

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

JEFFREY KRUEGER,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1195 WDA 2013

Appeal from the PCRA Order Entered July 15, 2013  
In the Court of Common Pleas of Allegheny County  
Criminal Division at No(s): CP-02-CR-0012273-2004

BEFORE: BENDER, P.J.E., WECHT, J., and PLATT, J.\*

MEMORANDUM BY BENDER, P.J.E.:

**FILED JULY 11, 2014**

Appellant, Jeffrey Krueger, appeals from the July 15, 2013 order denying his petition for post-conviction relief under the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. We affirm.

On November 7, 2007, Appellant proceeded to a nonjury trial. At the conclusion of trial, Appellant was found guilty of two counts of aggravated assault, two counts of recklessly endangering another person, and two violations of the Motor Vehicle Code, 75 Pa.C.S. § 101 *et. seq.* On February 6, 2008, Appellant was sentenced to four years' probation. This Court affirmed Appellant's judgment of sentence on November 9, 2009. **See**

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\* Retired Senior Judge assigned to the Superior Court.

***Commonwealth v. Krueger***, 988 A.2d 722 (Pa. Super. 2009) (unpublished memorandum).

On February 24, 2010, Appellant filed a timely *pro se* PCRA petition. The court subsequently appointed counsel, who filed a motion to withdraw as counsel on July 8, 2010, and an accompanying ***Turner/Finley***<sup>1</sup> “no merit” letter explaining Appellant lacked any meritorious issues worthy of PCRA relief. On October 6, 2010, the PCRA court dismissed all issues in Appellant’s PCRA petition without a hearing, with the exception of one claim regarding restitution. Following a hearing on Appellant’s restitution claim, the court denied PCRA relief on February 25, 2011. On December 20, 2011, this Court vacated the PCRA court’s order, and remanded for a hearing regarding whether Appellant’s appeal counsel, Matthew Debbis, Esq., was ineffective for failing to file a Petition for Allowance of Appeal to the Supreme Court of Pennsylvania on Appellant’s behalf. ***See Commonwealth v. Krueger***, 40 A.3d 199 (Pa. Super. 2011) (unpublished memorandum). At the close of that hearing on June 13, 2013, the court issued an order denying Appellant’s petition. Appellant filed a timely notice of appeal, and a timely concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Herein, he presents two issues for our review:

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<sup>1</sup> ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988), and ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1988 (*en banc*)).

- I. Whether the [PCRA] court erred in finding counsel effective when counsel knew [] Appellant intended to continue his appeal and counsel failed to file a [Petition for Allowance of Appeal]?
- II. Whether the [PCRA] court erred in finding counsel effective when he failed to consult with [] Appellant regarding the advantages and disadvantages of filing an appeal to the Supreme Court?

Appellant's brief at 3.

Before addressing Appellant's issues, we note that "[t]his Court's standard of review from the grant or denial of post-conviction relief is limited to examining whether the lower court's determination is supported by the evidence of record and whether it is free of legal error." **Commonwealth v. Morales**, 701 A.2d 516, 520 (Pa. 1997) (citing **Commonwealth v. Travaglia**, 661 A.2d 352, 356 n.4 (Pa. 1995)). Where, as here, a petitioner claims that he received ineffective assistance of counsel, our Supreme Court has stated that:

[A] PCRA petitioner will be granted relief only when he proves, by a preponderance of the evidence, that his conviction or sentence resulted from the "[i]neffective 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." Generally, counsel's performance is presumed to be constitutionally adequate, and counsel will only be deemed ineffective upon a sufficient showing by the petitioner. To obtain relief, a petitioner must demonstrate that counsel's performance was deficient and that the deficiency prejudiced the petitioner. A petitioner establishes prejudice when he demonstrates "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." ... [A] properly pled claim of ineffectiveness posits that: (1) the underlying legal issue has arguable merit; (2) counsel's actions lacked an objective reasonable basis; and

(3) actual prejudice befell the petitioner from counsel's act or omission.

***Commonwealth v. Johnson***, 966 A.2d 523, 532-33 (Pa. 2009) (citations omitted).

Appellant's first argument is that Attorney Debbis was ineffective because he failed to discuss with Appellant the advantages and disadvantages of filing a petition for allowance of appeal to our Supreme Court. Rather, Appellant claims, their consultation was inadequate as it "was limited to addressing the odds of winning." Appellant's brief at 12. The record belies Appellant's claim.

Attorney Debbis testified at the June 13, 2013 PCRA hearing that he corresponded with Appellant via email, and those emails were entered into evidence at the hearing. N.T. Hearing, 6/13/13, at 10. In these emails, Attorney Debbis informed Appellant that filing a petition for allowance of appeal could potentially delay Appellant's obtaining PCRA relief, as he expected it would take the Supreme Court "six to nine months" to rule on Appellant's petition for allowance of appeal. Commonwealth's brief, Appendix, at 4. Attorney Debbis advised Appellant that, given the record in the instant case, as well as the applicable law, the Supreme Court was unlikely to grant Appellant relief on his challenge to the weight of the evidence supporting his conviction. ***Id.*** Moreover, Attorney Debbis discussed the Supreme Court's standard of review on appeal, as well as the fact that appeals to the Supreme Court are not of right. ***Id.*** at 1 - 2. Attorney Debbis informed Appellant that the Supreme Court selects a small

number of cases for review, and Appellant's case did not present a novel question of law the Court would be likely to review. **Id.**

In addition, Attorney Debbis testified at the PCRA hearing that Appellant's concerns regarding his conviction were "PCRA-type," *i.e.*, ineffectiveness of counsel, claims. **Id.** at 13. He informed Appellant that such claims were cognizable in a PCRA petition. **Id.** In response, Appellant "asked [Debbis] for advice in filing the PCRA." **Id.** at 14. As such, we conclude that the record was sufficient to establish that Attorney Debbis acted effectively when he consulted with Appellant regarding his filing of a petition for allowance of appeal to our Supreme Court.

Next, Appellant claims that Attorney Debbis failed to file a petition for allowance of appeal after Appellant directed him to do so. We conclude that this claim is likewise belied by the record. As the emails clarify, Attorney Debbis repeatedly and explicitly asked Appellant if he wished to file a petition for allowance of appeal. Commonwealth's brief, Appendix, at 2, 3, 4, 5, 7, 9. Appellant ultimately told Attorney Debbis not to file the petition. **Id.** at 1. Appellant's penultimate email to Attorney Debbis asked if the Supreme Court could consider an issue not raised in the Superior Court. **Id.** at 2. Attorney Debbis informed Appellant that the Supreme Court's review would be limited to the issues raised in Superior Court. **Id.** In his final email to Attorney Debbis, Appellant stated: "If the fact that both their testimonies are false can not be presented to the high court then I guess I'll forgo it, and move on to the PCRA. Do you have any suggestions on how I

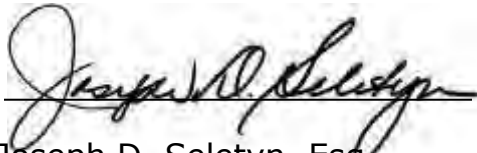
might approach the PCRA petition?" **Id.** at 1. Accordingly, the record is sufficient to establish that Attorney Debbis was not ineffective when he did not file a petition for allowance of appeal to our Supreme Court on Appellant's behalf.

In sum, our review of the record reveals that the PCRA court did not err in concluding that Attorney Debbis acted effectively. Accordingly, we affirm the order denying Appellant's petition.

Order affirmed.

Judge Wecht did not participate in the consideration or decision of this case.

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: 7/11/2014