

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

KEVIN LEE TAGNOSKY

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1918 WDA 2013

Appeal from the PCRA Order of September 5, 2013
In the Court of Common Pleas of Potter County
Criminal Division at No.: CP-53-CR-0000057-2010

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

KEVIN LEE TAGNOSKY

Appellant

IN THE SUPERIOR COURT OF
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No. 1919 WDA 2013

Appeal from the PCRA Order of September 5, 2013
In the Court of Common Pleas of Potter County
Criminal Division at No.: CP-53-CR-0000058-2010

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

MEMORANDUM BY WECHT, J.:

FILED: June 9, 2014

* Retired Senior Judge assigned to the Superior Court.

Kevin Tagnosky ("Tagnosky") appeals from the September 5, 2013 order that denied his petition for relief pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-46. We affirm.

Tagnosky reported to the Galeton Borough police department that Kevin Kiselyk stole Tagnosky's prescription medication. The police investigated this accusation and, over the course of several weeks, received additional reports of theft of medications and weapons, and threats made against, and by, both Tagnosky and Kiselyk. During the course of the investigation, the police learned that Tagnosky had a prior conviction that precluded him from possessing a firearm. Nonetheless, Tagnosky had firearms in his possession. The police searched Tagnosky's residence twice, once after obtaining a warrant and once with consent.

During the searches, the police found multiple firearms, marijuana including some that was packaged for sale, and drug paraphernalia. Tagnosky was charged with forty-two counts related to the firearms and drugs at docket number CP-53-CR-0000057-2010. He was charged with an additional six counts at docket number CP-53-CR-0000058-2010.

On November 19, 2010, Tagnosky entered a guilty plea. On January 6, 2011, Tagnosky filed a motion to withdraw his plea, which was granted on January 12. On February 22, 2011, Tagnosky entered a second guilty plea at each docket number. He pled guilty to one count of person not to possess a firearm, 18 Pa.C.S.A. § 6105, one count of possession of a controlled substance with intent to deliver, 35 P.S. § 780-113(a)(30), one count of

possession of a controlled substance, 35 P.S. § 780-113(a)(16), and one count of possession of drug paraphernalia, 35 P.S. § 780-113(a)(32), at docket number CP-53-CR-0000057-2010. Tagnosky pled guilty to one count each of possession of a controlled substance with intent to deliver, possession of a controlled substance, and possession of drug paraphernalia at docket number CP-53-CR-0000058-2010. On March 2, 2011, the trial court imposed an aggregate sentence of thirty to sixty months' incarceration and a consecutive term of one year of probation.

On March 4, 2011, Tagnosky filed a petition to modify his sentence. Following a stipulation by the Commonwealth, on April 29, 2011, the motion was granted to the extent that Tagnosky's credit for time served was increased. No direct appeal was filed. On January 18, 2012, after receiving a letter from Tagnosky in which he indicated that he filed a PCRA petition, the PCRA court appointed counsel for Tagnosky. However, the docket does not reflect and the certified record does not contain a PCRA petition filed at that time.

On July 15, 2013, appointed counsel filed a PCRA petition and *pro se* amended PCRA petition. On July 23, 2013, the Commonwealth filed an answer to the petition and a motion to dismiss, claiming that the PCRA was untimely filed. Following an August 26, 2013 hearing, the PCRA court dismissed the PCRA petition as untimely by order dated September 5, 2013.

On September 23, 2013, Tagnosky filed a notice of appeal. The PCRA court ordered Tagnosky to file a concise statement of errors complained of

on appeal pursuant to Pa.R.A.P. 1925(b), and Tagnosky timely complied. Instead of filing a Rule 1925(a) opinion, the PCRA court relied upon its September 5, 2013 order, in which the court concluded that Tagnosky's petition was untimely.

We concur with the PCRA court that Tagnosky's petition was untimely filed, which deprives us of jurisdiction to reach the merits of Tagnosky's substantive claims. Tagnosky's appeal became final on or about May 29, 2011, after expiration of the thirty-day period during which Tagnosky could have filed a direct appeal following the ruling upon his timely post-sentence motions. **See** 42 Pa.C.S.A § 9545(b)(3). Therefore, he had until on or about May 29, 2012 to file a timely PCRA petition. **See** 42 Pa.C.S.A. § 9545(b)(1). Although Tagnosky sent a letter sometime before January 18, 2012, indicating he had filed a PCRA petition,¹ no petition was filed until July 5, 2013, rendering that petition untimely unless he could plead and prove one of the three exceptions to the time bar. Neither the PCRA petition nor the amended PCRA petition address any of the statutory exceptions to the time bar, let alone establishes the basis for the application of an exception. "PCRA time limits are jurisdictional in nature, implicating a court's very

¹ From his statements at the PCRA hearing, it appears that Tagnosky filed something that he titled a PCRA with the federal district court, which was dismissed for failure to exhaust state remedies. Tagnosky's counsel admitted that no PCRA petition had been filed in state court until July 15, 2013. Notes of Testimony, 8/26/2013, at 12-13.

power to adjudicate a controversy.” **Commonwealth v. Ali**, 86 A.3d 173, 177 (Pa. 2014). Because Tagnosky has not pled and proven one of the exceptions and his petition was filed untimely, we are without jurisdiction to address its merits.

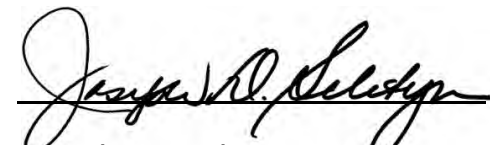
Were we not without jurisdiction, we would be compelled to dismiss this appeal. Tagnosky’s appellate brief, even though prepared by counsel, is so deficient that review would be impossible. Tagnosky’s counsel has not included a statement of jurisdiction, the order in question, a statement of the case, or a summary of the argument. Such failure violates Pa.R.A.P. 2111(a), 2114, 2115, 2117, and 2118. Tagnosky’s counsel did not include a statement of questions involved. **See** Pa.R.A.P. 2111(a), 2116. Instead, Tagnosky’s counsel launches into an argument without providing any factual or procedural background and without even identifying his appellate issues. The argument contains facts and assertions that are seemingly in random order. Tagnosky’s counsel provides no citations to the record for the facts he does include. When the defects in a brief are substantial, the appeal may be dismissed. Pa.R.A.P. 2101.

Further, Tagnosky’s counsel cites only one statute and two precedents strictly for general propositions of law. Tagnosky’s Brief at 1-2, 3 (unpaginated) (citing 42 Pa.C.S.A. § 9545(b)(1) for “provid[ing] certain timing exceptions; **Strickland v. Washington**, 466 U.S. 668 (1984), for the standard for ineffectiveness of counsel; and **Commonwealth v. Sisneros**, 692 A.2d 1105 (Pa. Super 1997), for the proposition that an appellant can

claim ineffective assistance of counsel to excuse waiver). However, Tagnosky's counsel fails utterly to develop these bare citations or apply them to his case. Tagnosky's counsel appears to identify several perceived deficiencies by the trial court and by trial counsel, but he does not provide any cogent argument as to how these deficiencies could be remedied by the PCRA court or how the PCRA court erred. When an appellant's argument is undeveloped and unsupported by authority, that argument is waived. ***Commonwealth v. Burkett***, 830 A.2d 1034, 1038 (Pa. Super. 2003) (citing Pa.R.A.P. 2101, 2119); ***see Commonwealth v. Pantalion***, 957 A.2d 1267, 1270 n.6 (Pa. Super. 2008). Tagnosky's brief is so deficient and so undeveloped that we would be compelled to dismiss on that basis had the PCRA been timely.

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: 6/9/2014