

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

Appellee

v.

JOHN LEBROM

Appellant

No. 1344 EDA 2012

Appeal from the PCRA Order May 7, 2012  
In the Court of Common Pleas of Philadelphia County  
Criminal Division at No(s): MC-51-CR-0444561-2001

BEFORE: BOWES, J., GANTMAN, J., and MUSMANNO, J.

MEMORANDUM BY GANTMAN, J.:

Filed: March 20, 2013

Appellant, John Lebrom, appeals from the order entered in the Philadelphia County Court of Common Pleas, dismissing his first petition brought pursuant to the Post Conviction Relief Act ("PCRA").<sup>1</sup> We affirm.

The relevant facts and procedural history of this appeal are as follows.

On May 2, 2001, Appellant and a sixteen-year-old cohort were arrested for stripping an automobile. On November 11, 2001, Appellant entered a negotiated guilty plea to all charges. Sentencing was scheduled for January 11, 2002, but Appellant failed to appear. A bench warrant was issued for his arrest. On January 28, 2002, Appellant was found in contempt for failing to appear on January 11, 2002, and sentencing was deferred until February 20, 2002.

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<sup>1</sup> 42 Pa.C.S.A. §§ 9541-9546.

On February 20, 2002, Appellant was sentenced to the following: 4 months' probation for theft by unlawful taking; 24 months' probation for corrupting the morals of a minor; 24 months' probation for theft from a motor vehicle; 24 months' probation for conspiracy; and 90 days of probation for criminal mischief. All sentences were ordered to run concurrently with one another, for an aggregate sentence of 24 months' probation. Appellant was also ordered to pay \$146.50 in court costs and \$3,500.00 in restitution at the rate of at least \$100.00 per month.

In a separate case, Appellant was arrested on October 23, 2001, for theft by unlawful taking (automobile), chop shop, criminal conspiracy, and other related charges. While on bail for his October 23, 2001 case, Appellant was arrested on October 24, 2002 and charged with theft by unlawful taking (automobile), criminal conspiracy, and other related offenses.<sup>1</sup> These matters were consolidated for a jury trial, and Appellant was found guilty of the aforementioned charges.

<sup>1</sup> In yet another case, Appellant was arrested on July 29, 2002 for conspiracy to commit theft, again involving an automobile. He received probation.

The conviction for the offense of October 23, 2001 did not constitute a violation of Appellant's probation because this offense occurred prior to the imposition of the February 20, 2002 probation only sentence. However, Appellant's conviction on the October 24, 2002 case did result in a direct violation of the court's February 20, 2002 order of probation.<sup>2</sup>

<sup>2</sup> On February 6, 2003, the [court] sentenced Appellant to an aggregate term of 8 to 17 years' incarceration on the October 24, 2002 case.

Subsequently, Appellant was found to be in direct and technical violation of the February 20, 2002 sentence of probation. On February 17, 2004, probation was revoked, and the trial court sentenced Appellant as follows: 2½ to 5 years' incarceration for corrupting the morals of a minor to be served consecutively to any sentence he was already serving; 2½ to 5 years' incarceration for theft by unlawful

taking, to be served consecutively to the corrupting the morals of a minor sentence; 2½ to 5 years' incarceration for criminal conspiracy, to be served consecutively to the corrupting the morals of a minor sentence; 2½ to 5 years' incarceration for theft from a motor vehicle, to be served concurrently to the corrupting the morals of a minor and theft by unlawful taking sentences; and 45 to 90 days' incarceration for criminal mischief, to run concurrently with the corrupting the morals of a minor sentence.<sup>[2]</sup> This resulted in an aggregate sentence of 7½ to 15 years' incarceration.

***Commonwealth v. Lebron***,<sup>3</sup> No. 987 EDA 2004, unpublished memorandum at 1-3 (Pa.Super. filed January 20, 2006). On January 20, 2006, this Court affirmed the judgment of sentence.

On August 31, 2006, Appellant timely filed a counseled PCRA petition. In it, Appellant claimed prior counsel was ineffective for failing to file post-sentence motions challenging the sentence imposed following the revocation of probation. On May 9, 2007, the PCRA court provided notice of its intent to dismiss the petition without a hearing, pursuant to Pa.R.Crim.P. 907. On June 1, 2007, Appellant filed a response to the Rule 907 notice. Thereafter, the court failed to enter a formal order denying PCRA relief.

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<sup>2</sup> Appellant's offenses were graded as first degree misdemeanors, except for criminal mischief, which was graded as a summary offense. A person convicted of first degree misdemeanor can be sentenced to a maximum term of imprisonment of five (5) years. 18 Pa.C.S.A. § 1104. A person convicted of summary offense can be sentenced to a maximum term of imprisonment of ninety (90) days. 18 Pa.C.S.A. § 1105.

<sup>3</sup> Throughout the certified record, Appellant's last name appears as both "Lebron" and "Lebrom."

Appellant, however, mistakenly believed that the court had denied relief and PCRA counsel had failed to preserve Appellant's right to appeal the matter. On September 10, 2007, Appellant filed a *pro se* PCRA petition, seeking reinstatement of his appellate rights *nunc pro tunc*. On July 16, 2008, the court granted relief and reinstated Appellant's right to appeal *nunc pro tunc*. The court also appointed new counsel. Appellant timely filed a notice of appeal on August 15, 2008. On appeal, this Court recognized that the PCRA court had failed to enter a formal order dismissing Appellant's 2006 PCRA petition. Consequently, this Court remanded the matter for the entry of an appealable order.

Upon remand, the court entered an order denying PCRA relief on May 7, 2012. Appellant timely filed a notice of appeal on May 9, 2012. The court did not order Appellant to file a concise statement of errors complained of on appeal, pursuant to Pa.R.A.P. 1925(b).

Appellant raises two issues for our review:

WAS VOP COUNSEL INEFFECTIVE FOR FAILING TO FILE A MOTION FOR RECONSIDERATION OF SENTENCE WHEN THE SENTENCE IMPOSED WAS MANIFESTLY EXCESSIVE AND INCONSISTENT WITH CERTAIN PROVISIONS OF THE SENTENCING CODE AND WHEN THE SENTENCE IMPOSED UNDERMINED THE FUNDAMENTAL NORMS OF THE SENTENCING PROCESS?

DID THE PCRA COURT ERR IN DISMISSING APPELLANT'S PCRA PETITION WHEN COUNSEL WAS INEFFECTIVE FOR FAILING TO FILE A MOTION FOR RECONSIDERATION OF SENTENCE BECAUSE THE SENTENCE WAS MANIFESTLY EXCESSIVE AND WAS ALSO INCONSISTENT WITH PROVISIONS OF THE SENTENCING CODE AND

UNDERMINED FUNDAMENTAL NORMS OF THE  
SENTENCING PROCESS?

(Appellant's Brief at 4).

Our standard of review of the denial of a PCRA petition is limited to examining whether the evidence of record supports the court's determination and whether its decision is free of legal error. ***Commonwealth v. Conway***, 14 A.3d 101 (Pa.Super. 2011), *appeal denied*, 612 Pa. 687, 29 A.3d 795 (2011). This Court grants great deference to the findings of the PCRA court if the record contains any support for those findings. ***Commonwealth v. Boyd***, 923 A.2d 513 (Pa.Super. 2007), *appeal denied*, 593 Pa. 754, 932 A.2d 74 (2007).

In his two issues, Appellant contends the court imposed an excessive sentence following the revocation of probation. Appellant asserts the sentence is inconsistent with the protection of the public and does not serve his rehabilitative needs. Appellant also argues that the aggregate term of imprisonment shocks the conscience due to the court's imposition of consecutive sentences. Appellant complains counsel should have challenged the sentencing scheme by filing post-sentence motions. Appellant maintains counsel had no reasonable basis for failing to file post-sentence motions. Appellant insists he suffered prejudice due to counsel's failure, which deprived him of the opportunity to challenge the discretionary aspects of sentencing. Appellant concludes counsel was ineffective for failing to file

post-sentence motions, and the PCRA court should have granted relief on this basis. We disagree.

The law presumes counsel has rendered effective assistance. ***Commonwealth v. Williams***, 597 Pa. 109, 950 A.2d 294 (2008). When asserting a claim of ineffective assistance of counsel, the petitioner is required to demonstrate that: (1) the underlying claim is of arguable merit; (2) counsel had no reasonable strategic basis for his action or inaction; and, (3) but for the errors and omissions of counsel, there is a reasonable probability that the outcome of the proceedings would have been different. ***Commonwealth v. Kimball***, 555 Pa. 299, 724 A.2d 326 (1999). The failure to satisfy any prong of the test for ineffectiveness will cause the claim to fail. ***Williams, supra***.

"The threshold inquiry in ineffectiveness claims is whether the issue/argument/tactic which counsel has foregone and which forms the basis for the assertion of ineffectiveness is of arguable merit..." ***Commonwealth v. Pierce***, 537 Pa. 514, 524, 645 A.2d 189, 194 (1994). "Counsel cannot be found ineffective for failing to pursue a baseless or meritless claim." ***Commonwealth v. Poplawski***, 852 A.2d 323, 327 (Pa.Super. 2004).

Once this threshold is met we apply the 'reasonable basis' test to determine whether counsel's chosen course was designed to effectuate his client's interests. If we conclude that the particular course chosen by counsel had some reasonable basis, our inquiry ceases and counsel's assistance is deemed effective.

***Pierce, supra*** at 524, 645 A.2d at 194-95 (internal citations omitted).

Prejudice is established when [a defendant] demonstrates that counsel's chosen course of action had an adverse effect on the outcome of the proceedings. The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. In [*Kimball, supra*], we held that a "criminal defendant alleging prejudice must show that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable."

***Commonwealth v. Chambers***, 570 Pa. 3, 21-22, 807 A.2d 872, 883 (2002) (some internal citations and quotation marks omitted).

"In general, the imposition of sentence following the revocation of probation is vested within the sound discretion of the trial court, which, absent an abuse of that discretion, will not be disturbed on appeal."

***Commonwealth v. Hoover***, 909 A.2d 321, 322 (Pa.Super. 2006). A sentence should not be disturbed where it is evident the court was aware of the appropriate sentencing considerations and weighed them in a meaningful fashion. ***Commonwealth v. Fish***, 752 A.2d 921, 923 (Pa.Super. 2000).

The Sentencing Guidelines do not apply to sentences imposed following a revocation of probation. ***Commonwealth v. Ferguson***, 893 A.2d 735 (Pa.Super. 2006), *appeal denied*, 588 Pa. 788, 906 A.2d 1196 (2006). "[U]pon sentencing following a revocation of probation, the trial court is limited only by the maximum sentence that it could have imposed originally at the time of the probationary sentence." ***Commonwealth v. Coolbaugh***, 770 A.2d 788, 792 (Pa.Super. 2001).

A court can sentence a defendant to total confinement after revoking probation if the defendant was convicted of another crime, the defendant's conduct indicates that it is likely that he will commit another crime if he is not imprisoned, or such a sentence is essential to vindicate the court's authority. ***Commonwealth v. Crump***, 995 A.2d 1280 (Pa.Super. 2010), *appeal denied*, 608 Pa. 661, 13 A.3d 475 (2010). "A sentencing court need not undertake a lengthy discourse for its reasons for imposing a sentence or specifically reference the statute in question, but the record as a whole must reflect the sentencing court's consideration of the facts of the crime and character of the offender." ***Id.*** at 1283.

Instantly, the court justified its sentencing decision as follows:

Appellant incurred two new convictions after imposition of [the] court's [February 20, 2002 probationary] sentence. These convictions were for the same or similar offenses, *i.e.*, stripping cars, chop shop, etc. Appellant had juvenile adjudications for the same offenses. He was placed on...probation and warned of what would happen if he violated.

Appellant was arrested on July 29, 2002 and October 24, 2002 ([five] and eight months, respectively, after he was sentenced by [the] court). He was subsequently convicted and sentenced on these charges.

Despite warnings by [the] court of the consequences of violation, Appellant blatantly continued to disregard [the] court's order and conditions of probation. Appellant also failed to pay anything, whatsoever, toward the \$3,500.00 restitution, or the Court Costs of \$146.50 ordered in this matter. Appellant was sentenced within the statutorily permissible limits. The sentence imposed was based upon the nature of the violations.... Appellant repeatedly failed to comply with orders of [the] court.



(**See** Trial Court Opinion, filed February 14, 2005, at 9) (internal footnote omitted).

Here, the court considered Appellant's lack of success under probation, the arrests while under supervision, and the failure to pay any restitution or court costs. The record as a whole reflects that the court considered the facts of the crimes and the character of Appellant in making its determination, and Appellant's sentence should remain undisturbed. **See Hoover, supra**. To the extent Appellant also complains about the court's decision to impose consecutive sentences, we reiterate that a defendant is not entitled to a "volume discount" for his crimes by having all sentences run concurrently. **See Commonwealth v. Prisk**, 13 A.3d 526 (Pa.Super. 2011) (stating same). Thus, counsel was not ineffective for failing to pursue the baseless sentencing claims.<sup>4</sup> **See Poplawski, supra**. Accordingly, we affirm the order denying PCRA relief.

Order affirmed.

\*JUDGE BOWES CONCURS IN THE RESULT.

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<sup>4</sup> Moreover, Appellant challenged the excessiveness of the sentencing scheme on direct appeal. This Court determined Appellant had waived the claim, because he failed to file post-sentence motions. Assuming Appellant had preserved the claim, this Court concluded Appellant would not be entitled to relief. Specifically, this Court emphasized that Appellant's "boilerplate claim of sentencing court error would fail to raise a substantial question...." **See Lebron, supra** at 6.