NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. OLAYIWOLA HOLLIST Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1414 EDA 2012

Appeal from the Judgment of Sentence of November 3, 2011
In the Court of Common Pleas of Northampton County
Criminal Division at No.: CP-48-CR-0004109-2010

BEFORE: SHOGAN, J., WECHT, J., and COLVILLE, J.*

MEMORANDUM BY WECHT, J.: **FILED NOVEMBER 22, 2013**

Olayiwola Hollist ("Appellant") appeals his November 3, 2011 judgment of sentence, which was imposed after Appellant was convicted of three counts of first-degree murder[1] and three counts of conspiracy to commit first-degree murder.[2] We affirm.

In an opinion in response to Appellant's post-sentence motions, the trial court detailed the factual and procedural history of this case as follows:

> [Appellant] was charged with three counts of Criminal Homicide and three counts of Conspiracy to Commit Criminal Homicide. The charges arose out of [the] execution-style triple homicide

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* Retired Senior Judge assigned to the Superior Court.

1 18 Pa.C.S. § 2502(a).

2 18 Pa.C.S. §§ 903, 2502(a).

that occurred during the early morning hours of November 29, 2007, in Kim Slack's apartment located on the second and third floors of 128 North 13th Street, Easton, Pennsylvania. The three victims, Alphie Rene ("Rene"), Aleah Hamlin ("Hamlin") and Chanel Armour ("Armour"), were shot and killed in a bedroom located on the third floor of the building. The Commonwealth's theory, based upon witness statements, was that four assailants came into the backdoor to the apartment located on the second floor. Three of the assailants ran up the interior stairs of the apartment to a third floor bedroom. The victims were killed by bullets shot from two separate handguns (a .380 High Point and a 9 millimeter). All of the bullets and casings located at the crime scene confirm that only two weapons were fired. The evidence which led to the eventual identifications and arrests of the accomplices was gathered over a period of time.

The four accomplices eventually identified by the Commonwealth are [Appellant], Demar Edwards ("Edwards"), Ali Elijah Davis ("Davis"), and Lewis Gray ("Gray").

Davis was the first arrested. The Commonwealth sought the death penalty against Davis. In fact, Davis was arrested, tried and convicted prior to the arrest of Edwards and [Appellant]. Davis was found guilty of three counts of First[-]Degree Murder and Conspiracy to Commit Murder, however, the jury did not impose the death penalty. Davis is now serving three consecutive life sentences imposed on January 27, 2010. During the Davis trial, the Commonwealth's evidence established that Davis was one of the four assailants who came into the apartment. However, we note that there were no eyewitness[es] who could identify which of the three assailants ran up the stairs. The Commonwealth argued to the jury that the circumstantial evidence established that Davis was one of the three assailants who ran up [the] stairs and likely was one of the shooters. In the alternative, the Commonwealth argued that Davis was guilty under the theory of accomplice liability.

Gray was the second accomplice arrested. Gray [pleaded] guilty, with a sentence bargain, to three counts of Criminal Conspiracy Engaging—Criminal Homicide and was sentenced to 13-26 years['] confinement on May 5, 2010. As part of Gray's negotiated plea, he provided a statement to the Commonwealth regarding his participation in the murder of the victims and he confirmed the identity of the remaining assailants who remained at large.

[Appellant] was arrested on August 12, 2010, and Edwards on September 1, 2010. Both were arrested in New Jersey and extradited to Pennsylvania. [Appellant] provided a series of statements to the police regarding his version of the events of November 28 and 29, 2007.

The Commonwealth filed a Motion for Joinder on December 20, 2010, seeking to join the trials of [Appellant] and Edwards. [Appellant] filed Omnibus Pre-Trial Motions on February 4, 2011. [Appellant]'s motions included a Motion to Suppress Statements, a Petition for *Habeas Corpus* and Motion to Dismiss, a Motion to Dismiss Aggravating Factor, a Motion to Preclude Discharge of Jurors that Object to the Imposition of the Death Penalty, a Motion to Challenge the Array and Composition of the Jury Panel, and a Motion to Challenge the Constitutionality of 42 Pa.C.S. § 4502. The Court denied [Appellant's] Motions and granted the Commonwealth's Motion to join the trials of [Appellant] and Edwards.

Prior to the commencement of the joint trial, [Appellant and Edwards] and the District Attorney reached a hybrid/negotiated resolution with regard to the death penalty. In return for [Appellant's and Edwards'] waiver of their right to a jury trial, the District Attorney agreed not to pursue the death penalty. The non-jury trial began on October 31, 2011.

During the joint trial of Edwards and [Appellant], the Commonwealth presented various police officers who testified as to their various roles in the investigation; eyewitnesses present in the apartment—Josh Oliver ("Oliver"), Kim Slack ("Slack"), and Georgia Bricker ("Bricker"); one eyewitness to the actual shootings—Gray; and testimony by Romel Thompson ("Thompson") involving background testimony related to [Appellant and Edwards], the events of November 28, 2007, . . . Davis' vehicle leaving from Newark, New Jersey, for Easton, and alleged admissions made after the homicides, separately by Edwards and [Appellant], to Thompson. In addition, the Commonwealth and [Appellant and Edwards] agreed to submit portions of the testimony of Lakindel Spring ("Spring") from the Davis trial. The parties stipulated that Spring was unavailable to testify at the time of this trial.

The Commonwealth also presented the redacted statement of [Appellant]. There was nothing in [Appellant's] redacted

statement which identified Edwards as a participant in the homicides.

Finally, the Commonwealth's presentation also included evidence regarding the location of Davis' car as the four assailants allegedly travelled from Newark to the crime scene in Easton and back to Newark. The evidence included photographs of Davis' car at the Easton toll bridge and forensic evidence tracing the assailants' cell phones (cell tower) activity as they used their cell phones in [*sic*] route.

The Commonwealth's theory was that the killings were gang related with Davis, Oliver, Edwards, [Appellant], Gray, and Thompson belonging to one "Blood" sect. Spring and Rene were alleged to be members of a different "Blood" sect. Rene's execution was allegedly retaliation related to an intra-Blood dispute.

Oliver, now a purported "former" Blood gang member, acknowledged that he was a member of the Bloods in 2007 and was present at Slack's house at the time of the shooting. Oliver testified that, earlier in that day, Davis had given him a .380 High Point handgun to hold. That evening, Davis called Oliver on several occasions while Oliver was visiting Slack's residence to learn the logistics of who was in the apartment and where each person was located. Davis also told Oliver to open the back door to allow him access to the apartment. Oliver further testified that, when Davis and three other individuals showed up at Slack's house later that night, Oliver opened the back door to the apartment for Davis and the three men standing behind Davis. Oliver identified two of the men with Davis as "G-Red" (Demar Edwards) and "Monster" (Lewis Gray) and stated he could only see the shadow of the fourth man on the porch. Oliver did not know the [identity] of the fourth man. Oliver recognized Davis and Edwards as fellow Blood gang members. He also testified that Gray was not a Blood. While on the back steps, Davis then asked Oliver to return possession of his .380 High Point. Oliver testified that, after giving Davis the .380 High Point handgun, Oliver went into the second floor bedroom with Slack and closed the door. After a few minutes, Oliver heard gunshots. After hearing the shots, Oliver opened the door and saw three men run down the stairs and past the door. Oliver could not identify the three individuals who ran down the steps. Oliver claimed that he did not know the mission of the four men who came into Slack's apartment until after the shooting. Later,

in the early morning hours, after Davis returned to Easton, Oliver reunited with Davis. Oliver claimed that Davis told him that the fourth man was known as "T-Bone." Oliver knew that [Appellant] went by the street name "T-Bone."

Slack and Bricker testified that they were both in the house at the time of the shooting. However, neither saw who shot Rene, Hamlin, and Armour. Slack saw three men run past the door of her bedroom located on the second floor but could not identify the men. Bricker, who was in a separate bedroom on the third floor of Slack's house, saw three men run down the third floor stairs to the second floor of the house but also could not identify the men.

Thompson, another "purported" former Blood gang member, was a Blood in 2007. Thompson testified that Davis, Oliver, Edwards and [Appellant] were also Bloods. Thompson testified that he was with Edwards, [Appellant], Davis, and Gray at a bar during the evening of November 28, 2007, before Davis' vehicle left Newark. Thompson testified that he saw the four men get into Davis' car and drive away, however, Thompson denied knowing the destination or reason for their trip. Thompson also spoke with [Appellant] the day after the shootings. [Appellant] reportedly told Thompson he participated in the homicides and that he was a shooter. Thompson also spoke with Edwards after the shootings. Edwards told Thompson that, although Rene was the target, they also killed Hamlin and Armour so there would not be witnesses.

Gray denied that he was a Blood gang member. Gray testified that he met Thompson at a bar in Newark on November 28, 2007. Gray testified that he had an independent business relationship with Thompson related to drug distribution. Apparently, Thompson was his supplier. Gray testified that he drove to Easton with Edwards, [Appellant], and Davis that evening. Gray asserted that he was not friendly with Edwards, Davis, or [Appellant], but was asked to go along with them by Thompson. Gray denied knowing that there was a plan to shoot the victims. Gray assumed he was sent as an observer for an unknown mission that was related to Thompson. Gray testified that, when Davis led the group to the scene of the shooting, Oliver opened the backdoor to the apartment and handed Davis a .380 High Point handgun. Davis then gave the .380 High Point to [Appellant]. According to Gray, he brought his own sawed-off shotgun that was inoperable and Edwards brought a 9 millimeter

handgun. Once in the house, Edwards, [Appellant], and Gray went to the third floor to the room which contained the victims. According to Gray, Davis did not go up to the third floor. Gray testified that he watched Edwards and [Appellant] shoot Rene, Hamlin, and Armour. After which, the three men ran downstairs and out of the house. Gray initially did not cooperate with the police. However, he eventually identified Davis but still withheld the identification of Edwards and [Appellant] because he believed they had given him a justifiable excuse for the shootings. Eventually, Gray identified Edwards and [Appellant] because he later found out their excuse was not true. Gray testified that, in return for his cooperation, Gray was permitted to plead to Third[-]Degree Murder and he received a sentence bargain of 13-26 years.

The relevant portion of Spring's testimony stated that Spring was at Slack's house in the second floor bathroom at the time of the shootings. Spring heard the shots and shortly after, Davis kicked in the bathroom door while holding a handgun. Spring heard the commotion while in the shower and he managed to crawl out through the bathroom window and flee to a nearby bar. The only individuals Spring saw were Gray and Davis.

[Appellant] testified in his own defense. [Appellant] denied that he was a member of the Blood gang. [Appellant] admitted to being in Davis' car with Davis, Gray and a third individual on the drive to Easton.[1] [Appellant] testified that he and Gray sat in the back seat and that Gray had a shotgun which he placed on his lap. [Appellant] told the jury that he instructed Gray to point his shotgun another direction as it was laying on Gray's lap and pointed in the direction of [Appellant]. [Appellant] stated that once they arrived at Slack's home, Davis, Gray and the third man left to do their business but he waited in the car because he felt sick and eventually threw up outside the car.[2] [Appellant] also testified that Davis, Gray and the third man did not tell him what happened in Slack's house and he did not know about the shootings until the police began investigating him. [Appellant] claimed that he believed the others were possibly involved in a drug transaction or plan to rob drug dealers and Thompson wanted [Appellant] to be present to make sure that Thompson was not ripped off by the others. [Appellant] testified that he could not identify the third man in the Davis car.

[1] [Appellant] said he was with three others but only identified Gray and Davis at trial. In other statements to

> the police, he said the fourth person was Edwards. [Appellant] also lived with Edwards in 2008 and was good friends with him.
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> [2] Although [Appellant] stated that he threw up in the street while he was waiting, no vomit or trace thereof was found by the investigating police after a thorough search of the area conducted during the processing of the crime scene.

Edwards did not testify, however, he asserted in his [closing] argument . . . that the evidence did not establish that he was at the crime scene.

Prior to the commencement of closing arguments, Counsel for [Appellant] and Edwards argued that the Commonwealth should be precluded from arguing that Edwards and [Appellant] were both shooters, because the direct evidence established that only two guns were used to commit the crimes and, therefore, the only logical conclusion would be that there were, at most, only two shooters. Therefore, to argue in the separate trials that Davis, Edwards and [Appellant] were all guilty of First[-]Degree Murder for being actual shooters involved in the use of factually contradictory theories in different trials . . . would be "fundamentally unfair" and a violation of due process. [The trial court] denied this motion.

Edwards and [Appellant] were each convicted of three counts of [first-degree murder] and three counts of [conspiracy to commit first-degree murder]. Both Edwards and [Appellant] were sentenced to three consecutive life sentences without the possibility of parole.

[Appellant] filed Post-Sentence Motions on November 10, 2011. In his first Motion, [Appellant] asserts that the evidence produced at trial was insufficient to prove [Appellant] was guilty beyond a reasonable doubt. [Appellant] asserts that the evidence produced at trial shows Edwards and Davis had the murder weapons and that the only evidence showing [Appellant] was present in Slack's house was offered by Gray, a witness [who] is not credible because his testimony was "bought and paid for" with a lesser sentence. In his second Motion, [Appellant] asserts that the verdict is against the weight of the evidence and a new trial should be granted. [Appellant] asserts the credible testimony of Oliver, Bricker, Slack, and Spring shows [that Appellant] was not in Slack's apartment on

> November 29, 2007, shows Davis and Edwards were the two shooters on November 29, 2007, and outweighs the incredible testimony of Gray and Thompson. In his final Motion, [Appellant] seeks to have [the trial court] reconsider the sentence of three consecutive life sentences without the possibility of parole because, by electing a bench trial, he saved the Court the weeks of time required for jury selection, the guilt phase of the trial, and the penalty phase of the trial and he had no prior record.
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> [Appellant] filed his Brief in support of his Post-Sentence Motion on March 9, 2012. The Commonwealth filed its Brief in opposition on March 27, 2012.

Trial Court Opinion ("T.C.O."), 4/9/2012, at 1-9.

On April 9, 2012, the trial court denied Appellant's post-sentence motions. On May 7, 2012, Appellant filed a notice of appeal. In response, the trial court directed Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). On May 29, 2012, Appellant timely complied. On June 19, 2012, the trial court issued an opinion pursuant to Pa.R.A.P. 1925(a).

Appellant raises the following three questions for our consideration:

1. Whether or not the verdict was against the weight of the evidence on all three counts of [first-degree murder and conspiracy to commit first-degree murder]?
2. Whether or not the Trial Court was in error when [the court] allowed the Commonwealth to argue inconsistent theories concerning culpability in light of the fact that in a previous trial against Ali Davis, a co-defendant, Mr. Davis was specified as being a shooter, and in the case at bar the Commonwealth alleged that the only two shooters were the Appellant and Mr. Edwards?
3. Whether or not Trial Counsel, Charles Banta and Kate Collette, were ineffective for talking the Appellant into waiving

> his right to a trial by jury and proceeding with a [non-jury trial]?

Brief for Appellant at 10.

In his first issue, Appellant asserts that his convictions were against the weight of the evidence. Appellant first raised this issue in his November 10, 2011 post-sentence motions. After reviewing the matter, the trial court determined that the verdict was not against the weight of the evidence. ***See*** T.C.O., 4/9/2012, at 12. In assessing the trial court's ruling, we must "review[] the trial court's exercise of discretion, not the underlying question of whether the verdict is against the weight of the evidence." ***Commonwealth v. Smith***, 985 A.2d 886, 888 (Pa. 2009). The fact-finder is free to believe all, part, or none of the evidence; an appellate court will not make its own assessment of the credibility of the evidence. ***Commonwealth v. Ramtahal***, 33 A.3d 602, 609 (Pa. 2011). "The trial court will only award a new trial when the jury's verdict is so contrary to the evidence as to shock one's sense of justice." ***Id.*** In turn, we will reverse a trial court's refusal to award a new trial only when we find that the trial court abused its discretion when it did not conclude that the verdict was so contrary to the evidence as to shock one's sense of justice. In effect, "the trial court's denial of a motion for a new trial based on a weight of the evidence claim is the least assailable of its rulings." ***Id.***

Specifically, Appellant argues that the credible evidence did not establish that he was one of the three men who entered Slack's home and

murdered the three victims. Appellant points out that neither Slack, Bricker, nor Oliver, each of whom observed the three assailants from a very close vantage point, identified Appellant at trial as one of those men. Appellant admits that Oliver selected Appellant from a police line-up, but argues that Oliver only did so after he was told by Davis that Appellant was one of the three assailants. Additionally, Oliver did not start cooperating with the police in the investigation until after Oliver was charged in an unrelated robbery, for which he later received a lenient sentence.

According to Appellant, the only two individuals who identified him at trial as being in Slack's home on the night of the murders were Gray and Thompson, each of whose testimonies were afflicted with significant credibility problems. Gray, who pleaded guilty to his involvement in the murders, received a very lenient sentence (thirteen to twenty-six years) relative to the seriousness of the crimes in exchange for his testimony against Davis, Appellant, and Edwards. Thompson, who was incarcerated at the time of trial on unrelated drug charges, was never charged in the murder, although his involvement in the Blood gang leadership and in the early stages of the crime was well-documented at trial. Appellant contends that Thompson, whose own testimony established that he told the police multiple different stories about the circumstances surrounding the planning and execution of the crimes, created the version of events that he described at trial after he learned that he was not going to be charged as an accomplice or co-conspirator.

Appellant further relies upon his own testimony, and upon the fact that no physical or scientific evidence was presented at trial directly linking him to the crime. In light of the eyewitness testimony, Appellant contends that the verdicts were contrary to the weight of the evidence and that the trial court's verdict, based solely upon corrupt and incredible testimony, should have shocked the conscience of that court. Moreover, Appellant contends that the trial court's determination to the contrary was an abuse of discretion. We disagree.

The trial court sat as the finder of fact in this case. That court was in the best position to view the demeanor of the Commonwealth's witnesses, and to assess each witness' credibility. The trial court heard all of the information that Appellant maintains rendered Gray and Thompson incredible. Nonetheless, the trial court considered their testimonies worthy of belief, and simultaneously rejected Appellant's testimony. ***See*** T.C.O. 4/9/2012, at 11-12. Thompson testified that Appellant was with Edwards, Davis, and Gray earlier in the evening on the night in question. Thompson saw the men get into Davis' car and drive toward Easton. Appellant admitted to Thompson that he was one of the shooters. Additionally, Gray testified that he entered the house with Davis, Appellant, and Edwards. Gray stated that he, Appellant, and Edwards went to the third floor bedroom, where he watched as Appellant and Edwards shot the three victims. The trial court credited the identification testimony proffered by both Gray and Thompson, while being simultaneously well-aware of the

credibility concerns raised by Appellant. The trial court had the benefit of observing these witnesses first-hand, and determined that the verdict did not shock its conscience. Based upon the record before us, we discern no abuse in the trial court's exercise of its discretion in this regard.

In his second challenge, Appellant argues that the trial court erred by permitting the Commonwealth to argue inconsistent factual theories regarding the identities of the shooters at Appellant's and Davis' trials. At Davis' trial, the Commonwealth alleged that Davis was the shooter. At Appellant's trial, the Commonwealth argued that Appellant and Edwards were the shooters. However, the ballistics evidence proved that only two guns were fired. Prior to closing arguments, Appellant moved the trial court to preclude the Commonwealth from arguing that Appellant was one of the shooters. The trial court denied the motion. Appellant now contends that the court's ruling was in error. For the reasons that follow, we find this issue to be waived.

On May 29, 2012, Appellant filed his first Rule 1925(b) statement of errors complained of on appeal. Appellant did not include this issue in his concise statement. Rule 1925(b) requires Appellant to raise all of the issues that he intends to pursue on appeal in his concise statement of errors complained of on appeal. "Any issues not raised in a Pa.R.A.P. 1925(b) statement will be deemed waived." ***See Commonwealth v. Castillo***, 888 A.2d 775, 780 (Pa. 2005) (citing ***Commonwealth v. Lord***, 719 A.2d 306, 309 (Pa. 1998)).

In his statement, Appellant noted that, at the time of the filing, he was without the October 31, 2011 trial transcript. Appellant averred that he had all of the other necessary trial transcripts. Thus, Appellant specifically requested leave of court to supplement his concise statement once he had obtained the October 31, 2011 transcript. ***See*** Concise Statement of the Matters Complained of on Appeal, 5/29/2012, ¶¶4-8. On June 19, 2012, the trial court issued its final Rule 1925(a) opinion. The trial court did not rule upon Appellant's request for leave to supplement his Rule 1925(b) statement. The official trial docket indicates that the trial court, by order or otherwise, did not grant Appellant leave to supplement his statement. The certified record does not contain such an order. Nonetheless, on November 15, 2012, after a briefing schedule had been issued by this Court, Appellant filed a supplemental Rule 1925(b) statement, wherein Appellant raised this issue. The trial court did not issue a supplemental opinion addressing the issue.

Rule 1925(b) permits supplemental filings in two limited circumstances. First, Rule 1925(b)(2) states that, "[u]pon application of the appellant and for good cause shown, the judge **may** enlarge the time period initially specified or permit an amended or supplemental Statement to be filed." Pa.R.A.P. 1925(b)(2). While Appellant requested leave to supplement his statement, it is clear that the trial court did not enter any order granting Appellant leave to file a supplemental statement. Appellant did not have permission, as required by the rule, to file a supplemental

statement, and his waiver cannot be cured by such a supplemental statement.

Second, Rule 1925(b)(2) also states that, "[i]n extraordinary circumstances, the judge may allow for the filing of a Statement or amended or supplemental Statement nunc pro tunc." Pa.R.A.P. 1925(b)(2). The Note to the Rule elaborates as follows:

> In general, nunc pro tunc relief is allowed only when there has been a breakdown in the process constituting extraordinary circumstances. ***See, e.g.***, ***In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election***, 843 A.2d 1223, 1234 (Pa. 2004) ("We have held that fraud or the wrongful or negligent act of a court official may be a proper reason for holding that a statutory appeal period does not run and that the wrong may be corrected by means of a petition filed nunc pro tunc.") Courts have also allowed nunc pro tunc relief when "non-negligent circumstances, either as they related to appellant or his counsel" occasion delay. ***McKeown v. Bailey***, 731 A.2d 628, 630 (Pa. Super. 1999). However, even when there is a breakdown in the process, the appellant must attempt to remedy it within a "very short duration" of time. ***Id.***; ***Amicone v. Rok***, 839 A.2d 1109, 1113 (Pa. Super. 2003) (recognizing a breakdown in process, but finding the delay too long to justify nunc pro tunc relief).

Pa.R.A.P. 1925(b), note (citation modified).

Instantly, we detect no extraordinary circumstances that would warrant application of this provision of the rule. Appellant never asserted that a breakdown in the process occurred, nor did he posit any other circumstance envisioned by the rule. Moreover, a close inspection of the record demonstrates the complete absence of extraordinary circumstances. Appellant sought leave of court to supplement his concise statement because he had not yet received the October 31, 2011 transcript. However, the

motion to preclude the Commonwealth from presenting inconsistent theories was litigated on November 3, 2011, the transcript of which Appellant does not claim was missing. Additionally, the Commonwealth's actual presentation of the theory occurred during closing arguments on the same date. Thus, Appellant was in possession of all of the necessary materials to advance this claim at the time that he filed his initial statement, and no extraordinary circumstances warranted a nunc pro tunc supplement to Appellant's first concise statement. Consequently, because Appellant failed to include this issue in that concise statement, and no provisions in the rule excuse his failure to do so, Appellant's issue is waived. ***See Castillo***, *supra*.

In his final issue, Appellant argues that trial counsel was ineffective in advising Appellant to waive his right to a jury trial. We dismiss this claim without prejudice to Appellant's right to raise it in a subsequent Post-Conviction Relief Act ("PCRA") petition.[3] Recently, in ***Commonwealth v. Holmes***, ___ A.3d ___, 2013 WL 5827027 (Pa 2013), our Supreme Court considered "the reviewability of claims of ineffective assistance ("IAC") of counsel on post-verdict motions and direct appeal." ***Id.*** at *1. Following a comprehensive review of the language codified in the PCRA and decisions from our courts, the Supreme Court reaffirmed the principle that IAC claims must be deferred until collateral review, and, thus, are not reviewable on

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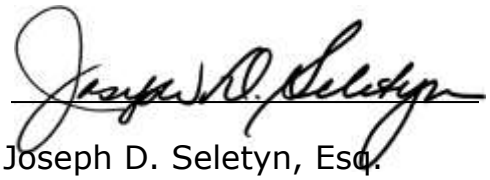
[3] ***See*** 42 Pa.C.S. §§ 9541-46.

direct appeal. ***Id.*** The Court crafted two exceptions to this general proscription. First, the Court held that a trial court may, in its discretion, entertain IAC claims where extraordinary circumstances exist such that review of the claim would best serve the interests of justice. ***Id.*** at *1, 14. Second, the Court "repose[d] discretion in trial courts" to review IAC claims during post-sentence motions "only if (1) there is good cause shown, and (2) the unitary review so indulged is preceded by the defendant's knowing and express waiver of his entitlement to seek PCRA review from his conviction and sentence, including an express recognition that the waiver subjects further collateral review to the time and serial restrictions of the PCRA." ***Id.*** at *1, 14-17.

Instantly, there is no indication in the record that extraordinary circumstances exist in this case such that Appellant's IAC claim warrants review on direct appeal or that Appellant expressly waived his right to PCRA review. ***See also Commonwealth v. Barnett***, 25 A.3d 371 (Pa. Super. 2011) (*en banc*) (holding that this Court cannot review ineffective assistance of counsel claims on direct appeal absent a defendant's waiver of PCRA review). Consequently, in light of ***Holmes***, we dismiss Appellant's claim of ineffective assistance of counsel, without prejudice to his ability to raise it in a subsequent PCRA petition, if he so chooses.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 11/22/2013