

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

Appellee

v.

JAMAR CARROLL REEVES

Appellant

No. 1714 MDA 2013

Appeal from the PCRA Order August 23, 2013  
In the Court of Common Pleas of Dauphin County  
Criminal Division at No(s): CP-22-CR-0001255-2010  
CP-22-CR-0000900-2010  
CP-22-CR-0001256-2010  
CP-22-CR-0001259-2010  
CP-22-CR-0001278-2010  
CP-22-CR-0001277-2010

BEFORE: OTT, J., STABILE, J., and MUSMANNO, J.

MEMORANDUM BY OTT, J.:

**FILED AUGUST 14, 2014**

Jamar Carroll Reeves appeals, *pro se*, from the order entered on August 23, 2103, in the Court of Common Pleas of Dauphin County, granting counsel's petition to withdraw pursuant to **Turner/Finley**, and denying Reeves's petition for relief filed pursuant to the Post Conviction Relief Act. **See** 42 Pa.C.S. § 9541 *et seq.* In seeking to withdraw his guilty plea and obtain a trial, Reeves raises four issues in this timely appeal. Three of the issues are simply variations of the same claim; specifically, that his guilty plea was involuntary because the sentence imposed was not consistent with the sentence counsel told him he was going to receive. The final issue is a claim that his plea was involuntary because counsel failed to confer with him

prior to the plea. Following a thorough review of the submissions by the parties, relevant law, and the certified record, we affirm.

We relate the factual history of this matter as stated by the PCRA court in its Memorandum Opinion, dated June 11, 2013.

Petitioner, Jamar C. Reeves [], was arrested and charged with one count of Persons Not to Possess Firearms and one count of Carrying a Firearm without a License at docket 900 CR 2010. At docket 1255 CR 2010, [Reeves] was arrested and charged with one count of Robbery and one count of Criminal Conspiracy. At docket 1256 CR 2010, [Reeves] was arrested and charged with one count of Robbery and one count of Carrying a Firearm Without a License. At docket 1259 CR 2010, [Reeves] was arrested and charged with one count of Robbery, one count of Criminal Conspiracy, and one count of Carrying a Firearm without a License. At docket 1277 CR 2010, [Reeves] was arrested and charged with one count of Robbery. At docket 1278 CR 2010, [Reeves] was arrested and charged with one count of Robbery, and one count of Criminal Conspiracy.<sup>[1]</sup> [Reeves] pled guilty in open court on November 14, 2011, to all charges at the above-referenced dockets with the exception of 1255 CR 2010 in which he entered a plea of *nolo contendere*, while at all times represented by counsel. [Reeves] was sentenced to an aggregate term of confinement at a State Correctional Institution of not less than twelve and one half (12 ½) years nor more than thirty (30) years.

Memorandum Opinion, at 1-2 (footnotes omitted).

Importantly, the plea was a negotiated plea in which certain other charges were *nolle prossed* in exchange for the agreed upon 12½ to 30 year sentence.

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<sup>1</sup> Citations for the charges are: 18 Pa.C.S. §§ 6105 (person not to possess firearms); 6106 (carrying firearm without license); 3701(a)(1)(i) (robbery); and 903 (conspiracy).

No direct appeal was filed. However, Reeves filed a *pro se* PCRA petition claiming: counsel had not informed him of the consequence of his plea (the sentence), counsel had not consulted with him in the 18 to 24 months prior to the plea, counsel had informed him he would receive a five to ten year sentence, and counsel failed to object to the manifestly excessive sentence. Reeves was appointed counsel, who then filed a ***Turner/Finley***<sup>2</sup> no merit letter and sought permission to withdraw as counsel.<sup>3</sup> The PCRA court granted counsel's petition to withdraw, notified Reeves of the intent to dismiss the petition without a hearing and then did so. Reeves filed a timely appeal and was directed to file a 1925(b) statement of errors. Reeves complied.<sup>4</sup>

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<sup>2</sup> ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988); ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1998).

<sup>3</sup> Our review of the certified record indicates counsel met all the criteria under ***Turner/Finley***. Because counsel's withdrawal is not at issue, we will not recite that criteria. ***See also, Commonwealth v. Friend***, 896 A.2d 607 (Pa. Super. 2006).

<sup>4</sup> The PCRA court opined that Reeves had not filed his 1925(b) statement, determined all issues had been waived, and so requested the appeal be quashed. However, the 1925(b) statement appears in the certified record with a certificate of service dated October 17, 2013, the final day allowed for timely filing. Apparently, delivery of the 1925(b) statement was slow and the PCRA court found waiver and requested quashal of the appeal before the document was received by the court. We note that the Dauphin County Court did not attach the envelope in which the Rule 1925(b) statement was mailed, and therefore no postmark is available. This is beyond Reeves's control. Given the totality of the circumstances and the fact the all substantive issues have been fully addressed by both the Commonwealth  
(Footnote Continued Next Page)

Initially, we note,

[o]ur standard of review of an order denying PCRA relief is whether the record supports the PCRA court's determination and whether the PCRA court's decision is free of legal error. **Commonwealth v. Phillips**, 31 A.3d 317, 319 (Pa. Super. 2011) (citing **Commonwealth v. Berry**, 877 A.2d 479, 482 (Pa. Super. 2005)). The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record. **Id.** (citing **Commonwealth v. Carr**, 768 A.2d 1164, 1166 (Pa. Super. 2001)).

**Commonwealth v. Lawson**, 90 A.3d 1, 4 (Pa. Super. 2014).

Reeves's first, third and fourth ineffectiveness claims all center on his allegation that he was unaware of the sentence he was going to receive.

The standard for proving an ineffective assistance of counsel claim was recently restated by our Supreme Court.

To prevail on this claim, Appellant must plead and prove by a preponderance of the evidence that his conviction was the result of ineffective assistance of counsel that, under the circumstances, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place. **See** 42 Pa.C.S. § 9543(a)(2)(ii). The test is substantively the same as the performance-and-prejudice standard set forth in **Strickland v. Washington**, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984), although this Court has divided the performance component into sub-parts dealing with arguable merit and reasonable strategy. Appellant must therefore show that: the underlying legal claim has arguable merit; counsel had no reasonable basis for his act or omission; and Appellant suffered prejudice as a result. **See Commonwealth v. Pierce**, 515 Pa. 153, 158-160, 527 A.2d 973, 975-76 (1987). Because all three "**Pierce** factors" must be

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and the court, we will accept the timeliness of the document. Therefore, we decline to find waiver and will not quash this appeal.

demonstrated, the claim fails if any one of them is not proved. **See Commonwealth v. Busanet**, 618 Pa. 1, 18, 54 A.3d 35, 45 (2012).

**Commonwealth v. Baumhammers**, 92 A.3d 708, 719 (Pa. 2014).

Reeves's allegation he was unaware of the sentence he faced is demonstrably false. The certified record contains four written guilty plea colloquies and one written *nolo contendere* colloquy all of which were signed by both Reeves and his counsel. *All* of these documents indicate the terms of the plea include the imposition of an aggregate 12½ to 30 year sentence of incarceration.

Further, the notes of testimony from the guilty plea contain the following:

MR. BAER [Prosecutor]: As part of the agreement, the defendant will plead guilty to four of those dockets. It is my understanding that he is entering a no contest plea at docket 1255. In exchange for those pleas, the defendant will receive an aggregate term of incarceration of 12 and a half to 30 years. There is no agreement as to fines, costs or any special conditions of parole. Anything of that nature it is our intention to leave it to the discretion of the Court.

Mr. Reeves, do you understand the plea agreement I have just outlined for the Court?

[MR. REEVES]: Yes.

THE COURT: Excuse me. Mr. Reeves, we need to swear you in.

(Whereupon, the defendant was sworn.)

THE COURT: Go ahead.

MR. BAER: Is that your understanding of the plea agreement?

[MR. REEVES]: Yes.

MR. BAER: Is there anything that I stated that you disagree with or that is not correct?

[MR. REEVES]: No.

N.T. Guilty Plea, 11/14/2011, at 3-4.

Additionally, our review of the certified record reveals Reeves filed a *pro se* motion for reconsideration of sentence. In that motion, Reeves appealed to the trial court's sense of mercy by indicating he was the father of three small children, he had learned his lesson, and would volunteer to help counsel teens at risk. Conspicuously absent from the motion for reconsideration was any claim that the sentence imposed was anything other than what had been agreed to.

In light of the fact that Reeves signed five documents, all indicating the agreed upon sentence, as well as his testimony in open court that also demonstrated his knowledge of the sentence to be imposed as well as his agreement to that sentence, Reeves cannot prevail on any of the ineffectiveness claims involving the allegations regarding his sentence.

Appellant is bound by these statements, which he made in open court while under oath, and he may not now assert grounds for withdrawing the plea which contradict the statements.

***Commonwealth v. Willis***, 68 A.3d 997, 1009 (Pa. Super. 2013) (citation omitted).

In his final claim, Reeves alleges counsel was ineffective for not consulting with him and therefore counsel was inadequately prepared to

represent him. This claim is also belied by the certified record, which contains the following:

[MR. BAER]: You have been represented in this matter by Mr. Kovatch, are you satisfied with his representation?

[MR. REEVES]: Yes.

[MR. BAER]: Do you feel like this decision to accept your plea agreement was made in consultation with your attorney and considering his advice? Do you understand the question?

[MR. REEVES]: No.

MR. KOVATCH: Did we discuss your options in this case and ultimately it is your decision whether you enter a plea in this matter? Did we discuss these issues?

[MR. REEVES]: Yes.

MR. KOVATCH: You are making this decision based solely – it is your own decision, correct?

[MR. REEVES]: Yes.

MR. KOVATCH: I have counseled you and advised you on your options and what we can do but ultimately the decision to plead guilty is your decision, correct?

[MR. REEVES]: Yes.

[MR. BAER]: Has anyone made any threats or promises to you to get you to take this plea agreement?

[MR. REEVES]: No.

[MR. BAER]: Are you making it – taking this plea agreement because you feel as if it is in your best interests to do so?

[MR. REEVES]: Yes.

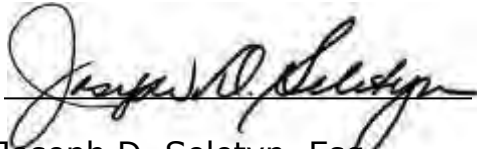
N.T. Guilty Plea, 11/14/2011, at 6-7.

The certified record demonstrates that at the time, Reeves was entering into the plea agreement of his own decision, he was not threatened or promised anything (other than the terms of the agreement), that he was satisfied with counsel's representation, and that he had consulted with counsel about the plea, including various options open to him. Reeves testified that he had no complaints regarding counsel and cannot now obtain relief by contradicting that sworn testimony.

The PCRA petition was patently frivolous and the PCRA court's decision to deny Reeves' ineffectiveness claims without a hearing is fully supported by the record. Accordingly, Reeves is not entitled to relief.

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: 8/14/2014