

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
DEVON R. WEAVER,		No. 1697 MDA 2012
Appellant		

Appeal from the Order entered September 14, 2012,
in the Court of Common Pleas of Berks County,
Criminal Division, at No(s): CP-06-CR-0002845-2011.

BEFORE: DONOHUE, ALLEN, and OTT, JJ.

MEMORANDUM BY ALLEN, J.:

Filed: March 15, 2013

Devon R. Weaver ("Appellant") appeals *pro se* from the order denying his petition for relief pursuant to the Post Conviction Relief Act ("PCRA"). 42 Pa.C.S.A. §§ 9541-46. We grant the Commonwealth's motion to dismiss and quash the appeal.

The PCRA court summarized the pertinent facts and procedural history as follows:

[Appellant] was charged with one (1) felony count of Possession With Intent to Deliver a Controlled Substance and two (2) misdemeanor counts of Possession of a Controlled Substance. On November 29, 2011, [Appellant] entered into an open guilty plea to the one (1) felony count of Possession Within Intent to Deliver a Controlled Substance. On that same date, [Appellant] was sentenced to serve no less than twenty-one (21) to no more than forty-two (42) months with a credit of one hundred and fifty-three (153) days of time served. The two counts of misdemeanor possession were dismissed by the Court.

[Appellant] represented himself at the guilty plea and sentencing hearing. No post-sentence motions or appeals were filed.

[Appellant] filed his instant [PCRA Petition] on December 20, 2011. [PCRA counsel] was appointed to represent [Appellant] on December 23, 2011, regarding the disposition of his PCRA Petition. [PCRA counsel] was directed by this Court to file, after careful review of the record and the PCRA Petition, either an amended PCRA [P]etition, pursuant to the Pennsylvania Rule of Criminal Procedure 905, detailing [Appellant's] eligibility for relief or a "No-Merit" Letter, pursuant to ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988) and ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1988), detailing the reasons why this Court should allow her to withdraw as counsel.

PCRA counsel reviewed the entire official record, communicated with [Appellant], and researched the relevant and applicable law. Based upon that review, on July 18, 2012, PCRA counsel filed a "No-Merit Letter, pursuant to ***Turner*** and ***Finley***, requesting leave to withdraw as counsel and a brief in support of that request. In the "No-Merit" Letter, counsel expressed that, in her professional judgment, there are no genuine issues of material fact that [Appellant] can raise to show that his claims have any arguable merit. Following an independent review, it is also the opinion of this Court that [Appellant's] PCRA Petition is lacking in merit and no purpose would be served by any further proceedings in this matter.

PCRA Court Opinion, 8/22/12, at 4-5.

The PCRA court issued Pa.R.Crim.P. 907 notice of its intent to dismiss Appellant's petition on August 22, 2012. After considering Appellant's response to this notice, the PCRA court, by order entered September 14, 2012, dismissed Appellant's petition. This appeal followed. Both Appellant and the PCRA court have complied with Pa.R.A.P. 1925.

Appellant raises the following issues:

1. Did the Commonwealth deliberately fail to turn over to [Appellant] exculpatory evidence?
2. Did the Commonwealth deliberately violate [*Brady v. Maryland*, 373 U.S. 83 (1963)]?
3. Did the Commonwealth fail to account for the discrepancy of the . . . evidence that was relied upon to convict [Appellant]?
4. Did the Commonwealth fail to explain or account for as to how [sic] according to the Property/evidence sheet of the City of Reading Police Department states or rather lists that on July 8, 2011 seven pieces of evidence was collected during [Appellant's] arrest of June 30, 2011, but only two pieces out of the seven collected were admitted into evidence by Officer Jodi Ryan?
5. Did the Commonwealth fail to list by name or description the actual two pieces of evidence submitted into the evidence room by Officer Jodi Ryan?
6. Did the Commonwealth fail to account or explain as to how on July 13, 2011[,] Officer Jodi Ryan, according to the Property Withdrawal Receipt, sent the following items to the Pennsylvania State Police Bethlehem Regional Laboratory for testing analysis: Item #1: Pill bottle w/pink baggie-Cocaine; Item #2: Pink bottle w/1 clear baggie-Cocaine; Item #3: (4) glassine packets-Heroin; Item #4: Clear baggie-Cocaine. There is or was no [listing] of twenty packets of Heroin allegedly found on the person of [Appellant] sent for analysis?
7. Did the Commonwealth fail to account or explain the Analysis Report listing the testing of positive (2) packets [sic] of heroin.
8. Did the Commonwealth engage in Obstruction of Justice?
9. Did the Commonwealth engage in prosecutorial Misconduct?

10. Did the trial court err and abuse [its] discretion when it accepted [Appellant's] guilty plea all the while knowing that it was not made knowingly, voluntary, or intelligent [sic]?

11. Did the trial court err and abuse [its] discretion by not considering that [Appellant] was unaware of the exculpatory evidence?

12. Did [the] trial court err and abuse [its] discretion by not allowing [Appellant] to have an evidentiary hearing?

13. Did [the] trial court abuse [its] discretion by not allowing [Appellant] to withdraw his guilty plea and proceed to trial?

Appellant's Brief at 1-2.

Before reaching Appellant's issues, we address the Commonwealth's Motion to Dismiss Appeal for Appellant's failure to comply with the mandates of Pa.R.A.P. 2101. Rule 2101 of the Pennsylvania Rules of Appellate Procedure provides that "[b]riefs . . . shall conform in all material respects with the requirements of these rules as nearly as the circumstances of the particular case will admit, otherwise they may be suppressed, and, if the defects are in the brief . . . of the appellant and are substantial, the appeal or other matter may be quashed or dismissed." Rule 2111 of the Pennsylvania Rules of Appellate Procedure provides the following requirements:

Rule 2111. Brief of the Appellant

(a) General rule. The brief of the appellant, except as otherwise prescribed by these rules, shall consist of the following matters, separately and distinctly entitled and in the following order:

- (1) Statement of Jurisdiction.
 - (2) Order or other determination in question.
 - (3) Statement of both the scope of review and the standard of review.
 - (4) Statement of the questions involved.
 - (5) Statement of the case.
 - (6) Summary of argument.
 - (7) Statement of the reasons to allow an appeal to challenge the discretionary aspects of sentence, if applicable.
 - (8) Argument for appellant.
 - (9) A short conclusion stating the precise relief sought.
 - (10) The opinions and pleadings specified in Subdivisions (b) and (c) of this rule.
 - (11) In the Superior Court, a copy of the statement of errors complained of on appeal, filed with the trial court pursuant to Rule 1925(b), or an averment that no order requiring a statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b) was entered.
- (b) Opinions below.** There shall be appended to the brief a copy of any opinions delivered by any court or other government unit below relating to the order or other determination under review, if pertinent to the questions involved. If an opinion has been reported, that fact and the appropriate citation shall also be set forth.

Pa.R.A.P. 2111(a), (b).

Appellant's "brief" does not conform with a majority of the above requirements. Although Appellant lists the aforementioned thirteen issues in his statement of issues, he presents his supporting arguments in summary fashion in only three parts, and provides a conclusory "DISCUSSION," in which he asks this court to grant his appeal "or any such thing as may be appropriate under the law." Appellant's Brief at 8.

Appellant's failure "to provide us with a proper brief [renders us] unable to conduct meaningful judicial review." ***Commonwealth v. Greenawalt***, 796 A.2d 996, 997 (Pa. Super. 2002). This Court has summarized:

While this Court is willing to liberally construe materials filed by a *pro se* litigant, we note that Appellant is not entitled to any particular advantage because [he] lacks legal training. As our Supreme Court has explained, "any layperson choosing to represent [himself] in a legal proceeding must, to some reasonable extent, assume the risk that [his] lack of expertise and legal training will prove [his] undoing.

Greenawalt, 796 A.2d at 997 (citation omitted).

In sum, because the defects in Appellant's brief are substantial and preclude this Court from conducting meaningful appellate review, we quash this appeal.¹

¹ Nevertheless, we note that, because Appellant could have raised all his claims in a direct appeal, they are considered waived under the PCRA. ***See generally***, 42 Pa.C.S.A. § 9544(b).

Motion to Dismiss granted. Appeal quashed.