

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee	:	
v.	:	
NICK BULLOCK,	:	
Appellant	:	No. 1748 EDA 2012

Appeal from the PCRA Order entered on May 11, 2012
in the Court of Common Pleas of Philadelphia County,
Criminal Division, No. CP-51-CR-0700791-2004

BEFORE: FORD ELLIOTT, P.J.E., LAZARUS and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED MAY 08, 2013

Nick Bullock ("Bullock") appeals, *pro se*, from the Order dismissing his first Petition for relief filed pursuant to the Post Conviction Relief Act ("PCRA"). **See** 42 Pa.C.S.A. §§ 9541-9546. We affirm.

The PCRA court set forth the procedural history underlying this appeal as follows:

On August 26, 2005, following a jury trial before the Honorable Renee Cardwell Hughes, [Bullock] was convicted of third-degree murder (F-1), firearms not to be carried without a license (F-3), and possessing an instrument of crime [] (M-1). On October 28, 2005, [Bullock] was sentenced to a cumulative term of 26 to 52 years of incarceration. [Bullock] filed timely postsentence motions, which were denied by the [trial c]ourt on November 4, 2005. A timely [N]otice of appeal was filed and, on April 28, 2008, [Bullock's] judgment of sentence was affirmed by the Superior Court. [**Commonwealth v. Bullock**, 948 A.2d 818 (Pa. Super. 2008)]. On [April] 14, 2009, [Bullock's] petition for allowance of appeal was denied. [**Commonwealth v. Bullock**, 968 A.2d 1280 (Pa. 2009)]. On August 20, 2009, [Bullock] filed a *pro se* [P]etition pursuant to the [PCRA]. PCRA counsel was

appointed and, after investigation, [counsel] filed a **Finley**^[FN] letter on January 6, 2012, having concluded that [Bullock's] PCRA [P]etition and the trial record presented no issues of arguable merit. After conducting its own independent review, th[e PCRA c]ourt found that [Bullock's] claims[] were without merit and, on January 24, 2012, [the court] issued a [N]otice to [Bullock] of its intention to dismiss his [P]etition without a hearing, as required by Pa.R.Crim.P. 907 ([Rule] 907 Notice). In a letter dated January 29, 2012, [Bullock] requested an extension until April 30, 2012[,] to respond to the [c]ourt's [Rule] 907 Notice. Th[e PCRA c]ourt granted the extension. On April 25, 2012, th[e PCRA c]ourt received [Bullock's *pro se*] Objection to the [Rule] 907 Notice wherein [Bullock] raised two new claims. On May 11, 2012, PCRA counsel filed an Amended **Finley** letter addressing the two new claims. Th[e PCRA c]ourt found that [Bullock's] additional claims were without merit and, on May 11, 2012, th[e c]ourt dismissed [Bullock's PCRA P]etition consistent with the [Rule] 907 Notice.

^[FN] **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super.[]) 1988) [(*en banc*)]. The **Finley** letter also complied with **Commonwealth v. Friend**, 896 A.2d 607 (Pa. Super. 2006). PCRA counsel was then permitted to withdraw.

PCRA Court Opinion, 7/11/12, at 1-2 (some footnotes omitted).

In response to Bullock's timely *pro se* Notice of appeal, the PCRA court ordered him to file a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal. Bullock timely filed a *pro se* Concise Statement.

On appeal, Bullock raises the following issues for our review:

- I. Did the trial court abuse its discretion when it improperly instructed the jury on the charge of self-defense[?]
- II. Did the PCRA court err when it accepted PCRA counsel's "no-merit" letter and granted [counsel's] request to withdraw where counsel failed to file an amended [PCRA] Petition on [Bullock's] claims of trial counsel's ineffectiveness[?]

Brief for Appellant at 4 (issues renumbered; capitalization omitted).

In reviewing a challenge to an order denying a PCRA petition, our standard of review is “whether the determination of the PCRA court is supported by the evidence of record and is free of legal error. The PCRA court’s findings will not be disturbed unless there is no support for the findings in the certified record.” ***Commonwealth v. Gandy***, 38 A.3d 899, 902 (Pa. Super. 2012) (citations omitted).

Bullock first argues that the judge at his trial committed legal error in giving an inadequate and legally incorrect jury instruction regarding self-defense. **See** Brief for Appellant at 11-12. Bullock, however, concedes that he did not raise this claim in his court-ordered Rule 1925(b) Concise Statement. ***Id.*** at 11. Accordingly, this issue is waived. **See** Pa.R.A.P. 1925(b)(4)(vii) (providing that “[i]ssues not included in the Statement ... are waived”); ***Commonwealth v. Lord***, 719 A.2d 306, 309 (Pa. 1998) (same). Moreover, this claim is waived and not cognizable under the PCRA because Bullock could have raised this claim on direct appeal but failed to do so. **See** 42 Pa.C.S.A. § 9544(b) (stating that “an issue is waived if the petitioner could have raised it but failed to do so ... on appeal”); **see also id.** § 9543(a)(3) (providing that the PCRA excludes waived issues from the class of cognizable PCRA claims).

Next, Bullock appears to argue that since this was his first post-conviction relief proceeding, and he was thus entitled to the representation of competent counsel, the PCRA court erred by (1) merely “accepting” Bullock’s PCRA counsel’s no-merit letter; and (2) dismissing Bullock’s PCRA

Petition without a hearing. Brief for Appellant at 8, 10. Bullock points out that “[t]he PCRA [P]etition underlying this appeal was [Bullock’s] first opportunity to challenge the ineffectiveness of trial counsel,” and, according to Bullock, the PCRA court erred in permitting PCRA counsel to withdraw where counsel did not file an amended PCRA Petition setting forth the additional claims of trial counsel’s ineffectiveness that Bullock wanted counsel to raise.¹ ***Id.*** at 10.

It is well established that a PCRA petitioner is not entitled to an evidentiary hearing as a matter of right, and a PCRA court’s decision to dismiss a PCRA petition without a hearing may only be reversed upon a finding of an abuse of discretion. ***Commonwealth v. McLaurin***, 45 A.3d 1131, 1135-36 (Pa. Super. 2012).

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.

¹ Bullock’s appellate brief does not identify the ineffectiveness claims that Bullock wanted PCRA counsel to raise. We are precluded from guessing the ineffectiveness claims that Bullock wished to raise, and we could deem these claims waived on this basis. ***See Commonwealth v. Beshore***, 916 A.2d 1128, 1140 (Pa. Super. 2007) (*en banc*) (noting that this Court will not develop an argument for an appellant and that the failure to develop an adequate argument in an appellate brief may result in waiver of the claim under Pennsylvania Rule of Appellate Procedure 2119).

Commonwealth v. Walls, 993 A.2d 289, 295 (Pa. Super. 2010) (citations omitted).

As stated above, Bullock filed a *pro se* "Objection" to the PCRA court's Rule 907 Notice, asserting, *inter alia*, two additional ineffectiveness claims concerning Bullock's trial counsel (hereinafter "the additional ineffectiveness claims"). In response to Bullock's Objection, PCRA counsel filed a thorough Amended **Finley** letter, which spanned nine pages, wherein counsel addressed, *inter alia*, the additional ineffectiveness claims and explained why those claims lacked merit. **See** Amended **Finley** letter, 5/11/12, at 4-5. PCRA counsel further averred there were no other viable issues that could be raised in an amended petition. ***Id.*** at 1.

After a thorough and independent review of (1) Bullock's *pro se* PCRA Petition; (2) Bullock's Objection to the PCRA court's Rule 907 Notice; (3) PCRA counsel's original **Finley** letter and the Amended **Finley** letter; and (4) the applicable law, we discern no error by the PCRA court in determining that all of the claims raised in Bullock's PCRA Petition and his Objection (including the additional ineffectiveness claims) were patently frivolous.² **See** **Walls**, 993 A.2d at 295. Relatedly, since PCRA counsel properly determined that the additional ineffectiveness claims lacked merit and were patently frivolous, there was no reason for PCRA counsel to file an amended

² Regarding Bullock's various ineffectiveness claims challenging trial counsel's representation, both the PCRA court and PCRA counsel cogently addressed these claims and properly determined that they were wholly frivolous. **See** PCRA Court Opinion, 7/11/12, at 5-8; Amended **Finley** letter, 5/11/12, at 4-5.

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PCRA petition setting forth those frivolous claims. Accordingly, we conclude that the PCRA court properly dismissed Bullock's PCRA Petition without a hearing and correctly permitted PCRA counsel to withdraw from representation.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Karen Gambrell". The signature is fluid and cursive, with a horizontal line extending from the end of the name.

Prothonotary

Date: 5/8/2013