J. S35038/14

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. FRANKLIN CONNERS WHITE, Appellant	: : : : : : : : : :	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1589 MDA 2013

Appeal from the PCRA Order August 13, 2013,
in the Court of Common Pleas of Lancaster County,
Criminal Division at No(s): CP-36-CR-0002014-2012

BEFORE: DONOHUE, WECHT, and STRASSBURGER*, JJ.

MEMORANDUM BY STRASSBURGER, J.: **FILED MAY 30, 2014**

Franklin Conners White (Appellant) appeals *pro se* from the order entered on August 13, 2013, dismissing his petition filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. Upon review, we affirm.

The factual and procedural history underlying this case can be summarized as follows. On June 1, 2012, Appellant pled guilty to one count of rape of an unconscious victim and one count of sexual assault in connection with raping his aunt while she was sleeping. Pursuant to a negotiated guilty plea, Appellant was sentenced concurrently to five to ten years' incarceration for the rape of an unconscious victim conviction and four

* Retired Senior Judge assigned to the Superior Court.

to eight years' incarceration for the sexual assault conviction. Appellant did not file a direct appeal.

On May 31, 2013, Appellant filed timely a *pro se* PCRA petition asserting, *inter alia*, that his sentence was illegal, as he was led to believe his aggregate sentence would be 4 to 8 years' incarceration. Counsel was appointed, and on July 8, 2013, counsel filed a petition to withdraw and 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 July 23, 2013, the PCRA court filed a notice pursuant to Pa.R.Crim.P. 907, in which it agreed with counsel's assessment of Appellant's claims, and permitted counsel to withdraw. Appellant responded to the Rule 907 notice asserting the same claims raised previously in his *pro se* PCRA petition. On August 13, 2013, the PCRA court dismissed Appellant's PCRA petition without a hearing. Appellant timely filed a notice of appeal. The PCRA court did not order a statement pursuant to Pa.R.A.P. 1925, and none was filed.

Preliminary, we note that when reviewing an order dismissing a PCRA petition, we must determine whether the ruling of the PCRA court is supported by record evidence and is free of legal error. ***Commonwealth v. Burkett***, 5 A.3d 1260, 1267 (Pa. Super. 2010). "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. Carter***, 21 A.3d 680, 682 (Pa. Super. 2011) (citation omitted).

On appeal, Appellant's primary issues are related to several defects of alleged constitutional magnitude.[1] Specifically, he argues that the criminal statutes were never enacted due to the lack of a "Saving Schedule/Saving Clause" and "Enacting Clause" in the Pennsylvania Constitution. Appellant's Brief at 8-9. Thus, he contends the trial court lacked subject matter jurisdiction over him. ***Id***. at 10.

To the extent we are able to discern any meaningful argument from this issue;[2] we conclude that Appellant is not entitled to relief. 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

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[1] In Appellant's objection to the PCRA court's Rule 907 notice, he states that "[t]he court failed to address Petitioner's Main Issue, of Constitutional Violations, The [1968] Pennsylvania Constitution is without a Saving Schedule/Saving Clause Nor an inacting [*sic*] clause Applicable to it's [*sic*] Criminal Offenses/Prosecutions…". Objection to 907 Notice, 8/5/2013, at ¶ 1.

[2] ***See Commonwealth v. Fetter***, 770 A.2d 762, 771 (Pa. Super. 2001) ("When issues are not properly raised and developed in briefs, when the briefs are wholly inadequate to present specific issues for review, a court will not consider the merits thereof.").

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 Appellant's conclusion herein that absence of a general savings clause in our constitution rendered Appellant's sentence illegal. Accordingly, we conclude that he is not entitled to relief.

Next, Appellant inartfully argues that he should be permitted to withdraw his guilty plea. He states the following.

> Appellant's guilty plea was forced by trial [counsel] and court officers. The guilty plea was the result of acceptance of a plea deal for 4 to 8 years; Appellant should have been allowed to withdraw his guilty plea behind the District Attorney's deception as well as the lower [court's] deception; a hearing must be provided…

Appellant's Brief at 10 (some capitalization omitted).

Presumably, Appellant is arguing that he is entitled to withdraw his guilty plea pursuant to 42 Pa.C.S. § 9543(a)(2)(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."). However, as the PCRA court aptly pointed out, Appellant never asserts his innocence of these crimes. ***See*** Rule 907 Notice, 7/23/13, at 2

("No where [*sic*] in his Petition does Petitioner point to any circumstance that would make it likely that Petitioner pled guilty despite his innocence.").[3] Thus, we agree with the PCRA court that Appellant is not entitled to relief on this basis.

Furthermore, to the extent that Appellant is asserting this claim in the context that the ineffective assistance of counsel forced him to plead guilty, he is also not entitled to relief.

> A defendant is permitted to withdraw his guilty plea under the PCRA if ineffective assistance of counsel caused the defendant to enter an involuntary plea of guilty.
>
> We conduct our review of such a claim in accordance with the three-pronged ineffectiveness test under section 9543(a)(2)(ii) of the PCRA, 42 Pa.C.S.A. § 9543(a)(2)(ii). The voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases.
>
> In order for Appellant to prevail on a claim of ineffective assistance of counsel, he must show, by a preponderance of the evidence, 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. Appellant must demonstrate: (1) the underlying claim is of arguable merit; (2) that counsel had no reasonable strategic basis for his or her action or inaction; and (3) but for the errors and omissions of counsel, there is a reasonable probability that the outcome of the

[3] Moreover, at the guilty plea hearing, Appellant told the court that what happened with his aunt occurred because of his alcohol problem. N.T., 6/1/2012, at 14 ("I apologize to the Court, to my family. Back in 2011 I wanted to go get myself some alcohol. Alcohol has been a problem for me for a long time…. That was not my type of character but nonetheless something happened. I want to let Your Honor know that nothing like this will ever happen again.").

> proceedings would have been different. The petitioner bears the burden of proving all three prongs of the test.
>
> Moreover, trial counsel is presumed to be effective.

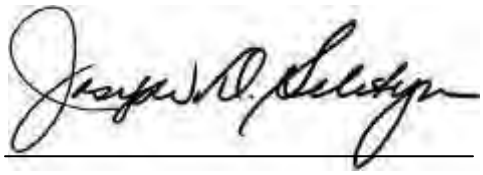
Commonwealth v. Rathfon, 899 A.2d 365, 369 (Pa. Super. 2006) (internal citations and quotations omitted).

Instantly, Appellant has not set forth any argument as to exactly how counsel misled Appellant into believing that he would be receiving a four to eight year sentence of incarceration. Furthermore, at the guilty plea hearing, Appellant stated that he understood the negotiated guilty plea and that he was satisfied with counsel's representation. N.T., 6/1/2012, at 15-16. "A defendant is bound by the statements made during the plea colloquy, and a defendant may not later offer reasons for withdrawing the plea that contradict statements made when he pled." ***Commonwealth v. Brown***, 48 A.3d 1275, 1277 (Pa. Super. 2012). Accordingly, Appellant is not entitled to relief.

Having concluded that Appellant's arguments are either waived for lack of clarity or without merit, we affirm the order of the PCRA court dismissing Appellant's petition.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 5/30/2014