

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
NADER ALI,	:	
	:	
Appellant	:	No. 1660 EDA 2012

Appeal from the PCRA Order Entered May 25, 2012,
In the Court of Common Pleas of Philadelphia County,
Criminal Division, at No. CP-51-CR-0307651-2005.

BEFORE: FORD ELLIOTT, P.J.E., BENDER and SHOGAN, JJ.

MEMORANDUM BY SHOGAN, J.: Filed: February 21, 2013

Appellant, Nader Ali, appeals from the order denying relief of his petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-9546. We affirm.

In Appellant's direct appeal, a panel of this Court presented the tragic facts of the case, as offered by the trial court, as follows:

The trial court has filed a Pa.R.A.P. 1925(a) opinion providing an apt factual history of the case such that we reproduce it here:

Nader Ali (hereinafter . . . "Appellant") and Lea Sullivan, the decedent, first met in 2002 during an orientation for incoming medical students at Jefferson Medical College in the City and County of Philadelphia. The two were classmates and acquaintances but were not close or intimate friends.

In the spring of 2004, Appellant suffered a precipitous decline in his mental health. In April, while vacationing in Florida, he suffered a breakdown and was hospitalized. When he returned to Philadelphia, Appellant was admitted to the emergency

department at Jefferson University Hospital and was subsequently transferred to the psychiatric unit at Bryn Mawr Hospital, where he stayed from April 9 through April 14, 2004. He was again admitted to the Bryn Mawr Hospital for psychiatric care April 21 through April 29, 2004. Because of his worsening mental condition, Appellant was placed on medical leave from Jefferson Medical College in May 2004. Ali returned to his parents' home in Franklin Lakes, New Jersey, where he received further treatment at local psychiatric hospitals.

During this time Appellant became fixated with Lea Sullivan. While still studying at Jefferson, he approached her and told her about the significance of her first name in the Kabbalah religion and asked her personal questions about her religion. She later told friends this conversation made her uncomfortable. Ali went to her parents' home and vandalized a car parked in the driveway. Ali also placed several calls to Lea Sullivan while he was away from school on medical leave. Appellant ultimately decided that Lea Sullivan was the evil incarnation of a Kabbalistic sage.

On Sunday, November 7, 2004, Appellant returned to Philadelphia to attack Lea Sullivan. He had spent the six weeks prior to the incident planning the attack. He went to the house she shared with Stephanie Gill and other roommates near Jefferson, in the 900 block of Locust Street. Stephanie Gill and Lea Sullivan spoke with Appellant, discussing his status at the school and asking the purpose of his visit. He told them there was nothing left for him in Philadelphia and he wanted to see people who had meant something to him. Ms. Gill noticed Appellant was acting nervous and appeared unkempt, especially as compared to how she remembered him acting and looking while he was still a student at Jefferson. Ms. Gill also noticed that Lea was uncomfortable with Appellant in their house, so after approximately twenty minutes, Ms. Gill told Appellant she had things to do and Ms. Sullivan had to go to the grocery store, prompting Appellant to leave. After Appellant left, Ms. Sullivan told Ms. Gill that Appellant had previously called her and his visit made her nervous. She asked if Ms. Gill thought they were safe, and, after being reassured by Stephanie Gill, she left the house and walked to the grocery store.

Appellant followed Lea Sullivan to the Whole Foods grocery store located at 10th and South Streets in the City and County of Philadelphia. He watched her enter the store and waited for her to exit. When she exited the store at around 2 P.M., Appellant walked towards her wearing a ski mask and brandishing a baseball bat. Appellant struck her in the head, and after she fell to the ground, continued to bludgeon her until an eyewitness ran at him, yelling for him to stop. Lea Sullivan was hit at least twelve times, with more than one blow being directed to her head. After Appellant stopped beating her, he took off his ski mask, and ran towards his car parked on South Street.

A rescue unit arrived on the scene and took Lea Sullivan to the emergency room at Jefferson Hospital. She died the next day, November 8, 2004, in the hospital. The cause of her death was multiple blunt force injuries. An autopsy revealed she sustained a fractured skull and multiple contusions to her brain, arms, and chest.

Police arrested [Appellant] at his parents' home in New Jersey on November 8, 2004. Witnesses noted Appellant's license plate and gave this information to police. Police also obtained a photo of Appellant from Jefferson University and compiled a photo array, from which witnesses later identified him. A warrant for Appellant's arrest and search warrants for his house and car were issued. His car and home were searched, and police found the baseball bat used to kill Lea Sullivan in the trunk of [Appellant's] car. He was taken into custody in New Jersey where he was committed to a psychiatric hospital and then subsequently extradited to Philadelphia where he was held at Norristown State Hospital to await trial.

Commonwealth v. Ali, 2823 EDA 2006, unpublished memorandum at 2-4, 964 A.2d 427 (Pa. Super. filed October 3, 2008), *appeal denied*, 602 Pa. 655, 980 A.2d 109 (2009) (citing Trial Court Opinion, 7/12/07, at 1-4).

On June 26, 2006, a jury convicted Appellant of the crimes of guilty but mentally ill of first degree murder and possession of an instrument of crime. On September 11, 2006, the trial court sentenced Appellant to serve

a term of incarceration of life without the possibility of parole on the murder conviction and a consecutive term of incarceration of two and one-half to five years on the possession of an instrument of crime conviction.

Appellant filed a timely direct appeal, which this Court denied on October 3, 2008. Appellant subsequently filed a petition for allowance of appeal with the Pennsylvania Supreme Court, which was denied on June 26, 2009.

On February 18, 2010, Appellant filed the instant PCRA petition. On May 25, 2012, the PCRA court denied the PCRA petition without a hearing. This appeal followed.

Appellant presents the following issues for our review:

I. WAS TRIAL COUNSEL INEFFECTIVE BECAUSE HE FAILED TO OBJECT EITHER PRIOR TO TRIAL, PRIOR TO THE COURT'S FINAL CHARGE, OR IMMEDIATELY AFTER THE CHARGE, TO PENNSYLVANIA'S STATUTORY FRAMEWORK FOR NOT GUILTY BY REASON OF INSANITY AND GUILTY BUT MENTALLY ILL VERDICTS AS VIOLATING DUE PROCESS OF LAW AS APPLIED IN THIS CASE BECAUSE THE JURY IS NOT GIVEN ANY STANDARDS FOR MAKING ITS DECISION AND NEITHER VERDICT CAN BE SAID TO HAVE A "COMMON-SENSE CORE OF MEANING"?

II. WAS TRIAL COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE COURT'S CHARGE THAT FAILED TO INFORM THE JURY THAT IF IT FOUND APPELLANT NOT GUILTY BY REASON OF INSANITY HE WOULD – WITHOUT QUESTION - BE COMMITTED TO A MAXIMUM SECURITY MENTAL HEALTH FACILITY AND KEPT THERE FOR WHATEVER PERIOD OF TIME UNTIL IT WAS CLEAR TO A COURT HE WAS NO LONGER DANGEROUS?

III. WAS TRIAL COUNSEL INEFFECTIVE FOR FAILING TO OBJECT ON DUE PROCESS GROUNDS TO THE COURT'S CHARGE - AS PER THE STANDARD SUGGESTED CRIMINAL JURY

INSTRUCTIONS - THAT IF THE ACCUSED IS "SICK RATHER THAN BAD" THE VERDICT SHOULD BE NOT GUILTY BY REASON OF INSANITY, BUT IF THE ACCUSED IS BOTH "SICK AND BAD" HE SHOULD BE FOUND GUILTY BUT MENTALLY ILL?

Appellant's Brief at 6.

Our standard of review for an order denying PCRA relief is whether the record supports the PCRA court's determination, and whether the PCRA court's determination is free of legal error. ***Commonwealth v. Phillips***, 31 A.3d 317, 319 (Pa. Super. 2011), *appeal denied*, ___ Pa. ___, 42 A.3d 1059 (2012) (citing ***Commonwealth v. Berry***, 877 A.2d 479, 482 (Pa. Super. 2005)). The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record. ***Id.*** (citing ***Commonwealth v. Carr***, 768 A.2d 1164, 1166 (Pa. Super. 2001)).

Appellant's issues challenge the effective assistance of trial counsel. In order to succeed on a claim of ineffective assistance of counsel, an appellant must demonstrate (1) that the underlying claim is of arguable merit; (2) that counsel's performance lacked a reasonable basis; and (3) that the ineffectiveness of counsel caused the appellant prejudice. ***Commonwealth v. Pierce***, 567 Pa. 186, 203, 786 A.2d 203, 213 (2001). Prejudice requires proof that there is a reasonable probability that, but for counsel's error, the outcome of the proceeding would have been different. ***Id.*** "A failure to satisfy any prong of the ineffectiveness test requires rejection of the claim of ineffectiveness." ***Commonwealth v. Daniels***, 600

Pa. 1, 18, 963 A.2d 409, 419 (2009) (citing ***Commonwealth v. Sneed***, 587 Pa. 318, 899 A.2d 1067 (2006)). Moreover, when it is clear that appellant has failed to meet the prejudice prong of his ineffective assistance of counsel claim, the claim may be disposed of on that basis alone, without a determination of whether the first two prongs have been met. ***Commonwealth v. Baker***, 880 A.2d 654, 656 (Pa. Super. 2005).

In addition, we are mindful that claims of ineffective assistance of counsel are not self-proving. ***Commonwealth v. Wharton***, 571 Pa. 85, 99, 811 A.2d 978, 986 (2002). “[A] post-conviction petitioner must, at a minimum, present argumentation relative to each layer of ineffective assistance, on all three prongs of the ineffectiveness standard...” ***Commonwealth v. D’Amato***, 579 Pa. 490, 500, 856 A.2d 806, 812 (2004). “[A]n underdeveloped argument, which fails to meaningfully discuss and apply the standard governing the review of ineffectiveness claims, simply does not satisfy Appellant’s burden of establishing that he is entitled to relief.” ***Commonwealth v. Bracey***, 568 Pa. 264, 273 n.4, 795 A.2d 935, 940 n.4 (2001).

Initially, Appellant claims that trial counsel was ineffective for failing to object prior to trial, prior to the court’s final charge, or immediately after the charge, to Pennsylvania’s statutory framework for not guilty by reason of insanity and guilty but mentally ill verdicts, imposed by 18 Pa.C.S.A.

§ 314(c)(1) and 18 Pa.C.S.A. § 315. According to Appellant, these statutes violate due process of law as applied in this case because the jury was not given any standards for making its decision and the instructions were incomprehensible.

Appellant has failed to develop this claim of ineffective assistance. Aside from the allegations that there is merit to the underlying claim, Appellant presents no analysis concerning whether trial counsel had a reasonable basis for the inaction, or whether Appellant suffered prejudice due to the inaction. Furthermore, as noted by the PCRA court, the constitutionality of the challenged statutes has been repeatedly upheld. **See** PCRA Court Opinion, 7/5/12, at 4 (citing **Commonwealth v. duPont**, 730 A.2d 970 (Pa. Super. 1999), *appeal denied*, 561 Pa. 669, 749 A.2d 466 (2000); **Commonwealth v. Eck**, 654 A.2d 1104 (Pa. Super. 1995); and **Commonwealth v. Trill**, 543 A.2d 1106 (Pa. Super. 1988), *appeal denied*, 522 Pa. 603, 562 A.2d 826 (1989)). Accordingly, we are constrained to conclude that Appellant has failed to establish his claim that trial counsel was ineffective. Therefore, this claim lacks merit.

In his second issue, Appellant argues that trial counsel was ineffective for failing to object to the trial court's charge which failed to inform the jury that, if it found Appellant not guilty by reason of insanity, Appellant would be committed to a maximum security mental health facility and kept there until

it was clear to a court that Appellant was no longer dangerous. Again, our review reflects that Appellant has failed to develop this claim of ineffective assistance beyond bald allegations concerning the appropriateness of the jury instructions as stated above. Appellant has failed to develop an argument concerning whether trial counsel had a reasonable basis for the failure to object to the jury charge, or how Appellant suffered prejudice as a result of trial counsel's inaction. Thus, we conclude that Appellant has failed to establish his claim that trial counsel was ineffective.

In his final issue, Appellant argues that trial counsel was ineffective for failing to object on due process grounds when the trial court instructed the jury with the standard criminal jury instructions that if the accused is "sick rather than bad" the verdict should be not guilty by reason of insanity, but if the accused is both "sick and bad" the verdict should be guilty but mentally ill. Our review, again, reflects that Appellant has failed to develop the claim of trial counsel's ineffective assistance beyond an allegation that the jury instructions were not appropriate.¹ Appellant has failed to develop an argument concerning whether trial counsel had a reasonable basis for the

¹ We note that a claim that the jury instructions provided by the trial court were not appropriate is somewhat disingenuous in light of the fact that Appellant has conceded in his appellate brief that "these instructions were expressly approved" in multiple appellate decisions which are binding upon this Court. **See** Appellant's Brief at 36. In addition, Appellant indicates that "the claims here are raised so as to preserve them for federal habeas corpus." *Id.* at 36. **See also** Appellant's Brief at 8, 37.

failure to object to the jury charges, or how Appellant suffered prejudice because of trial counsel's inaction. Thus, we again conclude that Appellant has failed to establish his claim that trial counsel was ineffective.

Order affirmed.