

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

BRAHEEM HAYWARD,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1918 EDA 2012

Appeal from the PCRA Order of May 25, 2012,  
in the Court of Common Pleas of Philadelphia County,  
Criminal Division at No. CP-51-CR-0004648-2008

BEFORE: ALLEN, OTT and COLVILLE\*, JJ.

MEMORANDUM BY COLVILLE, J.:

**FILED DECEMBER 02, 2013**

This is an appeal from the order which dismissed Appellant's petition filed pursuant to the Post Conviction Relief Act ("PCRA") as meritless. We affirm.

Our standard of review of the denial of PCRA relief is limited to examining whether the court's rulings are supported by the evidence of record and free of legal error. ***Commonwealth v. Anderson***, 995 A.2d 1184, 1189 (Pa. Super. 2010). Further, it is an appellant's burden to persuade this Court that the PCRA court erred and that relief is due. ***Commonwealth v. Bennett***, 19 A.3d 541, 543 (Pa. Super. 2011).

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\*Retired Senior Judge assigned to the Superior Court.

Appellant first challenges the PCRA court's dismissal of his petition where, he argues, he raised two valid claims of trial counsel's ineffectiveness. A PCRA petitioner may be entitled to relief if the petitioner effectively pleads and proves facts establishing ineffectiveness of prior counsel. ***Commonwealth v. Miner***, 44 A.3d 684, 687 (Pa. Super. 2012).

To establish ineffectiveness, a petitioner must plead and prove the underlying claim has arguable merit, counsel's actions lacked any reasonable basis, and counsel's actions prejudiced the petitioner. Counsel's actions will not be found to have lacked a reasonable basis unless the petitioner establishes that an alternative not chosen by counsel offered a potential for success substantially greater than the course actually pursued. Prejudice means that, absent counsel's conduct, there is a reasonable probability the outcome of the proceedings would have been different.

***Id.*** (internal citations omitted).

Appellant first claims the PCRA court erred in dismissing his claim that trial counsel was ineffective for failing to advise Appellant to take a plea offer made by the Commonwealth. The PCRA court found that Appellant failed to demonstrate any factual basis for this claim. In his petition, Appellant offered only bald assertions of the existence of a plea offer. PCRA counsel, in his no-merit letter, noted that he was unable to uncover any factual basis for this claim. On appeal, Appellant does no better, arguing only, “. . . trial defense counsel gave [Appellant] bad advise [sic] as to taking an offer by the Commonwealth to plead guilty pursuant to negotiations. . . . as to the negotiated guilty plea [Appellant] would have received a lesser sentence.” Appellant's Brief at 7. Appellant did not, and does not, offer any specifics of the alleged offer or point to any support from the record to establish the

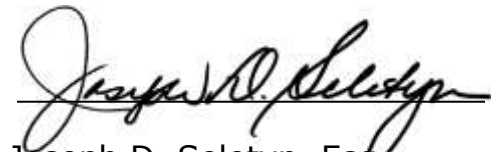
factual basis for his claim. He has failed to persuade us that he was entitled to PCRA relief thereupon.

Appellant next claims the PCRA court erred in dismissing his claim that trial counsel was ineffective for failing to file a motion pursuant to Pa.R.Crim.P. 600 (concerning prompt trial). The PCRA court found this claim to be without merit. In a fashion similar to the above-discussed claim, Appellant fails to refute the PCRA court's holding with an argument supported by citation to the certified record, in violation of Pa.R.A.P. 2119(c). Appellant did not, and does not, develop any serious record-based analysis of what should be a fact-intensive claim; thus, he has failed to persuade us that he was entitled to relief thereupon.

Appellant's second issue challenges the ineffective assistance of his PCRA counsel. This claim is waived because Appellant failed to raise it before the PCRA court. Pa.R.A.P. 302(a); ***Commonwealth v. Pitts***, 981 A.2d 878, 880 n.4 (Pa. 2009).

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 12/2/2013