

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

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| COMMONWEALTH OF PENNSYLVANIA | : | IN THE SUPERIOR COURT OF |
| | : | PENNSYLVANIA |
| | : | |
| v. | : | |
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| RICHARD WOODWARD, | : | |
| | : | |
| Appellant | : | No. 1090 WDA 2015 |

Appeal from the PCRA Order June 25, 2015
in the Court of Common Pleas of Allegheny County,
Criminal Division, No(s): CP-02-CR-0012298-2010

BEFORE: STABILE, DUBOW and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED FEBRUARY 29, 2016

Richard Woodward (“Woodward”) appeals from the Order dismissing his first Petition filed pursuant to the Post Conviction Relief Act (“PCRA”). **See** 42 Pa.C.S.A. §§ 9541-9546. We affirm.

In its Opinion, the PCRA court concisely set forth the relevant factual and procedural history underlying this appeal. **See** PCRA Court Opinion, 9/22/15, at 1-4. We adopt the court’s recitation as though fully set forth

herein. **See id.**^{1, 2}

On appeal, Woodward presents the following issue for our review:

Did the [PCRA] court err in denying [Woodward's] PCRA Petition since trial counsel was ineffective for failing to file a suppression motion challenging the voluntariness of [Woodward's inculpatory] hospital bed statement to police detectives[,] since the only evidence connecting [Woodward] to the instant crimes came from that statement, and [Woodward] was drugged and incoherent when he gave the statement[,] since he had been administered pain killers because of his gunshot wound?

Brief for Appellant at 3 (capitalization omitted).

This Court examines PCRA appeals in the light most favorable to the prevailing party at the PCRA level. Our review is limited to the findings of the PCRA court and the evidence of record. Additionally, we grant great deference to the factual findings of the PCRA court[,] and will not disturb those findings unless they have no support in the record. In this respect, we will not disturb a PCRA court's ruling if it is supported by evidence of record and is free of legal error. However, we afford no deference to its legal conclusions.

Commonwealth v. Henkel, 90 A.3d 16, 20 (Pa. Super. 2014) (*en banc*)

(internal citations, quotation marks and brackets omitted).

¹ We additionally observe that while Woodward was being treated at the hospital for his gunshot wound, of his own accord he asked to speak with the lead detective investigating the shootings, Margaret Sherwood ("Detective Sherwood"). N.T., 8/29/11-9/2/11 (trial), at 479. On July 15, 2010, five days after the shootings, Detective Sherwood interviewed Woodward, in his hospital room, in the presence of a fellow detective. **Id.** Prior to interviewing Woodward, Detective Sherwood read Woodward his **Miranda** rights, and gave him an opportunity to read and sign a **Miranda** rights waiver form. **Id.** at 480-81.

² At trial, Woodward was represented by Christy Foreman, Esquire ("trial counsel").

To prevail on a claim of ineffectiveness of counsel, the PCRA petitioner must demonstrate “(1) that the underlying claim is of arguable merit; (2) that counsel’s course of conduct was without a reasonable basis designed to effectuate his client’s interest; and (3) that he was prejudiced by counsel’s ineffectiveness[.]” **Commonwealth v. Wah**, 42 A.3d 335, 338 (Pa. Super. 2012) (citations omitted). The PCRA court may deny an ineffectiveness claim if the petitioner’s evidence fails to meet any of these prongs. **Commonwealth v. Franklin**, 990 A.2d 795, 797 (Pa. Super. 2010). Moreover, a PCRA petitioner bears the burden of demonstrating counsel’s ineffectiveness. **Id.; see also Commonwealth v. Lesko**, 15 A.3d 345, 380 (Pa. 2011) (stating that “[w]hen evaluating ineffectiveness claims, judicial scrutiny of counsel’s performance must be highly deferential.” (citation and internal quotation marks omitted)).

Regarding the first prong of the ineffectiveness test, if the petitioner’s underlying claim lacks arguable merit, his or her derivative claim of counsel’s ineffectiveness necessarily fails. **Commonwealth v. Baumhammers**, 92 A.3d 708, 722 n.7 (Pa. 2014). Concerning the second prong, our Pennsylvania Supreme Court has stated that

[g]enerally, counsel’s assistance is deemed constitutionally effective if he chose a particular course of conduct that had some reasonable basis designed to effectuate his client’s interests. Where matters of strategy and tactics are concerned, a finding that a chosen strategy lacked a reasonable basis is not warranted unless it can be concluded that an alternative not chosen offered a potential for success substantially greater than the course actually pursued.

Commonwealth v. Spatz, 84 A.3d 294, 311 (Pa. 2014) (citations, quotation marks and brackets omitted). Regarding the third, “prejudice prong,” it must be demonstrated that, absent counsel’s conduct, there is a reasonable probability that the outcome of the proceedings would have been different. **Commonwealth v. Charleston**, 94 A.3d 1012, 1019 (Pa. Super. 2014).

In considering Woodward’s claim that his inculpatory statements were subject to suppression for being involuntarily given, we are mindful of the following. “When a court is called upon to determine whether a confession is voluntary and, hence, admissible at trial, it examines the totality of the circumstances surrounding the confession to ascertain whether it is the product of an essentially free and unconstrained choice by its maker.” **Commonwealth v. Smith**, 85 A.3d 530, 537 (Pa. Super. 2014) (citation omitted). “By the same token, the law does not require the coddling of those accused of crime. One [] need not be protected against his own innate desire to unburden himself.” **Commonwealth v. Templin**, 795 A.2d 959, 966 (Pa. 2002) (citation omitted).

When assessing voluntariness pursuant to the totality of the circumstances, a court should look at the following factors: the duration and means of the interrogation; the physical and psychological state of the accused; the conditions attendant to the detention; the attitude of the interrogator; and any and all other factors that could drain a person’s ability to withstand suggestion and coercion. The determination of whether a confession is voluntary is a conclusion of law and, as such, is subject to plenary review.

Commonwealth v. Harrell, 65 A.3d 420, 434 (Pa. Super. 2013) (citations and quotation marks omitted).

Woodward argues that the PCRA court erred by failing to find that trial counsel was ineffective for not seeking to suppress Woodward's inculpatory statements, as they were "involuntary due to [Woodward's] drugged state during the interview[.]" Brief for Appellant at 24. According to Woodward,

he was so medicated [at the time of making his statements] that he was not thinking clearly[,] and [he] has no recollection of anything that the police put in their report regarding the interview[.] [Woodward's] contention is not disputed by the Commonwealth since there is no indication that the detectives checked to see what medication, or the quantity, [that Woodward] had been prescribed by doctors, or checked with hospital personnel to determine if [he] was lucid enough to interview.

Id. at 23-24. Woodward avers that "[t]he evidence regarding [his] alleged statements to police was exceedingly damaging since it detailed his involvement in the instant crimes, and[,] without that evidence[,] there is a great likelihood that he would have never been convicted of any of the instant crimes, but especially [second-degree m]urder[.]" ***Id.*** at 23. Moreover, Woodward contends that, contrary to trial counsel's position regarding her defense strategy, she had no reasonable basis for failing to suppress Woodward's involuntary statements. ***Id.*** at 24.

In its Opinion, the PCRA court adeptly addressed Woodward's claims and determined that trial counsel was not ineffective. ***See*** PCRA Court Opinion, 9/22/15, at 6-8. In sum, the PCRA court determined that

Woodward had failed to establish any of the three prongs of the ineffectiveness test, since (1) the mere fact that Woodward may have been on pain medication at the time of his statements,³ absent more, is not sufficient to warrant suppression; (2) trial counsel articulated a reasonable basis for making the conscious and strategic decision not to seek suppression; and (3) the outcome of Woodward's trial would not have been different had trial counsel sought suppression. ***Id.*** at 6-7. The PCRA court's analysis is supported by the record and the law, and we agree with its determination that Woodward failed to meet his burden to prove that trial counsel was ineffective. Accordingly, we affirm on this basis in rejecting Woodward's sole issue on appeal. ***See*** PCRA Court Opinion, 9/22/15, at 6-

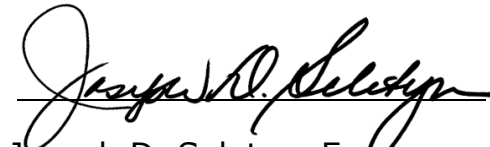
³ Woodward failed to advance any evidence that he was, in fact, on pain medication at the time of his statements to Detective Sherwood.

8.⁴

As we conclude that the PCRA court neither abused its discretion nor committed an error of law, we affirm the Order dismissing Woodward's PCRA Petition.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 2/29/2016

⁴ As an addendum, we observe that Woodward failed to establish that his inculpatory statements were involuntary and subject to suppression. Contrary to Woodward's above assertion, Detective Sherwood's testimony shows that not only was Woodward alert and responsive to questioning, but he was also able to communicate normally, including in his attempt to initially disclaim his association with the robbers, before changing his story upon being presented with evidence establishing his involvement. **See** N.T., 8/29/11-9/2/11, at 480-87; **see also Commonwealth v. McQuaid**, 417 A.2d 1210, 1213 (Pa. Super. 1980) (wherein this Court held that the inculpatory statement given by the defendant to police was voluntary notwithstanding that it was made in a hospital setting where the defendant was being treated for a gunshot wound to the head, as the defendant had spoken after being read his **Miranda** rights and appeared to be alert and responsive to the detectives' questions); **Commonwealth v. Hunt**, 398 A.2d 690, 693 (Pa. Super. 1979) (*en banc*) (where the appellant was interviewed in his hospital bed while being treated for a stab wound, holding that his inculpatory statements were voluntary, since appellant was alert and responsive. The Court also rejected the appellant's argument that "the interrogating officer should have made inquiry as to appellant's medical condition and what medication had been administered to him[.]").