NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. TODD MAURICE EADDY, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1869 EDA 2012

Appeal from the PCRA Order January 3, 2012
In the Court of Common Pleas of Delaware County
Criminal Division at No.: CP-23-CR-0000744-2008

BEFORE: BOWES, J., ALLEN, J., and PLATT, J.*

MEMORANDUM BY PLATT, J. Filed: February 20, 2013

Appellant, Todd Maurice Eaddy, appeals *pro se*[1] from the order denying his first petition pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541–9546.[2] We affirm.

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* Retired Senior Judge assigned to the Superior Court.

[1] Docket entries confirm that Appellant appealed *pro se* from the order dismissing his PCRA petition, and filed a Motion to Waive Counsel. There is no dispute that after a hearing on the motion on March 13, 2012 by videoconference, the PCRA court granted Appellant permission to proceed *pro se*. (***See*** Commonwealth's Brief, at 4).

[2] Appellant purports to appeal from an order dated December 30, 2011. There is no such order in the record before us. However, there is no dispute that the order appealed from denied PCRA relief, and docket entries confirm the order denying PCRA relief was filed January 3, 2012. We have amended the caption accordingly.

After a routine traffic stop on I-95, Pennsylvania State Police Trooper Joseph Thompson discovered almost two kilograms of cocaine and $22,510.00 during a consensual search of the rental car operated by Appellant. The suppression court denied Appellant's motion to suppress the evidence obtained, but granted the suppression of his statements. A jury convicted Appellant of possession with intent to deliver a controlled substance, and possession of a controlled substance. The trial court sentenced him to a term of not less than sixty nor more than 120 months' incarceration, which included a mandatory minimum sentence pursuant to 18 Pa.C.S.A. § 7508(a)(3)(iii) (aggregate weight of compound or mixture of the substance involved is at least 100 grams). This Court affirmed judgment of sentence on direct appeal. (***See Commonwealth v. Eaddy***, 29 A.3d 847 (Pa. Super. 2011) (unpublished memorandum)). Appellant filed an untimely petition for allowance of appeal, which our Supreme Court returned to him.

Appellant filed a *pro se* petition for PCRA relief on October 17, 2011. The PCRA court appointed counsel, who filed an amended petition. On November 30, 2011, the PCRA court issued notice pursuant to Pa.R.Crim.P. 907, (filed on December 2, 2011), of its intent to dismiss the petition

without a hearing. As previously noted, a docket entry confirms that the PCRA court entered an order denying the petition on January 3, 2012.[3]

On January 20, 2012, Appellant filed a timely notice of appeal *pro se,*[4] and on the same day, a motion to waive counsel, as previously noted. The PCRA court filed a Rule 1925(a) opinion on July 19, 2012.

Appellant raises two questions for our review, first, asserting that PCRA counsel was ineffective, and, secondly, claiming error in the PCRA court's denial of review of his claim that direct appeal counsel was ineffective. (***See*** Appellant's Brief, at 3).

At the outset we note that Appellant's claim of ineffective assistance by post-conviction counsel is waived. ***See*** Pa.R.A.P. 302(a) ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal."); ***Commonwealth v. Pitts***, 981 A.2d 875, 880 n.4 (Pa. 2009) (holding issue of whether PCRA counsel was ineffective was waived where

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[3] Subsequent to the issuance of this order the PCRA court judge, the Honorable Frank T. Hazel, retired. This case was re-assigned to the Honorable John P. Capuzzi, Sr.

[4] Although the notice of appeal is date-stamped as received on January 24, 2012, it apparently was not docketed until June 22, 2012. The successor PCRA court judge ordered that the notice of appeal shall be considered timely filed, even though it was not actually filed until June 22, 2012. (***See*** Order, 6/25/12). We defer to the PCRA court on timeliness. Similarly, we defer to the PCRA court's determination that, in light of independent court delays, and other reasons noted, Appellant's issues on appeal are not waived for failure to file a Rule 1925(b) statement. (***See*** PCRA Court Opinion, 7/19/12, at unnumbered 2 n.4).

appellant failed to argue ineffectiveness to PCRA court prior to his PCRA appeal); ***see also Commonwealth v. Ford***, 44 A.3d 1190, 1201 (Pa. Super. 2012) (holding that, "absent recognition of a constitutional right to effective collateral review counsel, claims of PCRA counsel ineffectiveness cannot be raised for the first time after a notice of appeal has been taken from the underlying PCRA matter") (citing, *inter alia*, ***Pitts***).

Moreover, it would not merit relief. Appellant asserts that PCRA counsel filed an amended petition which simply incorporated Appellant's own *pro se* claims, but omitted a memorandum of law also prepared by Appellant.[5] (***See*** Appellant's Brief, at 5). He claims that PCRA counsel should have challenged the findings of the suppression court as clearly erroneous. (***See id.*** at 8).

First, we note that "[a]s a prefatory matter, although this Court is willing to construe liberally materials filed by a *pro se* litigant, *pro se* status generally confers no special benefit upon an appellant." ***Commonwealth v. Lyons***, 833 A.2d 245, 251-52 (Pa. Super. 2003), *appeal denied*, 879 A.2d 782 (Pa. 2005) (citation omitted).

Next, we note that our standard of review is well-settled.

> In reviewing the denial of PCRA relief, we examine whether the PCRA court's determination "is supported by the record and free of legal error." ***Commonwealth v. Rainey***, 593 Pa. 67,

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[5] We note for clarification that Appellant's summary of argument inverts the issues raised in the statement of questions presented.

928 A.2d 215, 223 (2007). To be entitled to PCRA relief, appellant must establish, by a preponderance of the evidence, that his conviction or sentence resulted from one or more of the enumerated errors in 42 Pa.C.S. § 9543(a)(2), his claims have not been previously litigated or waived, and "the failure to litigate the issue prior to or during trial . . . or on direct appeal could not have been the result of any rational, strategic or tactical decision by counsel." 42 Pa.C.S. § 9543(a)(3), (a)(4). An issue is previously litigated if "the highest appellate court in which [appellant] could have had review as a matter of right has ruled on the merits of the issue." 42 Pa.C.S. § 9544(a)(2). An issue is waived if appellant "could have raised it but failed to do so before trial, at trial, . . . on appeal or in a prior state post conviction proceeding." 42 Pa.C.S. § 9544(b).

In order to obtain relief on a claim of ineffectiveness, a PCRA petitioner must satisfy the performance and prejudice test set forth in ***Strickland v. Washington***, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In Pennsylvania, we have applied the ***Strickland*** test by looking to three elements: the petitioner must establish that: (1) the underlying claim has arguable merit; (2) no reasonable basis existed for counsel's actions or failure to act; and (3) the petitioner suffered prejudice as a result of counsel's error such that there is a reasonable probability that the result of the proceeding would have been different absent such error. ***Commonwealth v. Pierce***, 515 Pa. 153, 527 A.2d 973, 975 (1987). Additionally, we note, the Sixth Amendment right to counsel is recognized "not for its own sake," but because of the effect it has on the accused's right to a fair trial. ***See Lockhart v. Fretwell***, 506 U.S. 364, 369, 113 S.Ct. 838, 122 L.Ed.2d 180 (1993); ***see also Strickland***, 466 U.S. at 689, 104 S.Ct. 2052. For these reasons, counsel is presumed to have rendered effective assistance. Finally, both the U.S. Supreme Court and [our Supreme] Court have made clear that a court is not required to analyze the elements of an ineffectiveness claim in any particular order of priority; instead, if a claim fails under any necessary element of the ***Strickland*** test, the court may proceed to that element first. ***Strickland***, ***supra***; ***Commonwealth v. Albrecht***, 554 Pa. 31, 720 A.2d 693, 701 (1998). Counsel cannot be deemed ineffective for failing to raise a meritless claim. ***Commonwealth v. Jones***, 590 Pa. 202, 912 A.2d 268, 278 (2006).

Commonwealth v. Sepulveda, 2012 WL 5936029, *2 -*3 (Pa. 2012).

Here, in Appellant's first question, he claims that PCRA counsel was ineffective for merely incorporating Appellant's *pro se* issues in the amended petition, and for excluding the legal argument presented in Appellant's own memorandum of law. (***See*** Appellant's Brief, at 3). Appellant argues that his claim has arguable merit because counsel's conduct amounts to a failure of meaningful participation. (***See id.*** at 8). He claims counsel had no reasonable basis for this strategy. (***See id.***). Appellant concludes that had counsel presented his own *pro se* arguments the outcome would have been different. (***See id.*** at 9). We disagree.

We note that our Supreme Court has repeatedly held that ineffectiveness claims will not be considered in a vacuum. We will not find counsel ineffective where appellant fails to allege with specificity sufficient facts in support of his claim. ***See Commonwealth v. Thomas***, 744 A.2d 713, 716 (Pa. 2000).

Here, Appellant baldly asserts that PCRA counsel's strategic decision not to include his (Appellant's) *pro se* memorandum of law was ineffective, but fails to develop pertinent argument in support of the claim, or even to state what those arguments were. (***See*** Appellant's Brief, at 6-9). This is insufficient to overcome the presumption of effectiveness. ***See Thomas***, ***supra***.

Additionally, Appellant fails to reference where in the record his legal arguments could be found. (***See*** Appellant's Brief, at 6-9); ***see also***

Pa.R.A.P. 2119(c). "We shall not develop an argument for [the appellant], nor shall we scour the record to find evidence to support an argument[.]" ***J.J. DeLuca Co., Inc. v. Toll Naval Associates***, 2012 WL 4841441, *5 (Pa. Super. filed October 12, 2012) (quoting ***Commonwealth v. Beshore***, 916 A.2d 1128, 1140 (Pa. Super. 2007), *appeal denied sub nom.* ***Commonwealth v. Imes***, 603 Pa. 680, 982 A.2d 509 (2009)). Appellant's first claim fails.

Further, we note for the completeness of the analysis, that, as observed by both the PCRA court and the Commonwealth, Appellant's suppression issues were previously litigated and rejected. PCRA counsel cannot be deemed ineffective for failing to raise a meritless claim. ***See Sepulveda***, ***supra***. Appellant's first claim would fail for all these reasons as well.

In his second issue, Appellant argues that direct appeal counsel was ineffective because he failed to challenge the findings of the suppression court. (***See id.***). Appellant claims he was subject to an unreasonable search and seizure. (***See id.*** at 15). We disagree. He asks this Court for remand with direction to appoint replacement counsel, and a finding that the PCRA court erred by "depriv[ing] him of the standard of 'reasonableness' imposed upon the exercise of di[s]cretion by government officials[.]" (***Id.*** at 16). We decline.

Appellant argues that direct appeal counsel failed to challenge the denial of suppression. (***See*** Appellant's Brief, at 10-16). This is simply false. Counsel raised, and this Court on direct appeal reviewed, at length the issue of suppression, including the underlying facts. (***See Commonwealth v. Eaddy***, No. 1350 EDA 2010, at 4-12) (Pa. Super. 2011) (unpublished memorandum)). Appellant's claim is unsupported by the record, and, accordingly, legally frivolous. His second issue fails.

Moreover, Appellant cites, but fails to follow, case authority on the proof of a stand-alone claim of appellate ineffectiveness. (***See*** Appellant's Brief, at 10 (citing ***Commonwealth v. Koehler***, 36 A.3d 121, 141-42 (Pa. 2012))). Specifically, Appellant fails "to identify a single fact omitted by counsel or a single principle of law overlooked by this Court on direct appeal, which would establish a reasonable probability that the outcome of the appeal would have been different." ***Koehler***, ***supra*** at 141.

Rather, Appellant engages in a long repetition of the evidence, apparently to challenge various factual premises. (***See*** Appellant's Brief, at 11-15). In effect, Appellant seeks for this Court to engage in an improper and impermissible re-weighing of the evidence considered by the suppression court. We decline to do so. Appellant misapprehends our standard of review and his attempted re-assessment of the evidence fails to address the three prong standard of ineffectiveness under the ***Pierce*** test. ***See Sepulveda***, ***supra***. Appellant's arguments are waived and would not

merit relief. The PCRA court's decision is supported by the record and free of legal error.

Order affirmed.