s petition to withdraw states that she served Radford a copy of the **Anders** brief and advised him that he may raise additional issues before this Court *pro se* or with private counsel. Radford filed a response stating that his claims are not frivolous. **See** Objection, filed 8/21/23. We now review the appeal for frivolousness.

Counsel’s **Anders** brief presents the following issues:

- A. Whether the Commonwealth failed to prove by clear and convincing evidence that [Radford] is a sexually violent predator.
- B. Whether the trial court erred and abused its discretion by relying on hearsay evidence when it accepted the Sexual

Offender Assessment Board [SOAB] member's opinion that [Radford] is a sexually violent predator as [Radford] did not participate in the SOAB assessment and the member relied solely on hearsay evidence to formulate her opinion.

C. Whether the court imposed harsh and excessive sentences.

**Anders** Br. at 4 (unnecessary capitalization and suggested answers omitted).

The first issue challenges the sufficiency of the evidence to support Radford's SVP designation. When reviewing an SVP designation, we must determine whether the Commonwealth presented clear and convincing evidence that the defendant meets the statutory definition of an SVP. **See Commonwealth v. Hollingshead**, 111 A.3d 186, 189 (Pa.Super. 2015). Clear and convincing evidence is "evidence that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." **Commonwealth v. Morgan**, 16 A.3d 1165, 1168 (Pa.Super. 2011) (citation, internal quotation marks, and brackets omitted). In conducting this review, we view the evidence in the light most favorable to the Commonwealth. **See Commonwealth v. Fuentes**, 991 A.2d 935, 942 (Pa.Super. 2010).

To be classified as an SVP, the Commonwealth must prove by clear and convincing evidence that the defendant has "a mental abnormality or personality disorder that makes [him] likely to engage in predatory sexually violent offenses." 42 Pa.C.S.A. § 9799.12 ("Sexually violent predator"). The defendant's actions must also have been "predatory," which is statutorily defined as "[a]n act directed at a stranger or at a person with whom a

relationship has been initiated, established, maintained, or promoted, in whole or in part, in order to facilitate or support victimization.” ***Id.*** (“Predatory”).

In deciding whether the defendant meets the above definition, the Sex Offenders Assessment Board (“SOAB”) examines numerous mandatory factors:

(1) Facts of the current offense, including:

- (i) Whether the offense involved multiple victims.
- (ii) Whether the individual exceeded the means necessary to achieve the offense.
- (iii) The nature of the sexual contact with the victim.
- (iv) Relationship of the individual to the victim.
- (v) Age of the victim.
- (vi) Whether the offense included a display of unusual cruelty by the individual during the commission of the crime.
- (vii) The mental capacity of the victim.

(2) Prior offense history, including:

- (i) The individual’s prior criminal record.
- (ii) Whether the individual completed any prior sentences.
- (iii) Whether the individual participated in available programs for sexual offenders.

(3) Characteristics of the individual, including:

- (i) Age.
- (ii) Use of illegal drugs.
- (iii) Any mental illness, mental disability or mental abnormality.



(iv) Behavioral characteristics that contribute to the individual's conduct.

(4) Factors that are supported in a sexual offender assessment field as criteria reasonably related to the risk of reoffense.

42 Pa.C.S.A. § 9799.24(b).

Here, the court credited Brust's testimony. She testified as an expert about the absence or presence of evidence of each factor. She also testified that based on Radford's antisocial personality disorder, Radford had a personality disorder that makes him likely to re-offend. **See** N.T., Sentencing, 10/24/22, at 20. She further stated that Radford's actions were predatory in nature. **See id.** at 21. She testified:

My opinion is that Mr. Radford's behavior was predatory in nature. His offenses showed planning and intent. He used the guise of asking the victim if she wanted to go for a walk to go talk to some friends. Once he was on that walk with her, he began to sexually assault her and continued stalking her during that evening on several occasions knocking her down, dragging her by the ankles just so he could sexually assault her and meet his goal of raping her.

**Id.** In view of Brust's expert testimony, which the trial court credited, there is no reasonable basis on which to mount a sufficiency challenge against the SVP finding. Radford's claim is frivolous.

The next issue challenges the court's reliance on hearsay evidence. He argues that since Brust did not interview him, her opinion regarding his SVP designation was based solely on hearsay.

This claim is frivolous. An SOAB evaluator may rely on hearsay evidence, including but not limited to the hearing transcript, the criminal complaint, and

“information contained in records provided by state, county and local agencies, offices and entities in this Commonwealth[.]” **Commonwealth v. Aumick**, 297 A.3d 770, 781-82 (Pa.Super. 2023) (*en banc*). Here, Brust testified that she reviewed numerous records in coming to her opinion of Radford’s SVP status, including but not limited to the trial transcript, the victim’s statement, and the criminal complaint. Pursuant to **Aumick**, this challenge is frivolous.

For his final claim, Radford challenges the discretionary aspects of his sentence. Specifically, he alleges that the court imposed a harsh and excessive sentence.

“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.” **Commonwealth v. Bullock**, 170 A.3d 1109, 1123 (Pa.Super. 2017) (citation omitted). Challenges to the discretionary aspects of sentence are not appealable as of right. **See Commonwealth v. Leatherby**, 116 A.3d 73, 83 (Pa.Super. 2015). We must first determine whether the appellant: 1) filed a timely notice of appeal; 2) preserved the issue at sentencing or in a post-sentence motion; 3) included a concise statement of the reasons relied upon for allowance of an appeal with respect to the discretionary aspects of his sentence in his brief; and 4) raised a substantial question. **See Commonwealth v. Green**, 204 A.3d 469, 488 (Pa.Super. 2019).

Here, Radford fails to satisfy the final prong of our four-part inquiry. He baldly claims that the court imposed a harsh and excessive sentence. Such a

claim does not raise a substantial question. **See Commonwealth v. Fisher**, 47 A.3d 155, 159 (Pa.Super. 2012) (“a bald assertion that a sentence is excessive does not by itself raise a substantial question”) (citation omitted). As counsel concluded, this sentencing claim is frivolous.

Moreover, even if Radford had raised a substantial question, we would find the claim to be frivolous. The trial court imposed a sentence within the standard guideline range and did not exceed the statutory limits.

We now address the additional claims raised by Radford in his response to counsel’s **Anders** brief. **See Commonwealth v. Bennett**, 124 A.3d 327, 333 (Pa.Super. 2015) (stating when appellant exercises right to file *pro se* response to **Anders** brief, this Court will examine issues raised and developed in response). Radford claims that his issues are not frivolous. He also raises additional claims of ineffective assistance of counsel and argues that there was no “evidence wit[h] merit to support a conviction.” Objection at 3. . He also alleges that counsel erroneously relied on the three-judge panel decision in **Aumick** because it was non-precedential.

Radford’s challenge to the sufficiency of the evidence is waived because he did not raise it in his Rule 1925(b) statement. **See** Pa.R.A.P. 1925(b)(4)(vii) (issues not raised in Rule 1925(b) statement are waived). Furthermore, his argument is undeveloped. Regarding his ineffectiveness claim, such a claim must be raised on collateral review unless an exception applies. **See Commonwealth v. Holmes**, 79 A.3d 562, 563-64, 576 (Pa. 2013) (holding exceptions to raising ineffective assistance claim

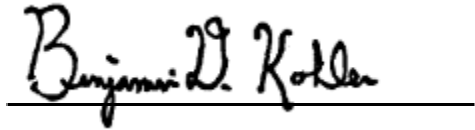
on direct appeal “where a discrete claim (or claims) of trial counsel ineffectiveness is apparent from the record and meritorious to the extent that immediate consideration best serves the interests of justice” or “where the defendant seeks to litigate multiple or prolix claims of counsel ineffectiveness, including non-record-based claims, on post-verdict motions and direct appeal, we repose discretion in the trial courts to entertain such claims, but only if . . . there is good cause shown”). Radford does not claim any exception. He thus has asserted no basis on which he could make such a claim on direct appeal.

Finally, Radford’s claim that **Aumick** is non-precedential is frivolous. Although counsel’s **Anders** brief references the non-precedential panel decision in **Aumick**, that decision has been replaced by the precedential *en banc* opinion cited above. **See** Pa.R.A.P. 3103(b) (“An opinion of the court *en banc* is binding on any subsequent panel of the appellate court in which the decision was rendered”).

Upon review of the record, we have not found any non-frivolous claims for our review.

Judgment of sentence affirmed. Petition to withdraw granted.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.  
Prothonotary

Date: 1/22/2024