

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA, : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
Appellee :
: v. :
TIMOTHY R. BOWSER, :
Appellant : No. 1157 WDA 2012

Appeal from the PCRA Order July 3, 2012,
Court of Common Pleas, Fayette County,
Criminal Division at No. CP-26-CR-0001377-2006

BEFORE: FORD ELLIOTT, P.J.E, BOWES and DONOHUE, JJ.

MEMORANDUM BY DONOHUE, J.: Filed: February 5, 2013

Appellant, Timothy R. Bowser (“Bowser”), appeals from the July 3, 2012 order dismissing his petition filed pursuant to the Post Conviction Relief Act (“PCRA”), 42 Pa.C.S.A. §§ 9541-46. We affirm.

A prior panel of this Court summarized the underlying facts:

Frank Black (‘Frank’) was not home when, without permission, [Bowser] entered Frank’s home. [Bowser] took item’s [sic] from Frank’s home and placed them in [Bowser’s] vehicle. As [Bowser] prepared to leave, Frank, who was eighty-one years old at the time, approached [Bowser]. [Bowser] punched Frank, causing him severe injuries. Frank’s son, John Black (‘John’), arrived on the scene and approached [Bowser]. [Bowser] stabbed John with a screwdriver and fled the scene.

Commonwealth v. Bowser, 998 A.2d 1014 (Pa. Super. 2010), unpublished memorandum, at 1, *appeal denied*, 608 Pa. 615, 8 A.3d 340 (2010).

On August 16, 2007 the trial court sentenced Bowser to an aggregate 120 to 300 months of incarceration based on his plea of guilty to burglary, aggravated assault, and simple assault. Bowser eventually filed a *nunc pro tunc* direct appeal, and this Court affirmed the judgment of sentence on April 19, 2010. **Bowser**, 998 A.2d 1014. The Supreme Court denied allowance of appeal on September 24, 2010, and Bowser filed a timely PCRA petition on March 3, 2011. The PCRA court conducted a hearing on the petition on May 31, 2012, and entered its order denying the petition on July 3, 2012. Bowser filed this timely appeal on July 19, 2012. He argues that his trial counsel was ineffective for his “failure to adequately handle plea procedures[.]” Bowser’s Brief at 5. Specifically, Bowser argues that his counsel was not prepared to go to trial and that he coerced Bowser into pleading guilty.

“The standard of review for an order denying post-conviction relief is limited to whether the record supports the PCRA court’s determination, and whether that decision is free of legal error. The PCRA court’s findings will not be disturbed unless there is no support for the findings in the certified record.” **Commonwealth v. Allen**, 48 A.3d 1283, 1285 (Pa. Super. 2012). To establish ineffective assistance of counsel, the petitioner must plead and prove that the underlying claim is of arguable merit; that counsel had no reasonable strategic basis for the action or inaction in question; and that but for counsel’s error, the outcome of the proceeding would have been

different. *Id.* at 1286. “We presume that counsel is effective, and it is the burden of Appellant to show otherwise.” *Id.*

At the hearing, Bowser testified that his counsel, George Bills (“Bills”), told Bowser that his case was a loser and that Bills did not want to try it. N.T., 5/31/12, at 12-13. According to Bowser, Bills threatened to withdraw if Bowser did not plead guilty. *Id.* at 13. Bowser also testified that Bills told him he had had dinner with the sentencing judge and that the judge informed Bills he would sentence Bowser to five to 10 years of incarceration if Bowser entered an open plea of guilty. *Id.* at 11-12.

Bills testified that the Commonwealth’s initial plea offer was 20 to 40 years of incarceration. *Id.* at 23. Concerning the merits of Bowser’s case, Bills testified that the only two witnesses to the crime were the two victims. *Id.* at 22-23. Bills moved unsuccessfully to suppress the victims’ identifications of Bowser and a statement Bowser gave to the police. *Id.* at 23. Bills spoke with the victims and believed they would be good witnesses for the Commonwealth at trial. *Id.* at 24, 28. Bills testified that he was prepared to go to trial, if necessary, but that he also discussed the possibility of an open plea with Bowser. *Id.* at 30-31. Bills believed the Commonwealth’s offer of 20 to 40 years of incarceration was too high and that he would try the case rather than accept that. *Id.* at 33. Bills denied that he threatened to withdraw if Bowser declined to plead guilty. *Id.* at 32. Bills also denied having dinner with a judge and procuring a promise of a five

to 10 year sentence if Bowser entered an open guilty plea. *Id.* at 25, 31. Ultimately, Bowser received a lesser sentence from the trial court than the one the Commonwealth offered, and Bills did not believe a motion to reconsider would be successful. *Id.* at 33.

As set forth above, the factual underpinnings of Bowser's argument depend on the PCRA court's assessment of his credibility as compared to that of Bills. "A PCRA court's credibility findings are to be accorded great deference." *Commonwealth v. Dennis*, 609 Pa. 442, 457, 17 A.3d 297, 305 (2011). "Indeed, where the record supports the PCRA court's credibility determinations, such determinations are binding on a reviewing court." *Id.*; *see also Allen*, 48 A.3d at 1285. Here, the record supports the PCRA court's findings and we will not disturb them. Since the facts of record, as found by the PCRA court, reveal no support for Bowser's assertion of ineffective assistance of counsel, the PCRA court did not err in dismissing Bowser's petition.

Order affirmed.