

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

ASHOKKUMAR GURU

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 160 EDA 2013

Appeal from the PCRA Order December 13, 2012  
In the Court of Common Pleas of Philadelphia County  
Criminal Division at No(s): CP-51-CR-0000107-2010

BEFORE: ALLEN, J., MUNDY, J., and FITZGERALD, J.\*

MEMORANDUM BY MUNDY, J.:

**FILED DECEMBER 10, 2013**

Appellant, Ashokkumar Guru, appeals from the December 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. On January 11, 2010, the Commonwealth filed an information charging Appellant with first-degree murder and possessing instruments of crime (PIC).<sup>1</sup> On June 16, 2010, Appellant entered a negotiated guilty plea

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\* Former Justice specially assigned to the Superior Court.

<sup>1</sup> 18 Pa.C.S.A. §§ 2502(a) and 907, respectively.

to first-degree murder. N.T., 6/16/10, at 23. In return for Appellant's guilty plea, the Commonwealth agreed to withdraw its notice of intent to seek the death penalty.<sup>2</sup> **Id.** at 14-15. That same day, the trial court imposed a sentence of life imprisonment without the possibility of parole. **Id.** at 25. Appellant did not file a post-sentence motion or a direct appeal.

On June 14, 2011, Appellant filed a timely *pro se* PCRA petition. The PCRA court appointed counsel, who filed an amended PCRA petition on June 12, 2012. On October 17, 2012, the Commonwealth filed a motion to dismiss Appellant's PCRA petition. On November 9, 2012, the PCRA court entered an order notifying Appellant of its intent to dismiss his PCRA petition without a hearing, pursuant to Pennsylvania Rule of Criminal Procedure 907. Appellant did not file a response to the Court's notice, and the PCRA court entered an order dismissing Appellant's PCRA petition on December 13, 2012. On January 11, 2013, Appellant filed a timely notice of appeal.<sup>3</sup>

On appeal, Appellant raises one issue for our review.

1. Where material issues of contested fact are raised should the [PCRA] court hold an evidentiary hearing to determine the merit of the issues?

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<sup>2</sup> Additionally, the Commonwealth *nolle prossed* Appellant's PIC charge. N.T., 6/16/10, at 2.

<sup>3</sup> Appellant and the PCRA court have complied with Pa.R.A.P. 1925.

Appellant's Brief at 7.

We begin by noting our well-settled standard of review. "Our review of a PCRA court's decision is limited to examining whether the PCRA court's findings of fact are supported by the record, and whether its conclusions of law are free from legal error." **Commonwealth v. Koehler**, 36 A.3d 121, 131 (Pa. 2012) (citation omitted). "[Our] scope of review is limited to the findings of the PCRA court and the evidence of record, viewed in the light most favorable to the prevailing party at the PCRA court level." **Id.** "The PCRA court's credibility determinations, when supported by the record, are binding on this Court." **Commonwealth v. Spatz**, 18 A.3d 244, 259 (Pa. 2011) (citation omitted). "However, this Court applies a *de novo* standard of review to the PCRA court's legal conclusions." **Id.**

We also note that a PCRA petitioner is not automatically entitled to an evidentiary hearing. "A PCRA court's decision denying a claim without a hearing may only be reversed upon a finding of an abuse of discretion." **Commonwealth v. Walker**, 36 A.3d 1, 17 (Pa. 2011) (citation omitted).

[T]he right to an evidentiary hearing on a [PCRA] petition is not absolute. It is within the PCRA court's discretion to decline to hold a hearing if the petitioner's claim is patently frivolous and has no support either in the record or other evidence. It is the responsibility of the reviewing court on appeal to examine each issue raised in the PCRA petition in light of the record certified before it in order to determine if the PCRA court erred in its determination that there were no genuine issues of material fact in controversy and in denying relief without conducting an evidentiary hearing.

**Commonwealth v. Wah**, 42 A.3d 335, 338 (Pa. Super. 2012) (internal citations omitted). Moreover, “an evidentiary hearing ... is not ... a fishing expedition for any possible evidence that may support some speculative claim of ineffectiveness.” **Commonwealth v. Keaton**, 45 A.3d 1050, 1094 (Pa. 2012) (citations and quotation omitted).

Instantly, Appellant argues that the PCRA court erred in denying him an evidentiary hearing. Appellant’s Brief at 10. Initially, Appellant alleges an issue of fact exists as to whether the entry of his plea was knowing and voluntary. **Id.** Appellant asserts that his trial counsel informed him that if he did not accept the negotiated plea agreement, the Commonwealth would immediately put him to death. **Id.** Appellant argues this advice rendered his trial counsel’s representation ineffective. **Id.** at 8.

In the alternative, Appellant argues an issue of fact exists as to his understanding of his counsel’s advice. **Id.** at 10. As Appellant does not speak or understand English, Appellant asserts that he believed his trial counsel informed him that the Commonwealth would immediately put him to death unless he pled guilty. **Id.** at 8. Thus, Appellant also alleges his trial counsel was ineffective for failing “to ensure that an interpreter properly conveyed” his advice to Appellant. **Id.**

“[I]t is well-established that counsel is presumed effective, and to rebut that presumption, the PCRA petitioner must demonstrate that counsel’s performance was deficient and that such deficiency prejudiced

him.” **Koehler, supra, citing Strickland v. Washington**, 466 U.S. 668, 687-691 (1984). Our Supreme Court articulated a three-part test to determine when an appellant has received ineffective assistance of counsel. “Appellant must demonstrate that: (1) the underlying legal issue has arguable merit; (2) counsel’s actions lacked an objective reasonable basis; and (3) Appellant was prejudiced by counsel’s act or omission.” **Id., citing Commonwealth v. Pierce**, 527 A.2d 973, 975 (Pa. 1987). Appellant must show that his claim meets all three prongs in order to be entitled to relief on appeal. **Commonwealth v. Thomas**, 44 A.3d 12, 17 (Pa. 2012) (citation omitted).

It is clear that a criminal defendant’s right to effective counsel extends to the plea process, as well as during trial. However, [a]llegations of ineffectiveness in connection with the entry of a guilty plea will serve as a basis for relief only if the ineffectiveness caused the defendant to enter an involuntary or unknowing plea. Where the defendant enters his plea on the advice of counsel, the voluntariness of the plea depends on whether counsel’s advice was within the range of competence demanded of attorneys in criminal cases.

**Wah, supra**, at 338-339 (citations and quotations omitted; brackets in original). “The law does not require that an appellant be pleased with the results of the decision to enter a guilty plea; rather [a]ll that is required is that [appellant’s] decision to plead guilty be knowingly, voluntarily and intelligently made.” **Commonwealth v. Brown**, 48 A.3d 1275, 1277 (Pa.

Super. 2012) (citations and quotations omitted; brackets in original), *appeal denied*, 63 A.3d 773 (Pa. 2013).

We note “[a] defendant is bound by the statements made during the plea colloquy, and a defendant may not later offer reasons for withdrawing the plea that contradict statements made when he pled.” ***Id.*** (citation omitted).

The longstanding rule of Pennsylvania law is that a defendant may not challenge his guilty plea by asserting that he lied while under oath, even if he avers that counsel induced the lies. ... A criminal defendant who elects to plead guilty has a duty to answer questions truthfully. We [cannot] permit a defendant to postpone the final disposition of his case by lying to the court and later alleging that his lies were induced by the prompting of counsel.

***Commonwealth v. Turetsky***, 925 A.2d 876, 881 (Pa. Super. 2007) (citations omitted; brackets in original), *appeal denied*, 940 A.2d 365 (Pa. 2007). ***See also Brown, supra.***

In the case *sub judice*, a language barrier existed between Appellant and both his counsel and the trial court. As a result, a duly sworn interpreter assisted Appellant, his counsel, and the trial court in executing Appellant’s oral and written guilty plea colloquies. ***See*** N.T., 6/16/10, at 2-3; Written Guilty Plea Colloquy, 6/16/10, at 1. During the execution of his oral colloquy, Appellant testified he was able to understand the court

proceedings and to communicate with his counsel with the aid of the interpreter.<sup>4</sup>

At the time of Appellant's plea, the trial court engaged in an extensive oral colloquy with Appellant regarding the rights he was waiving by entering into this negotiated plea. **See generally** N.T., 6/16/10, at 2-23. The pertinent portions of this colloquy follow.

[Trial Court]: Now, I understand that you have decided, after consulting fully with your lawyers, that you want to give up your right to a trial and your presumption of innocence forever and give up most of your appeal rights and plead guilty to first[-]degree murder. Is that correct?

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<sup>4</sup> The following exchange referencing the interpreter occurred on the record.

[Trial Court]: I'm Judge Lerner and I will be presiding over these proceedings today. I understand that you do not speak or understand English, therefore, we are proceeding with the assistance of a Punjabi interpreter.

With the help of this interpreter, are you able to understand everything that is being said in court today?

[Appellant]: Yes.

[Trial Court]: With the help of the interpreter, have you been able to communicate fully with your lawyers about this case?

[Appellant]: Yes.

N.T., 6/16/10, at 2-3.

[Appellant]: Yes.

...

[Trial Court]: All right. The penalties under Pennsylvania law for first[-]degree murder are either life in prison without parole or, under certain circumstances, the death penalty. Do you understand that?

[Appellant]: I understand.

[Trial Court]: In your case, the prosecutor originally informed you and your lawyers that if you were convicted of first[-]degree murder they intended to seek the death penalty against you. Do you understand that?

[Appellant]: I understand.

[Trial Court]: In return for your agreement to give up your right to a trial and to plead guilty to this offense, the district attorney has agreed to withdraw the death penalty notice. In other words, they have agreed not to seek the death penalty against you in return for your guilty plea. Do you understand that?

[Appellant]: I understand.

[Trial Court]: That means that if you enter this guilty plea and I accept it, I will sentence you to the only available penalty under Pennsylvania law for this crime, and that penalty is life in prison without parole. Do you understand that?

[Appellant]: I understand.

[Trial Court]: Except for the agreement by the district attorney to withdraw the death penalty notice, has anyone made any other promise to you of any kind in order to get you to give up your right to a trial?



[Appellant]: I have decided on my own with my attorney.

[Trial Court]: Has anybody tried to threaten you or force you to give up your right to a trial in this case?

[Appellant]: No.

...

[Trial Court]: Have you discussed everything about this case and about your rights with your lawyers?

[Appellant]: I understand.

[Trial Court]: That's not an "I understand" question.

[Appellant]: Yes, I understand.

[Trial Court]: Are you satisfied with their representation so far?

[Appellant]: Yes.

N.T., 6/16/10, at 13-16.

The record also contains Appellant's written guilty plea colloquy. **See** Written Guilty Plea Colloquy, 6/16/10, at 1-5. "[A]n official court interpreter" aided Appellant in completing his written colloquy. **Id.** at 1. In Appellant's written colloquy, he provided that he is pleading guilty to first-degree murder. **Id.** Appellant acknowledged that he "could receive the death penalty" for this charge, but, because of his plea, the Commonwealth promised to both recommend a sentence of "life" imprisonment and withdraw its "capital notice[.]" **Id.** The trial court additionally addressed

the validity of Appellant's written colloquy during its oral colloquy of Appellant.

[Trial Court]: I have in front of me this written guilty plea form with your name on it.

[Appellant]: Yes.

[Trial Court]: With the assistance of the interpreter, have you reviewed this form with your lawyers?

[Appellant]: Yes, I understand.

[Trial Court]: Down here at the bottom of page 4, is this your signature?

[Appellant]: Yes.

[Trial Court]: Does that signature mean that you are satisfied that after reviewing this form with your lawyers and the interpreter you understand and agree with everything on this form?

[Appellant]: Yes, I understand.

N.T., 6/16/10, at 16-17.

In addition, the PCRA court reasoned Appellant's instant claims lacked merit based upon the following facts.

[Appellant] stated that he understood all of his trial rights and that he was presumed innocent unless and until found guilty. [Appellant] stated that he had fully discussed his case with counsel[] and that he understood the elements of the charged [offense]. [Appellant] also stated that he understood the maximum possible sentence he could receive upon conviction; that no one threatened him or tried to force him to plead guilty; and that he was doing so of his own free will. In addition, [Appellant] stated that he was satisfied with counsel's

representation. [Appellant] then accepted the Commonwealth's recitation of the facts as accurate, and the [trial] court found that these acknowledged facts provided a sufficient basis for his guilty plea. Finally, in response to the [trial] court's questions, [Appellant] acknowledged that he had reviewed the written guilty plea form with his counsel[] and that he understood and agreed with everything in it.

PCRA Court Opinion, 2/15/13, at 4.

After careful review, we conclude the PCRA court did not abuse its discretion when it dismissed Appellant's petition without a hearing. The record reveals that Appellant knowingly and voluntarily entered his guilty plea and that Appellant understood his counsel's advice. Accordingly, we agree with the PCRA court that no issue of material fact exists as to Appellant's claims based upon the lack of their support within the record. **See Wah, supra.** We, therefore, conclude that Appellant's claims of ineffective assistance of counsel lack "arguable merit," and Appellant is not entitled to relief. **Koehler, supra.**

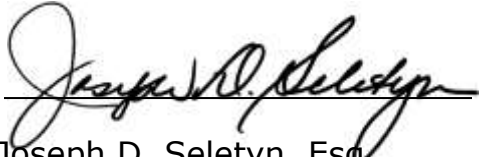
Based on the foregoing, we conclude the PCRA court did not abuse its discretion when it dismissed Appellant's PCRA petition without a hearing. **See Wah, supra; Walker, supra.** Accordingly, the PCRA court's December 13, 2012 order is affirmed.

Order affirmed.

Justice Fitzgerald files a Dissenting Statement.

J-S61027-13

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 12/10/2013