

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

GREGORY J. TALMONTI,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1460 WDA 2013

Appeal from the PCRA Order July 15, 2013
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0001862-2009

BEFORE: GANTMAN, P.J., BENDER, P.J.E., and OTT, J.

MEMORANDUM BY BENDER, P.J.E.:

FILED JULY 1, 2014

Appellant, Gregory J. Talmonti, appeals from the trial court's order, entered July 15, 2013, denying his petition for relief filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. We affirm.

In January 2009, Appellant led the 15-year-old male victim to Appellant's basement, where he proceeded to kiss the victim. Appellant directed the victim to perform oral sex on him, and Appellant digitally penetrated the victim's anus. **See** Trial Court Opinion, 09/02/2011, at 3-4.

Appellant pleaded guilty to Involuntary Deviate Sexual Intercourse (two counts), Indecent Assault, Corruption of Minors, and Unlawful Contact

with a Minor.¹ In exchange for his plea, the Commonwealth withdrew charges of Rape and Aggravated Indecent Assault.² Further, the Commonwealth and Appellant agreed to a negotiated sentence of 10 to 20 years' incarceration.

Appellant was sentenced as agreed. Following a hearing, the trial court designated Appellant a sexually violent predator (SVP) subject to lifetime registration under Megan's Law. **See** 42 Pa.C.S. § 9792. Appellant did not file a motion to withdraw his plea. In his direct appeal, Appellant did not challenge the validity of his plea, but rather his SVP designation. This Court affirmed, and the Pennsylvania Supreme Court denied Appellant's petition for allowance of appeal. **See *Commonwealth v. Talmonti***, No. 1017 WDA 2010, unpublished memorandum (Pa. Super. filed Jan. 27, 2012), *appeal denied*, No. 77 WAL 2012 (Pa. filed July 16, 2012).

Appellant timely filed *pro se* a PCRA petition, claiming ineffective assistance of plea counsel.³ The PCRA court appointed counsel to represent Appellant. Rather than filing an amended petition on Appellant's behalf, counsel filed a petition to withdraw and "no-merit letter" pursuant to

¹ Respectively, 18 Pa.C.S. §§ 3123(a)(7), 3126(a)(8), 6301(a)(1), and 6318(1).

² Respectively, 18 Pa.C.S. §§ 3121(a)(1) and 3125(a)(8).

³ Appellant has not pursued relief on additional claims alleged in his petition. We deem them abandoned.

Commonwealth v. Turner, 544 A.2d 927 (Pa. 1998), and **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988). The PCRA court granted counsel's petition to withdraw and issued a Pa.R.Crim.P. 907 notice of its intent to dismiss Appellant's petition without a hearing. Appellant did not respond to the Rule 907 notice, and the court dismissed Appellant's petition. Appellant timely appealed *pro se*, and new counsel was appointed by the PCRA court.

Appellant presents the following question for our review:

Did the [PCRA] court err when it dismissed Appellant's [] Petition for Post Conviction Relief without an evidentiary hearing relative to Appellant's claims of ineffective assistance of counsel[,] wherein Appellant's claims were not "patently frivolous" and, if proven, would have entitled Appellant to relief?

Appellant's Brief at 5.

We review an order denying a petition under the PCRA to determine whether the findings of the PCRA court are supported by the evidence of record and free of legal error. **Commonwealth v. Ragan**, 923 A.2d 1169, 1170 (Pa. 2007). The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record. **Commonwealth v. Carr**, 768 A.2d 1164, 1166 (Pa. Super. 2001).

Appellant challenges the PCRA court's denial of his motion without a hearing. We discern no error. "There is no absolute right to an evidentiary hearing on a PCRA petition, and if the PCRA court can determine from the record that no genuine issues of material fact exist, then a hearing is not

necessary.” **Commonwealth v. Jones**, 942 A.2d 903, 906 (Pa. Super. 2008); Pa.R.Crim.P. 907(2). Such is the case here.

According to Appellant, his plea counsel “never took any steps to challenge the victim’s accusations.” Appellant’s Brief at 12.⁴ Thus, counsel “essentially abandoned Appellant, leaving [him] with no choice but to enter a plea of guilty.” **Id.** at 11-12. This claim is devoid of merit.

To establish ineffective assistance of counsel, a PCRA petitioner must prove, by a preponderance of the evidence: “(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, 533 (Pa. 2009) (citations omitted). “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.” **Id.** A claim will be denied if the petitioner fails to meet any one of these requirements. **Commonwealth v. Springer**, 961 A.2d 1262, 1267 (Pa. Super. 2008) (citing **Commonwealth v. Natividad**, 938 A.2d 310, 322 (Pa. 2007)); **Jones**, 942 A.2d at 906.

⁴ We note that Appellant acknowledged criminal behavior in his petition, averring that the victim was a “willing participant.” **See** PCRA Petition at 4.

To the extent Appellant alleges counsel failed to challenge the victim's accusations, we note Appellant's continued acknowledgment of criminal activity toward the 15-year-old victim. **See Commonwealth v. Thomas**, 783 A.2d 328, 332-33 (Pa. Super. 2001) ("[C]ounsel will not be deemed ineffective for failing to pursue a baseless or meritless claim."); **see also** PCRA Petition at 4. Moreover, Appellant has failed to allege any exculpatory evidence. His claim is merely speculative, and therefore, Appellant cannot establish prejudice. **See Commonwealth v. Pursell**, 724 A.2d 293, 311 (Pa. 1999) (citing **Commonwealth v. Morris**, 684 A.2d 1037, 1045 (Pa. 1996)).

Turning to Appellant's implication that his plea was involuntary:

It is clear that a criminal defendant's right to effective counsel extends to the plea process, as well as during trial. However, allegations of ineffectiveness in connection with the entry of a guilty plea will serve as a basis for relief only if the ineffectiveness caused the defendant to enter an involuntary or unknowing plea. Where the defendant enters his plea on the advice of counsel, the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases.

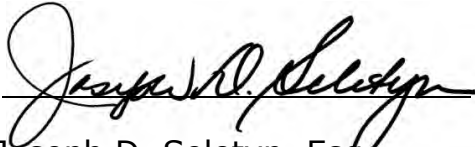
Commonwealth v. Wah, 42 A.3d 335, 338-39 (Pa. Super. 2012) (quoting **Commonwealth v. Allen**, 833 A.2d 800, 802 (Pa. Super. 2003) (internal quotation omitted)).

Appellant does not identify any deficiency in plea counsel's advice. His bald allegation is insufficient to overcome the presumption of counsel's effectiveness. **See Johnson**, 966 A.2d at 532. Moreover, we have

reviewed Appellant's written and oral colloquies and the transcript of Appellant's plea hearing. We discern no evidence to support Appellant's claim that his plea was unknowing or involuntary.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive style with a horizontal line underneath it.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/1/2014