

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
JAMES ALEKSANDROWICZ,	:	
	:	
Appellant	:	No. 1767 WDA 2013

Appeal from the PCRA Order October 4, 2013  
In the Court of Common Pleas of Erie County  
Criminal Division No(s).: CP-25-CR-0000936-2012

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
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	:	
JAMES ALEKSANDROWICZ,	:	
	:	
Appellant	:	No. 1771 WDA 2013

Appeal from the PCRA Order October 4, 2013  
In the Court of Common Pleas of Erie County  
Orphans' Court No(s).: CP-25-CR-0000940-2012

BEFORE: BOWES, JENKINS, and FITZGERALD,\* JJ.

MEMORANDUM BY FITZGERALD, J.:

**FILED MAY 22, 2014**

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\* Former Justice specially assigned to the Superior Court.

Appellant, James Aleksandrowicz, appeals from the order entered in the Erie County Court of Common Pleas denying his first Post Conviction Relief Act<sup>1</sup> (“PCRA”) petition seeking relief from the October 31, 2012, sentence of thirty to ninety months’ imprisonment following his guilty plea to charges of robbery<sup>2</sup> and theft.<sup>3</sup> Appellant contends that his trial counsel was ineffective by permitting him to enter a guilty plea because he was undergoing detoxification in prison and his mental and physical conditions were diminished. We affirm.

On August 30, 2012, Appellant, who was represented by counsel, entered a guilty plea to the above charges. At that time, the assistant district attorney represented to Appellant that the maximum possible jail time faced by Appellant was seven years. Appellant was released on bail after entering his plea and was scheduled to be sentenced pursuant to the plea on October 31, 2012. On approximately October 25, 2012, Appellant was arrested on other charges and incarcerated in the Erie County jail pending his sentencing hearing on the instant charges. On October 31, 2012, Appellant appeared with counsel at the sentencing hearing. At that time, the assistant district attorney notified Appellant that at the plea hearing Appellant had been misinformed as to his maximum possible

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<sup>1</sup> 42 Pa.C.S. §§ 9541-9546.

<sup>2</sup> 18 Pa.C.S. § 3701(a)(1).

<sup>3</sup> 18 Pa.C.S. § 3921(a).

sentence exposure. Rather than facing the possibility of a seven year sentence, Appellant was in actuality facing a maximum twenty-two year sentence. After consulting with counsel, Appellant chose to proceed with the sentencing hearing and did not attempt to withdraw his guilty plea based on this new information.

Following the hearing, the trial court sentenced Appellant to thirty to ninety months' incarceration in a state correctional institution. Appellant did not file post-sentence motions or a direct appeal from his judgment of sentence.

On May 14, 2013, Appellant filed a timely, *pro se*, PCRA petition.<sup>4</sup> The court appointed Appellant counsel, and on July 25, 2013, counsel filed a supplement to Appellant's PCRA petition. Following a hearing, the court denied Appellant's petition on October 4, 2013. This timely appeal followed on November 1, 2013.<sup>5, 6</sup>

Appellant raises the following issue on appeal:

Whether the lower court erred in failing to grant PCRA relief in the nature of leave to withdraw guilty pleas given

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<sup>4</sup> 42 Pa.C.S. § 9545(b)(1).

<sup>5</sup> Appellant was not ordered to file a Pa.R.A.P. 1925(b) statement.

<sup>6</sup> We note that the trial court dockets reflect that Appellant filed two PCRA petitions requesting relief from both his robbery conviction and his theft conviction. The PCRA court entered identical orders on each docket denying the petitions. Initially, Appellant filed separate notices of appeal from these orders. However, on December 11, 2013, this Court granted Appellant's application to consolidate these appeals.

the patent invalidity of the initial plea proceeding and the inability to properly cure that deficiency through the process engaged in at sentencing wherein the Appellant was compromised by his then physical and mental condition due to his undergoing detoxification in prison?

Appellant's Brief at 2.

Essentially, Appellant argues he should be permitted to withdraw his guilty plea because, at the time of his sentencing hearing, his PCRA counsel was ineffective in not recognizing that he was in the fifth day of opiate detoxification and was not competent to decide whether to withdraw his original plea. *Id.* at 6. We hold Appellant is not entitled to relief.

"On appeal from the denial of PCRA relief, our standard and scope of review is limited to determining whether the PCRA court's findings are supported by the record and without legal error." ***Commonwealth v. Abu-Jamal***, 941 A.2d 1263, 1267 (Pa. 2008).

[C]ounsel is presumed to have provided effective representation unless the PCRA petitioner pleads and proves that: (1) the underlying claim is of arguable merit; (2) counsel had no reasonable basis for his or her conduct; and (3) Appellant was prejudiced by counsel's action or omission. To demonstrate prejudice, an appellant must prove that a reasonable probability of acquittal existed but for the action or omission of trial counsel. A claim of ineffective assistance of counsel will fail if the petitioner does not meet any of the three prongs. Further, a PCRA petitioner must exhibit a concerted effort to develop his ineffectiveness claim and may not rely on boilerplate allegations of ineffectiveness.

***Commonwealth v. Perry***, 959 A.2d 932, 936 (Pa. Super. 2008)

(punctuation marks and citations omitted).

Following the entry of a guilty plea, the only cognizable issues for the PCRA court are the validity of the guilty plea and the legality of the sentence. **See Commonwealth v. Rounsely**, 717 A.2d 537, 538 (Pa. Super. 1998). "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." **Commonwealth v. Rathfon**, 899 A.2d 365, 369 (Pa. Super. 2006) (citation omitted).

As the transcript from Appellant's sentencing hearing makes clear, after learning that his maximum possible sentencing exposure had been misrepresented, Appellant had the opportunity to consult with counsel as to whether to withdraw his plea. N.T. Sentencing H'rg, 10/31/12, at 5-7. Furthermore, at the PCRA hearing, Appellant's plea counsel testified:

[t]he defect of the plea taken by Judge Brabender was discussed on the record on October 31, the day of [Appellant's] sentencing. He was posed with the question of whether he wanted to continue the sentencing, withdraw his plea, if he needed time to talk to me off the record. From what I—from what I recall. We had a brief discussion off the record. I asked him if he understood as far as the range, the exposure he was facing with the robbery. He said that he did understand and that he just wanted to go forward and be sentenced on that particular day.

N.T. PCRA H'rg, 10/3/13, at. 25-26.

Plea counsel noted that Appellant seemed competent and intelligent at the sentencing hearing and that Appellant had never given her any reason to believe that he was incapable of making a rational decision as a result of his

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addiction. **Id.** at 26-27. Plea counsel testified that she advised Appellant that he could request that the sentencing hearing be continued, Appellant could ask to withdraw his plea, or he could proceed with sentencing. **Id.** at 27. Counsel emphasized that, at the time of the sentencing hearing, Appellant seemed “very competent, very understanding of what he was facing.” **Id.** at 28.

With respect to Appellant’s decision not to withdraw his guilty plea, the trial court observed the following.

The [s]entencing [t]ranscript clearly reveals that the issue was specifically and appropriately addressed, and that [Appellant] had an opportunity to discuss it with his attorney. At the time of sentencing [Appellant] claims he was in the 7<sup>th</sup> and last day of his addiction withdrawal period. Once again, he told no one, no one observed any unusual conditions as to his actions, behavior, or demeanor, and no records were produced by [Appellant] to corroborate his claim. Further, pp.7 and 8 of the [s]entencing [t]ranscript reveal [Appellant] spoke cogently, honestly, and forthrightly to the [c]ourt prior to sentencing. Finally, [Appellant] made no attempt to withdraw or repudiate his plea at the time of sentencing even though he was given the opportunity to do so.

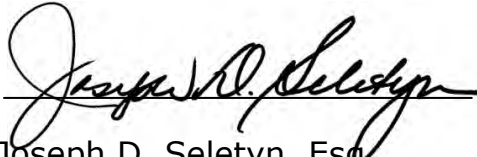
Trial Ct. Order, 10/4/13, at 1-2 (unpaginated).

After careful review of the record and the relevant testimony, we cannot conclude Appellant’s plea counsel was ineffective, **see Rathfon**, 899 A.2d at 369, and we hold that the PCRA court’s findings are supported by the record. **See Abu-Jamal**, 941 A.2d at 1267.

Order affirmed.

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Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn". The signature is written in a cursive style and is positioned above a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 5/22/2014