

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

Appellee

v.

MISTI D. WYLAND

Appellant

No. 1281 WDA 2012

Appeal from the Judgment of Sentence July 16, 2012  
In the Court of Common Pleas of Fayette County  
Criminal Division at No(s): CP-26-CR-0000157-2012

BEFORE: DONOHUE, J., MUNDY, J., and PLATT, J.\*

MEMORANDUM BY MUNDY, J.:

Filed: March 8, 2013

Appellant, Misti D. Wyland, appeals from the July 16, 2012 judgment of sentence of one year of probation, plus costs and restitution, after she pled guilty to access device fraud and criminal conspiracy.<sup>1</sup> After careful review, we affirm the judgment of sentence.

The underlying facts of this case, as set forth during the May 24, 2012 guilty plea hearing, are as follows.

[Appellant] did use an Access Device card that was unauthorized to use by the issuer, deviceholder, in that [Appellant] did from a period of time from June 13, 2011, to approximately July 7, 2011, use the Access Device to obtain, or attempt to obtain the

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\* Retired Senior Judge assigned to the Superior Court.

<sup>1</sup> 18 Pa.C.S.A. §§ 4106 and 903, respectively.

victim's bank account with the knowledge that the device was issued to another person, namely Kenneth Randall Harris, of Point Marion Borough, Fayette County, Pennsylvania, who did not authorize its use, and did engage in a conspiracy with Jeffrey Lloyd Guthrie, to use such a device. The total amount of loss being \$9,224.23.

N.T., 5/24/12, at 4-5.

On February 14, 2012, Appellant was charged with one count each of access device fraud and criminal conspiracy in connection with this incident. As noted, Appellant entered a negotiated guilty plea to the aforementioned charges on May 24, 2012, and a guilty plea hearing was held that same day. Appellant was represented at the guilty plea and sentencing phases by Fayette County Assistant Public Defender Michael Garofalo, Esquire. On July 16, 2012, the trial court sentenced Appellant to one year of probation, plus costs and restitution, for the access device fraud charge. No further penalty was imposed for the criminal conspiracy charge. Appellant did not file any post-sentence motions. Thereafter, on August 15, 2012, Appellant filed a timely notice of appeal.<sup>2</sup>

On appeal, Appellant raises the following issues for our review.

1. Whether Appellant's former counsel was ineffective due to counsel's failure to provide adequately (sic) representation during [] Appellant's plea and sentencing?

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<sup>2</sup> We note that Appellant and the trial court have complied with Pa.R.A.P. 1925.

2. Whether Appellant was unlawfully induced to plead guilty to a crime despite the fact that she was innocent?

Appellant's Brief at 6. For the ease of our discussion, we have elected to address Appellant's claims, at least in part, simultaneously.

Appellant contends that her prior counsel rendered ineffective assistance during the guilty plea and sentencing phases, and as a result, she "was unlawfully induced to plead guilty to a crime despite the fact that she was innocent." *See id.* at 9-14. For the following reasons, we conclude that Appellant is not entitled to relief.

Generally, "the entry of a guilty plea constitutes a waiver of all defects and defenses except lack of jurisdiction, invalidity of the plea, and illegality of the sentence." *Commonwealth v. Main*, 6 A.3d 1026, 1028 (Pa. Super. 2010). Courts of this Commonwealth have long recognized that, barring an exception, allegations of ineffective assistance of counsel should be deferred for collateral review pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546. *Commonwealth v. Grant*, 813 A.2d 726, 738 (Pa. 2002). In *Commonwealth v. Bomar*, 826 A.2d 831 (Pa. 2003), our Supreme Court recognized an exception to the rule it announced in *Grant*. "[C]laims of ineffectiveness may be heard on direct appeal, where the claims were raised before the trial court, and a record was developed." *Commonwealth v. Daniels*, 999 A.2d 590, 595 (Pa. Super. 2010), *citing Bomar, supra* at 845.

However, this Court recently announced that our Supreme Court's exception in **Bomar** was limited.

With the proviso that a defendant may waive further PCRA review in the trial court, absent further instruction from our Supreme Court, this Court, pursuant to [**Commonwealth v. Wright**, 961 A.2d 119 (Pa. 2008)] and [**Commonwealth v. Liston**, 977 A.2d 1089 (Pa. 2009)], will no longer consider ineffective assistance of counsel claims on direct appeal.

**Commonwealth v. Barnett**, 25 A.3d 371, 377 (Pa. Super. 2011) (*en banc*) (footnote omitted).

Upon careful review of the certified record, we conclude that Appellant has not made any such waiver. Accordingly, we dismiss Appellant's claims of ineffective assistance of counsel without prejudice to Appellant's right to raise them on collateral review pursuant to the PCRA. **See Commonwealth v. Quel**, 27 A.3d 1033, 1037 (Pa. Super. 2011) (stating when an appellant does not knowingly and voluntarily waive PCRA review of an ineffective assistance claim, under **Barnett**, dismissal of the ineffective assistance claim without prejudice is the appropriate remedy).

Furthermore, to the extent Appellant contends that her guilty plea was not knowing, voluntary, or intelligent, we conclude that she waived this substantive claim. **See** Appellant's Brief at 14-15. Our review of the record reveals that Appellant did not object to her guilty plea at the May 24, 2012 hearing, or file a post-sentence motion seeking to withdraw her guilty plea. **See** N.T., 5/24/12, at 3-6. In order to preserve an issue related to a guilty

plea, an appellant must either object at the colloquy or otherwise raise the issue at the hearing or through a post-sentence motion. ***Commonwealth v. Tareila***, 895 A.2d 1266, 1270 n.3 (Pa. Super. 2006); ***see also*** 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[.]”).

Accordingly, for all the foregoing reasons, we discern no error on the part of the trial court in rejecting Appellant’s claims. Therefore, we affirm the July 16, 2012 judgment of sentence.

Judgment of sentence affirmed.