J. S19044/13
**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

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| COMMONWEALTH OF PENNSYLVANIA, | : | IN THE SUPERIOR COURT OF PENNSYLVANIA |
| v. | : | |
| JAMES EARL GEORGE, | : | |
| Appellant | : | No. 1752 WDA 2012 |

Appeal from the PCRA Order entered October 1, 2012,
in the Court of Common Pleas of Butler County,
Criminal Division, at No(s): CP-10-CR-0000330-2007
CP-10-CR-0000605-2008.

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| COMMONWEALTH OF PENNSYLVANIA, | : | IN THE SUPERIOR COURT OF PENNSYLVANIA |
| v. | : | |
| JAMES EARL GEORGE, | : | |
| Appellant | : | No. 1817 WDA 2012 |

Appeal from the PCRA Order entered November 8, 2012,
in the Court of Common Pleas of Butler County,
Criminal Division, at No(s): CP-10-CR-0000330-2007
CP-10-CR-0000605-2008.

BEFORE: SHOGAN, OTT, and STRASSBURGER*, JJ.

MEMORANDUM BY STRASSBURGER, J.: FILED: June 5, 2013

* Retired Senior Judge assigned to the Superior Court.

James Earl George (Appellant) appeals *pro se* from the order entered November 8, 2012, dismissing his timely petition filed pursuant to the Post Conviction Relief Act (PCRA).[1] We affirm.

On October 17, 2008, following a jury trial at CP-10-CR-0000605-2008 (605-2008), Appellant was convicted of multiple counts of assault of a corrections officer and resisting arrest which stemmed from Appellant's volatile behavior during a cell extraction at the Butler County Prison. On November 13, 2008, following a jury trial at CP-10-CR-0000330-2007 (330-2007), Appellant was convicted of numerous sexual offenses associated with the rape and assault of a minor female victim. On February 27, 2009, during a consolidated sentencing proceeding, the trial court sentenced Appellant as a "third strike" offender at both cases and imposed two concurrent mandatory minimum sentences of 25 to 50 years' incarceration. Appellant filed a timely consolidated appeal with this Court. On September 3, 2010, a panel of this Court affirmed Appellant's judgment of sentence as to both cases. ***See Commonwealth v. George***, 13 A.3d 972 (Pa. Super. 2010) (unpublished memorandum). Appellant's petition for allowance of appeal with our Supreme Court was denied on September 26, 2011. ***See Commonwealth v. George***, 612 Pa. 697 (Pa. 2011) (table).

On December 5, 2011, Appellant, *pro se*, filed a PCRA petition at each docket number. The trial court appointed counsel and, after consideration of

[1] 42 Pa.C.S. §§ 9541-9546.

Appellant's claims, counsel filed with the PCRA court a consolidated motion to withdraw as counsel, accompanied by 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) (*en banc*).

On October 2, 2012, in compliance with Pa.R.Crim.P. 907, the PCRA court provided Appellant with notice of its intent to dismiss his petitions without a hearing and advised Appellant that he had 20 days within which to respond. Additionally, the PCRA court granted PCRA counsel's request to withdraw. Appellant did not file a response to the PCRA court's 907 notice. Instead, he filed *pro se* a notice of appeal with this Court on October 12, 2012, which was docketed at 1752 WDA 2012. On October 16, 2012, the PCRA court entered an order noting that Appellant's notice of appeal was premature as the PCRA court had not yet dismissed Appellant's *pro se* petition. Thus, the PCRA court indicated it would wait until the expiration of the time for Appellant to respond to its 907 notice before addressing Appellant's notice of appeal.[2,3]

[2] On November 1, 2012, this Court returned Appellant's appeal to the lower court for payment of the appropriate filing fee or an order certifying Appellant's indigent status.

[3] At 1752 WDA 2012, Appellant purports to appeal from the PCRA court's October 1, 2012 Rule 907 notice. As the trial court correctly points out, such notice did not dispose of Appellant's PCRA petition and is, therefore, not a final order. ***See*** PA.R.A.P. 341(b)(1) ("A final order is any order that . . . disposes of all claims and of all parties.") Accordingly, we quash the appeal docketed at 1752 WDA 2012. We note that this disposition does not limit our ability to address Appellant's substantive claims, which were raised

On November 8, 2012, the PCRA court dismissed Appellant's petition and granted Appellant leave to proceed *in forma pauperis* on appeal. On November 15, 2012, Appellant filed with this Court a second notice of appeal, which was docketed at 1817 WDA 2012. The PCRA court did not request Appellant file a concise statement pursuant to Pa.R.A.P. 1925(b), and none was filed. This appeal followed.

Appellant's statements of questions involved present various assertions with respect to both 330-2007 and 605-2008,[4] including jurisdictional challenges, allegations of trial counsel's ineffectiveness, and claims regarding the sufficiency of the evidence.

Specifically with respect to 330-2007, the sexual assault case, Appellant raises the following arguments:

> 1. Did the trial court [err] when it sentenced [Appellant] to 25-50 [years] under 42 Pa.C.S. §9714?
>
> 2. Did the trial court abuse its discretion when counsel for [Appellant] filed a motion to [withdraw] due to a civil suit pending, naming counsel David DeFazio as a defendant by [Appellant]. [The trial court] allowed counsel to [withdraw] his [motion to withdraw as counsel] despite [the] reasons stated within motion [*sic*] and advice by attorney for David DeFazio not to represent [Appellant]?
>
> 3. Did Butler County police officers Chad Rensel and Lt. Pate illegally search and plant evidence at [Appellant's] home before a legal search warrant was obtained?

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in Appellant's subsequent appeal from the PCRA court's November 8, 2012 order dismissing his PCRA petition, which is docketed at 1817 WDA 2012.

[4] Despite the fact that his convictions were consolidated for the purposes of this appeal, Appellant has filed two appellate briefs, one for each lower court case number, which we will consider together for ease of disposition.

> 4. Was there [prosecutorial] misconduct prejudicial misconduct [*sic*] when the court allowed Sgt. Peffer [to] testify for Lt. Pate and Rensel [*sic*], Butler police officers, who [] at the suppression hearing and trial did not show to testify?
>
> 5. Did police officer Mayhugh [perjure] himself under oath [stating] that he never came to [Appellant's] home before he obtained a search warrant?
>
> 6. Did police officers Lt. Pate, patrolman Mayhugh and Detective Patrick Cannon conspire to make DNA [results] positive and prosecuted [*sic*] [Appellant] illegally?
>
> 7. Were there any inconsistencies in the DNA testing and (the sperm) was it too old to tell when it was deposited?

Appellant's Brief 330-2007, at "iiii".

With respect to 605-2008, the assault of a corrections officer case, Appellant raises the following claims of error.

> 1. Did the [Appellant] receive an illegal sentence of 25-50 years under the three felony strike [law,] 42 Pa.C.S. §9714(A)(2)?
>
> 2. Did the trial court [err] when it allowed testimony of physical evidence by [victims] who saw the evidence but never presented it as evidence at trial?
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> 3. Was counsel for [Appellant] ineffective when he abandoned his questioning of [victim's] injury to his eye at the preliminary hearing and the three days it took [victim] to seek medical treatment for his wrist injury after incident at work?
>
> 4. Was counsel for [Appellant] ineffective when he made an [*sic*] statement to the trial judge saying that [Appellant] wanted him to object to photos as evidence and that he was OK with the photos as evidence at the side bar discussion?
>
> 5. Did the prosecutor commit prosecutorial misconduct by knowingly suppressing physical evidence (shampoo bottle) and did the prosecutor [commit] malicious prosecution without evidence to support facts?

> 6. Did the evidence support the convictions?
>
> 7. Was the evidence against Appellant supported by any physical evidence?
>
> 8. Were there any violation [*sic*] of state, federal [law] made due to no recordings of cameras, camcorder or photos of scene at time of incident?
>
> 9. Should this case be dismissed without prejudice?

Appellant's Brief 605-2008, at 2-3.

We address Appellant's claims mindful of the following legal principles. In reviewing the propriety of the PCRA court's dismissal of Appellant's PCRA petition, we are limited to determining whether the PCRA court's findings are supported by the record and whether the order in question is free of legal error. ***Commonwealth v. Ragan***, 923 A.2d 1169, 1170 (Pa. 2007). "Great deference is granted to the findings of the PCRA court, and these findings will not be disturbed unless they have no support in the certified record." ***Commonwealth v. Boyd***, 923 A.2d 513, 515 (Pa. Super. 2007). In order to be eligible for PCRA relief, a defendant must plead and prove by a preponderance of the evidence that his conviction or sentence arose from one or more of the errors listed at 42 Pa.C.S. § 9543(a)(2).[5] These issues must be neither previously litigated nor waived. 42 Pa.C.S. § 9543(a)(3).

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[5] That the conviction or sentence resulted from one or more of the following:

> (i) A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

In both cases, Appellant first claims that his sentence is illegal. Appellant's Brief 330-2007 at "iiii" and 605-2008 at 2. Although couched as a legality of sentence issue, in his argument Appellant appears to contend that the trial court lacked jurisdiction to impose a mandatory minimum sentence for second or subsequent offenders due to amendments made to the 1874 Pennsylvania Constitution and the lack of a "general savings clause applicable to criminal prosecutions." Appellant's Brief 330-2007 at 4 and 605-2008 at 6. Specifically, Appellant attempts to argue that the current version of 42 Pa.C.S. § 9714, relating to sentences for second and

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> (ii) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
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> (iii) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.
>
> (iv) The improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.
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> * * *
>
> (vi) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.
>
> (vii) The imposition of a sentence greater than the lawful maximum.
>
> (viii) A proceeding in a tribunal without jurisdiction.

42 Pa.C.S. § 9543(a)(2).

subsequent violent offenses, was enacted without constitutional foundation due to the improper amendment of the Pennsylvania Constitution in 1967-68. As a result of this oversight, Appellant claims the trial court should have sentenced him under the previously enacted version of the statute, which Appellant mistakenly believes imposed a seven-year look back period on qualifying previous violent offenses. ***Id***.[6]

In support of his claim, Appellant relies upon a footnote included in ***Commonwealth v. Bangs***, 393 A.2d 720 (Pa. Super. 1978). In ***Bangs***, this Court was tasked with considering the effect of an amendment to the definition of statutory rape where a statutory rape prosecution was in progress on the effective date of the amendment. The amendment at issue reduced the age of consent from sixteen to fourteen and was enacted without a clause specifically permitting ongoing statutory rape prosecutions to continue under the prior definition. In a footnote, we stated that, "with respect to the absence of a saving clause, we note that Pennsylvania is among the handful of states presently without a general saving clause applicable to criminal prosecutions." ***Id***. at 271 n.2. Significantly, however, this Court's observation about Pennsylvania's lack of a general savings clause had no bearing upon the outcome of ***Bangs*** and does not support

[6] In 2000, the legislature eliminated subsection (b) (presumption of high risk dangerous offender) and subsection (c) (high risk dangerous offender) from the section 9714. ***See*** Acts 2000, Dec. 20, P.L. 811, No. 113, § 2. Appellant alleges that the mandatory sentences imposed in the instant cases would not have been applicable had subsection (b) existed at the time of sentencing. Due to our disposition of this issue, we decline to speculate on the viability of Appellant's sentence under a previous version of the statute.

Appellant's conclusion herein that absence of a general savings clause in our constitution rendered the amendment to 42 Pa.C.S. § 9714 (eliminating the high risk offender designation) invalid. Thus, Appellant's reliance on our footnote in ***Bangs*** is misplaced. Accordingly, we conclude that he is not entitled to relief.

We turn now to the remaining claims raised in Appellant's brief at 330-2007. In his second claim, Appellant alleges that the trial court erred in denying Appellant's request for new appointed counsel after Appellant decided to sue his court-appointed trial attorney in federal court. ***See*** Court Order (330-2007), 7/14/2008. Because Appellant has failed to preserve this claim by raising it with the PCRA court, we find it waived. ***See Commonwealth v. Rainey***, 928 A.2d 215, 226 (Pa. 2007) (stating that claims not raised in PCRA petition are waived); ***see also Commonwealth v. Rounsley***, 717 A.2d 537, 538 (Pa. Super. 1988) (stating that an issue is deemed waived "if the petitioner could have raised it but failed to do so before trial, at trial, during unitary review, on appeal or in a prior state post-conviction proceeding") (quoting 42 Pa.C.S. § 9544(b)).

In his remaining issues related to 330-2007, Appellant makes various challenges to the sufficiency of, and the weight attributed to, the evidence presented to sustain his convictions. These issues are not cognizable under the PCRA and should have been raised on direct appeal. Accordingly, we deem those issues waived. ***See*** 42 Pa.C.S. § 9544(b).

We now turn to the remaining issues raised by Appellant in his petition with respect to 605-2008. Appellant's second, fifth, sixth, seventh, and eighth issues challenge the sufficiency and weight of the evidence produced at trial. As discussed ***supra***, these claims are waived.

In his third claim at 605-2008, Appellant argues that counsel was ineffective for "abandon[ing] questioning [of victim-officer] Matthew Salopek about his injury to his eye" during Appellant's preliminary hearing. Appellant's Brief 605-2008 at 8. Because Appellant has failed to raise this issue before the PCRA court, we conclude that it is waived. ***See Rainey, supra***. Similarly, Appellant has waived his fourth claim, that trial counsel was ineffective for failing to object to photographs entered into evidence by the Commonwealth, by failing to raise it in his PCRA petition. ***Id.***; Appellant's Brief 605-2008 at 8.

Even if not waived, Appellant still is not entitled to relief as he has failed to develop his ineffective assistance of counsel arguments. This Court has held an appellant cannot present bald assertions in support of relief.

> It is not for this Court to develop an appellant's arguments. Rather, it is the appellant's obligation to present developed arguments and, in so doing, apply the relevant law to the facts of the case, persuade us there were errors, and convince us relief is due because of those errors. If an appellant fails to do so, we may find the argument waived.

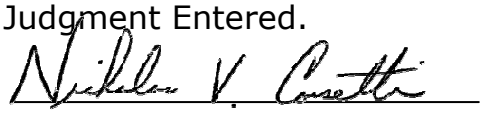
***Commonwealth v. Rush***, 959 A.2d 945, 950-51 (Pa. Super. 2008).

In light of our foregoing discussion, Appellant has failed to persuade us the PCRA court's decision to dismiss his *pro se* petitions without a hearing

was in error. Specifically, Appellant has failed to present any meritorious claims for our review. Consequently, we affirm the order dismissing the PCRA petition.

Order affirmed.

Judgment Entered.



Deputy Prothonotary

Date: June 5, 2013