Not for Publication

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX
APPELLATE DIVISION

SHASHI SEETARAM,	) **D.C. CRIM. APP. NO. 2005/014**
	)
Appellant,	) Re: Sup.Ct.Crim. 281/2003
	)
v.	)
	)
GOVERNMENT OF THE VIRGIN ISLANDS,	)
	)
Appellee.	)
	)

On Appeal from the Superior Court of the Virgin Islands

Considered: October 19 2007
Filed: November 4, 2008

BEFORE: **CURTIS V. GÓMEZ**, Chief Judge, District Court of the Virgin Islands; **RAYMOND L. FINCH**, Judge of the District Court of the Virgin Islands; and **LEON A. KENDALL** Judge of the Superior Court of the Virgin Islands, sitting by designation.

ATTORNEYS:

Linda Blair, Esq.
St. Croix, U.S.V.I.
Attorney for Appellant.

Maureen Phelan, AAG
St. Thomas, U.S.V.I.
Attorney for Appellee.

Memorandum Opinion

This matter is before the court on Attorney Linda J. Blair's *Anders* brief and Motion to Withdraw as Counsel.

I. FACTUAL AND PROCEDURAL POSTURE

Following a jury trial, Appellant Shashi Seetaram ("Seetaram" or "Appellant"), was convicted of Assault in the Third Degree, in violation of 14 V.I.C. § 297(2), and Possession of a Deadly Weapon During the Commission of a Crime of Violence, in violation of 14 V.I.C. § 2251(a)(2)(B). Thereafter, Appellant filed this timely appeal. However, Seetaram's appellate counsel, Attorney Linda Blair, ("Attorney Blair" or "counsel"), has now filed a brief in this case asserting the absence of merited issues for appeal and seeking to withdraw as counsel, pursuant to *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967). Counsel has also served the Appellant with her *Anders* brief, in accordance with *Anders*, 386 U.S. at 744, to permit the Appellant an opportunity to independently point the Court to any issues he deems meritorious.

II. JURISDICTION AND STANDARD OF REVIEW

This Court has jurisdiction to consider judgments and orders of the Superior Court in criminal cases. Revised Organic Act §

23A, 48 U.S.C. § 1613a;[1] Act No. 6687 § 4(2004).[2] We review *de novo* questions of law, issues implicating rights protected under the U.S. Constitution, and the interpretation of statutes. However, we afford the more deferential clear error review to factual determinations. *See Gov't of V.I. v. Albert*, 89 F.Supp.2d 658, 663 (D.V.I. App. Div. 2001).

III. DISCUSSION

We adhere to a two-part inquiry when analyzing *Anders* briefs. *See United States v. Youla*, 241 F.3d 296, 300(3d Cir. 2001). This inquiry consists of the following: "(1) whether counsel adequately fulfilled *Anders'* requirements; and (2) whether an independent review of the record presents any non-frivolous issues." *Id.* Regarding the first issue, when an attorney submits an *Anders* brief, his duties are(1)to demonstrate to the Court that he has thoroughly examined the record for appealable issues; and(2)to demonstrate that the issues are frivolous. *See United States v. Youla*, 241 F.3d 296, 300 (3d Cir. 2001). *Id.*

Counsel raises two possible issues for review in her *Anders*

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[1] The complete Revised Organic Act of 1954 is found at 48 U.S.C. §§ 1541- 1645 (1994), *reprinted in* V.I.CODE ANN., Historical Documents, Organic Acts, and U.S. Constitution at 159-60 (1995 & Supp. 2003) (preceding V.I.CODE ANN. tit. 1) ["Revised Organic Act"].

[2] Seetaram's notice of appeal was filed on February 2, 2005.

brief: (1) whether the trial court erred in prohibiting testimony as to witness bias; and (2) whether the sentence imposed on Seetaram was improper. Counsel argued that an appeal on both issues would be frivolous. In support of her brief, counsel submits an appendix consisting of: 1) excerpts of the trial transcript relevant to the prohibited testimony, 2) the order of judgment and commitment, 3) the sentencing hearing transcript, 4) the notice of appeal, 3) a letter from Senator Ronald E. Russell concerning revising mandatory minimum sentences, and 5) a New York Times article on federal sentencing laws.

In this matter, Counsel's appendix is devoid of trial, pre-trial or post-trial motions, or relevant hearing transcripts. These portions of the record are necessary to assure us that counsel has scoured the record. Moreover, they are the touchstone of our independent review of the cold record.[3] *Benjamin v. Gov't of the V.I.*, 2005 U.S. Dist. LEXIS 34499 (D.V.I. 2005); *see Maddox*, 121 F.Supp. 2d at 460 (finding appendix to support *Anders* brief insufficient where pre-trial or post-trial motions and hearings were not identified); *see also United States v. Marvin*, 211 F.3d 778,780 (3d Cir. 2000) (finding record submitted in

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[3] A reviewing court may not simply accept counsel's assessment of the appeal but, rather has a responsibility to conduct an independent examination of the proceedings "to decide whether the case is wholly frivolous." *Maddox*, 121 F. Supp.2d at 459-460.

support of *Anders* brief insufficient, where the relevant trial objections were not identified and where the submission did not indicate counsel had adequately scoured the record).

We recognize that counsel in carrying out her duties need not "raise and reject every possible claim." *United States v. Youla*, 241 F.3d 296, 300 (3d Cir. 2001). However, her *Anders* brief "at a minimum must assure us that [counsel] has made a sufficiently thorough evaluation of the record to conclude that no further discussion of other areas of the case is necessary." *Marvin*, 211 F.3d at 780. In this matter, the appendix submitted in support of this counsel's *Anders* brief does not sufficiently assure us that she has conducted a thorough evaluation of the record upon which our review rests.

When counsel's *Anders* submissions are insufficient, we remain open to whatever procedural options are available, so long as they adequately safeguard Appellant's Sixth Amendment right to appellate counsel. *Maddox*, 121 F.Supp. 2d at 460. In this case, we shall require counsel to file a supplemental appendix which shall include all motions and relevant hearings transcripts conducted pre-trial, during trial and post trial.

IV. CONCLUSION

For the reasons cited above, counsel's *Anders* brief is

insufficient. We shall require appellant to file a supplemental appendix. An order consistent with this opinion shall follow.