NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. RONALD A. NAHODIL Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1137 MDA 2012

Appeal from the Order June 13, 2012
In the Court of Common Pleas of Northumberland County
Criminal Division at No(s): CP-49-CR-0000597-2010

BEFORE: MUNDY, J., OLSON, J., and STRASSBURGER, J.*

MEMORANDUM BY MUNDY, J.: Filed: February 15, 2013

Appellant, Ronald A. Nahodil, appeals from the June 13, 2012 order dismissing his first petition for relief filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546. After careful review, we affirm.

We summarize the relevant facts and procedural history of this case as follows. Appellant was charged with one count each of terroristic threats, simple assault, and harassment.[1] Michael J. Romance, Esquire (Attorney Romance) was appointed to represent Appellant. The PCRA court described the deterioration of the attorney-client relationship as follows.

---

* Retired Senior Judge assigned to the Superior Court.

[1] 18 Pa.C.S.A. §§ 2706(a)(1), 2701(a)(3) and 2709(a)(3), respectively.

> At the time of the first day scheduled for testimony in the case, … [Attorney] Romance, detailed his efforts to meet with [Appellant] in order to prepare for trial. As related by [Attorney] Romance, after [Appellant] failed to appear for jury selection on Monday, April 11, 2011, [Attorney] Romance left a message for [Appellant] to set up a meeting. After all, the trial was to start in a few days on April 15, 2011. When [Attorney] Romance did not receive a return call from [Appellant], [Attorney] Romance left a second message instructing [Appellant] to meet with him the following day, at a local district judge's office, which was near [Appellant]'s home. [Attorney] Romance would be there tending to other matters. Nonetheless, [Appellant] failed to appear at the district judge's office on April 12, 2011, to meet with his counsel. On April 13, 2011, [Appellant] did contact [Attorney] Romance at his office, who explained to [Appellant] that he had to appear in court but instructed [Appellant] to stay where he was and he would call him back as soon as he returned from court. However, once again, after returning from court, [Attorney] Romance was unable to reach [Appellant]. On April 14, 2011, [Attorney] Romance received a message that [Appellant] had attempted to reach him, so he returned the call but was again unable to speak with [Appellant]. [Attorney] Romance left another message instructing [Appellant] to meet him at the district judge's office near [Appellant]'s home. Inexplicably, [Appellant] again failed to appear. With the jury coming back the next day, th[e trial c]ourt issued an informal directive to the [s]heriff's [o]ffice asking them to locate [Appellant]. The [s]heriff's [o]ffice and several local police departments were unable to locate [Appellant]. On April 15, 2011, [Appellant] finally show[ed] up at the courthouse for his trial, but at that point [Attorney Romance] had been provided with no opportunity to meet with his client to formulate a defense to the pending charges ….

> In view of [Appellant]'s continuous disregard of [Attorney Romance]'s attempts to contact him during the week up to his trial, and his previous failure to appear for jury selection, th[e trial c]ourt granted [Attorney Romance]'s request to withdraw as his appointed attorney. Th[e trial c]ourt found [Appellant]'s behavior sufficiently obstructive and dilatory so as to justify a finding that [Appellant] ha[d] forfeited his right to counsel, and instead designated [Attorney] Romance as his standby counsel.

PCRA Court Opinion, 9/27/12, at 2-3.

On April 15, 2011, the jury found Appellant guilty of terroristic threats and simple assault. That same day, while the jury was deliberating, the trial court found Appellant guilty of harassment as a summary offense. On June 27, 2011, the trial court imposed an aggregate sentence of one to four years' imprisonment for all charges. Appellant did not file a direct appeal with this Court.

Thereafter, on October 18, 2011, Appellant filed a timely *pro se* PCRA petition. The PCRA court appointed counsel and Appellant filed an amended PCRA petition on March 19, 2012. Relevant to this appeal, Appellant alleged that "he was denied his right to counsel under the Sixth Amendment … when the trial court failed to perform any colloquy in regards to him proceeding *pro se*."[2] Appellant's Amended PCRA Petition, 3/19/12, at ¶ 7. On May 17,

---

[2] It appears Appellant is referring to the colloquy found at Pennsylvania Rule of Criminal Procedure 121, as Appellant mentions said rule in one sentence in his brief. ***See*** Appellant's Brief at 10.

2012, the PCRA court conducted a hearing, and on June 13, 2012, the PCRA court dismissed Appellant's petition. Appellant filed a timely notice of appeal on June 21, 2012.[3]

On appeal, Appellant raises one issue for our review.

> 1. Did the [PCRA] court commit an abuse of discretion in denying [Appellant]'s claim under the [PCRA] that he was denied his right to appointed counsel at trial when it stated that he forfeited his right to appointed counsel by his behavior?

Appellant's Brief at 6.

Before we may address Appellant's claim on appeal, we must first determine whether it is properly preserved for our review. It is axiomatic that "issues not raised in a PCRA petition cannot be considered on appeal." ***Commonwealth v. Ousley***, 21 A.3d 1238, 1242 (Pa. Super. 2011) (citation omitted), *appeal denied*, 30 A.3d 487 (Pa. 2011); ***accord*** Pa.R.A.P. 302(a) (stating, "[i]ssues not raised in the lower court are waived and cannot be raised for the first time on appeal[]"). ***See also Commonwealth v. Strunk***, 953 A.2d 577, 579 (Pa. Super. 2008) (stating, "[e]ven issues of constitutional dimension cannot be raised for the first time on appeal[]") (citation omitted).

In his amended PCRA petition, Appellant advanced the claim that "he was denied his right to counsel under the Sixth Amendment … when the trial

---

[3] Appellant and the PCRA court have complied with Pa.R.A.P. 1925.

court failed to perform any colloquy in regards to him proceeding *pro se*."[4] Appellant's Amended PCRA Petition, 3/19/12, at ¶ 7; ***see also*** N.T., 5/17/12, at 3-4. On appeal, Appellant has briefed a wholly different issue. Specifically, he argues the trial court's conclusion that he had forfeited his right to counsel, and having him proceed *pro se*, violated his substantive right to counsel under the Sixth Amendment of the Federal Constitution. Appellant's Brief at 6. We are convinced that these two issues are different because, as Appellant correctly acknowledges in his brief, our Supreme Court has recently held that the Rule 121 colloquy is for waiver of the right to counsel and does not apply when a trial court concludes that a defendant has forfeited his right to counsel. ***See Commonwealth v. Lucarelli***, 971 A.2d 1173, 1179 (Pa. 2009).

Based on the foregoing, we are constrained to conclude Appellant's sole issue on appeal is one that he did not raise in his PCRA petition. As a result, this claim is waived on appeal. ***See Ousely***, ***supra***. Accordingly, the PCRA court's June 13, 2012 order is affirmed.

Order affirmed.

---

[4] Appellant also alleged that he was denied his right to be present during jury selection, as well as his right to be represented by counsel on direct appeal. Appellant's Amended PCRA Petition, 3/19/12, at ¶¶ 8-9. However, Appellant has not raised these issues on appeal.