

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
KERVIN L. BROWN	:	
	:	
Appellant	:	No. 540 EDA 2017

Appeal from the PCRA Order January 13, 2017  
In the Court of Common Pleas of Philadelphia County  
Criminal Division at No(s): CP-51-CR-0002995-2012,  
CP-51-CR-0002996-2012

BEFORE: GANTMAN, P.J., MUSMANNO, J., and STEVENS\*, P.J.E.

MEMORANDUM BY GANTMAN, P.J.: **FILED NOVEMBER 20, 2017**

Appellant, Kervin L. Brown,<sup>1</sup> appeals *pro se* from the order entered in the Philadelphia County Court of Common Pleas, which denied his first petition brought pursuant to the Post Conviction Relief Act (“PCRA”).<sup>2</sup> We affirm.

The PCRA court set forth the relevant facts and procedural history of this case as follows:

[Appellant] has appealed from the order of January 13, 2017, denying him relief under the Post Conviction Relief Act [at] 42 Pa.C.S. § [9541] *et seq.* By way of

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<sup>1</sup> Appellant’s first name is alternatively referred to as “Kevin” throughout the record.

<sup>2</sup> 42 Pa.C.S.A. §§ 9541-9546.

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\* Former Justice specially assigned to the Superior Court.

background, [Appellant] was arrested and charged with two counts of murder generally and violations of the Uniform Firearms Act. On August 28, 2013, [Appellant] appeared before this [c]ourt and entered into a negotiated guilty plea to two counts of third-degree murder and a single count of possession of a firearm prohibited in exchange for an aggregate sentence of forty to eighty years' incarceration. Said sentence was imposed immediately following the guilty plea hearing and the recording of the verdict.

[Appellant] did not file either a post-sentence motion or a notice of appeal following the imposition of sentence. On January 2, 2014, however, [Appellant] filed a [timely] *pro se* PCRA petition. Counsel was appointed to represent [Appellant] and on March 25, 2015, counsel filed an Amended Petition that alleged that his guilty plea was unlawfully induced by a Philadelphia Police Detective named Ronald Dove, who took an inculpatory statement from [Appellant] in the instant matter together with another detective following [Appellant]'s arrest. [Appellant] asserted that he discovered that Detective Dove himself was arrested and charged with falsifying evidence, which, according to [Appellant], called into question the authenticity, validity, and reliability of [Appellant]'s inculpatory statement to police and the entry of his guilty plea. Upon conducting a careful review of the record in this case and the service of a Pa.R.Crim.P. 907 notice upon [Appellant], this [c]ourt on January 13, 2017, denied [Appellant] PCRA relief without a hearing. [Appellant] thereafter filed a notice of appeal and an ordered Pa.R.A.P. 1925(b) Statement of [Errors].

The charges in this matter arose out of an incident that occurred on December 31, 2011, in the area of the 5600 block of North 2nd Street in Philadelphia during which [Appellant] shot and killed Arlette Aguero and Alejandro Garro as they sat in a car. [Appellant] shot them because he thought Garro was a drug dealer named "Tone" who [Appellant] believed was after him because he was selling drugs in Tone's territory. The shootings [were] witnessed by at least two persons who cooperated with police. Upon arresting [Appellant], he gave police a statement wherein he admitted that he shot the victims.

(PCRA Court Opinion, filed February 14, 2017, at 1-2).

Appellant raises one issue on appeal:

DID THE [PCRA] COURT ERR IN DENYING AN EVIDENTIARY HEARING IN THIS MATTER WHEN APPELLANT RAISED A MATERIAL ISSUE OF FACT BASED ON NEWLY DISCOVERED EVIDENCE THAT [APPELLANT'S] GUILTY PLEA WAS UNLAWFULLY INDUCED BY COERCION AND MANIPULATION BY THE POLICE DETECTIVE WHO TOOK THE STATEMENT OF APPELLANT?

(Appellant's Brief at 2).

Our standard of review of the denial of a PCRA petition is limited to examining whether the record evidence supports the court's determination and whether the court's decision is free of legal error. ***Commonwealth v. Ford***, 947 A.2d 1251 (Pa.Super. 2008), *appeal denied*, 598 Pa. 779, 959 A.2d 319 (2008). This Court grants great deference to the findings of the PCRA court if the record contains any support for those findings. ***Commonwealth v. Boyd***, 923 A.2d 513 (Pa.Super. 2007), *appeal denied*, 593 Pa. 754, 932 A.2d 74 (2007). A petitioner is not entitled to a PCRA hearing as a matter of right; the PCRA court can decline to hold a hearing if there is no genuine issue concerning any material fact, the petitioner is not entitled to PCRA relief, and no purpose would be served by any further proceedings. ***Commonwealth v. Hardcastle***, 549 Pa. 450, 701 A.2d 541 (1997).

Appellant argues his newly discovered evidence raised a material issue of fact that his guilty plea was unlawfully induced by coercion and

manipulation. Specifically, Appellant claims Ronald Dove, a Philadelphia Police Detective, caused Appellant to plead guilty when he was innocent and that this evidence was unavailable until after his conviction and sentence. Appellant first learned by letter from the public defender's office on October 30, 2013, that Detective Dove was under investigation for offenses involving false statements to authorities and obstruction of justice. Appellant asserts Detective Dove was later arrested for these offenses on January 22, 2015, and pled guilty to flight to avoid apprehension, conspiracy to hinder prosecution, hindering prosecution, obstruction, unsworn falsification, and tampering with physical evidence. Appellant maintains Detective Dove took Appellant's confession and was a key witness at Appellant's preliminary hearing; and the Commonwealth relied on the confession during the guilty plea proceedings. Appellant draws attention to his trial counsel's certification that she would have pursued a self-defense claim on Appellant's behalf, if she had known of the criminal inquiry into Detective Dove. Appellant also avers he would testify that Detective Dove manipulated and coerced Appellant to make a false confession. Appellant concludes his proposed after-discovered evidence creates a material issue of fact that demands an evidentiary hearing on his petition. For the following reasons, we cannot agree.

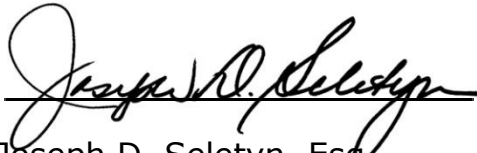
After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable Jeffrey P.

Minehart, we conclude Appellant's issue merits no relief. The PCRA court opinion fully discusses and properly disposes of the question presented. (**See** PCRA Court Opinion at 3-7) (finding: in his PCRA petitions, Appellant presented no evidence to support his claim; Appellant entered his plea before Detective Dove allegedly engaged in criminal conduct unrelated to Appellant's confession; Appellant failed to explain how Detective Dove coerced a confession or guilty plea; Appellant provided no description of Detective Dove's actions during interview and did not establish connection between Detective Dove's other misconduct and Appellant's confession; Appellant failed to discuss four elements of newly-discovered evidence claim; moreover, even if Appellant had discussed elements of newly-discovered evidence claim, he would not be entitled to relief, where Detective Dove was not lead detective in Appellant's case and conducted Appellant's interview with another detective, whom Appellant does not accuse of wrongdoing; evidence of Appellant's guilt was overwhelming, because two eyewitnesses saw Appellant's crime, and Appellant confessed to second detective; thus, Appellant failed to establish Detective Dove's involvement controlled outcome of Appellant's case; additionally, argument concerning Detective Dove's alleged unrelated criminal conduct would serve only to impeach his credibility; further, review of Appellant's guilty plea demonstrates Appellant entered his plea knowingly, intelligently, and voluntarily; court conducted oral guilty plea colloquy, and Appellant signed

written colloquy form; both colloquies advised Appellant of his rights and indicated which rights he waived by pleading guilty; record does not indicate Appellant would have elected to proceed to trial if he had been aware of Detective Dove's alleged unrelated criminal conduct; Appellant was not entitled to PCRA evidentiary hearing, because he failed to support his claim that Detective Dove manipulated or induced Appellant's confession or guilty plea). The record supports the court's decision to deny Appellant a hearing on his petition and/or PCRA relief on the claim presented. Accordingly, we affirm on the basis of the PCRA court's opinion.

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: 11/20/2017

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CRIMINAL TRIAL DIVISION

COMMONWEALTH OF PENNSYLVANIA : COURT OF COMMON PLEAS  
: PHILADELPHIA COUNTY  
:   
vs. : NOS.: CP-51-CR-0002995-2012  
: CP-51-CR-0002996-2012  
:   
KERVIN L. BROWN : **FILED**

FEB 14 2017

OPINION

Appeals/Post Trial  
Office of Judicial Records

Defendant, Kervin L. Brown has appealed from the order of January 13, 2017, denying him relief under the Post-Conviction Relief Act (hereinafter PCRA), 42 Pa.C.S. § 9741 *et seq.*<sup>1</sup> By way of background, petitioner was arrested and charged with two counts of murder, generally, and violations off the Uniform Firearms Act. On August 28, 2013, defendant appeared before this Court and entered into a negotiated guilty plea to two counts of third-degree murder and a single count of possession of a firearm prohibited in exchange for an aggregate sentence of forty to eighty years' incarceration. Said sentence was imposed immediately following the guilty plea hearing and the recording of the verdict.

Defendant did not file either a post-sentence motion or a notice of appeal following the imposition of sentence. On January 2, 2014, however, defendant filed a *pro se* PCRA petition. Counsel was appointed to represent defendant and on March 25, 2015, counsel filed an Amended Petition that alleged that his guilty plea was unlawfully induced by a Philadelphia Police Detective named Ronald Dove, who took an inculpatory

<sup>1</sup> It is noted that defendant has been referred to as Kevin Brown in various filings.



statement from defendant in the instant matter together with another detective following defendant's arrest. Defendant asserted that he discovered that Detective Dove himself was arrested and charged with falsifying evidence, which, according to defendant, called into question the authenticity, validity, and reliability of defendant's inculpatory statement to police and the entry of his guilty plea. Upon conducting a careful review of the record in this case and the service of a Pa.R.Crim.P. 907 notice upon defendant, this Court on January 13, 2017, denied defendant PCRA relief without a hearing. Defendant thereafter filed a notice of appeal and an ordered Pa.R.A.P. 1925(b) Statement of Matters.

The charges in this matter arose out of an incident that occurred on December 31, 2011, in the area of the 5600 block of North 2nd Street in Philadelphia during which defendant shot and killed Arlette Aguero and Alejandro Garro as they sat in a car. Defendant shot them because he thought Garro was a drug dealer named "Tone" who defendant believed was after him because he was selling drugs in Tone's territory. The shootings was witnessed by at least two persons who cooperated with police. Upon arresting defendant, he gave police a statement wherein he admitted that he shot the victims.

In his 1925(b) statement, defendant first asserts that he is entitled to withdraw his guilty plea because it was induced by Detective Dove who coerced a confession from him, which confession thereafter induced defendant to plead guilty. It is respectfully submitted that relief should be denied with respect to this claim.

In reviewing the propriety of a PCRA court's dismissal of a petition without a hearing, the reviewing court is limited to determining whether the court's findings are supported by the record and whether the order in question is free of legal error.



Commonwealth v. Holmes, 905 A.2d 707, 509 (Pa. Super. 2006) citing Commonwealth v. Halley, 870 A.2d 795, 799 (Pa. 2005). The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record. Commonwealth v. Carr, 768 A.2d 1164, 1166 (Pa. Super. 2001). A PCRA court may decline to hold a hearing on the petition if the petitioner's claims are patently frivolous and is without a trace of support either in the record or from other evidence. Commonwealth v. Jordan, 772 A.2d 1011, 1014 (Pa. Super. 2001). The reviewing court on appeal must examine each of the issues raised in the PCRA petition in light of the record in order to determine whether the PCRA court erred in concluding that there were no genuine issues of material fact and denying relief without an evidentiary hearing. Id. See also Commonwealth v. Hardcastle, 701 A.2d 541, 542 (Pa. 1997).

Instantly, defendant claimed that the discovery that Ronald Dove was arrested after Detective Dove participated in the taking of the inculpatory statement from him amounts to newly discovered evidence that vitiates the validity of his guilty plea.<sup>2</sup>

To obtain relief based upon newly-discovered evidence under the PCRA, a petitioner must establish that: (1) the evidence has been discovered after trial and it could not have been obtained at or prior to trial through reasonable diligence; (2) the evidence is not cumulative; (3) it is not being used solely to impeach credibility; and (4) it would likely compel a different verdict.

Commonwealth v. D'Amato, 856 A.2d 806, 823 (Pa. 2004), citing Commonwealth v. Abu-Jamal, 720 A.2d 79, 94 (Pa. 1998) (additional citation omitted).

This Court denied relief with respect to this claim because defendant presented no supporting evidence and merely alleged in the filings in this matter that Detective Dove

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<sup>2</sup> Detective Dove was charged with assisting his girlfriend to flee Philadelphia after she murdered her boyfriend.

“manipulated and coerced” him to confess to the two murders and that because of Detective Dove’s actions, he was induced to plead guilty. Amended Petition filed March 25, 2015. In his *pro se* PCRA petition, defendant averred that he was informed of Detective Dove’s misfeasance in a letter sent to him by the Defender Association of Philadelphia and that he acted in self-defense but that Detective Dove manipulated him to forego that defense. Nevertheless, other than indicating that Detective Dove engaged in misconduct and that he (defendant) did not know of it at the time he pleaded guilty, defendant did not engage in any analysis or provide any information explaining how Detective Dove’s **future** misdeeds coerced him to confess or plead guilty.

Utterly absent from defendant’s amended petition is any description of Detective’s Dove’s actions during the interview, that rendered defendant’s confession unknowing, unintelligent, or involuntary. In fact, given that defendant gave his statement more than a year prior to the date charges were lodged against Detective Dove and that defendant entered his plea prior to the date Detective Dove’s girlfriend killed her boyfriend, it is not surprising that there is such a dearth of supporting facts and argument in defendant’s filings for defendant’s claim that Detective Dove engaged in misconduct during the interview of him and that misconduct led to the confession and guilty plea. Merely averring that Detective Dove coerced a false confession without linking how the detective’s actions in his girlfriend’s subsequent matter does not support defendant’s claim herein that the detective acted illegally during defendant’s interview.

In addition, defendant failed to discuss the four elements of a successful newly discovered evidence claim in any of his filings. This was fatal to his claim because a PCRA defendant must at a minimum plead that there is merit to his claim. This is clear

must demonstrate that he will not use the alleged after-discovered evidence solely to impeach the credibility of a witness).

Finally, a review of defendant's guilty plea hearing demonstrate that he entered his plea knowingly, intelligently, and voluntarily. In addition to signing a guilty plea colloquy form that advised him of his rights as well as those he was foregoing by pleading guilty, defendant underwent an oral colloquy that again informed him of the rights he had and those he was waiving by pleading guilty. More importantly, the record establishes that defendant entered his plea knowingly, intelligently, and voluntarily. There simply is no evidence that defendant would not have pleaded guilty here if he had been aware that one of the officers involved in his case had legal problems of his own. It must be noted that this was originally designated a capital case and that the Commonwealth agreed not to seek the death penalty in exchange for defendant's guilty plea.

For all of the foregoing reasons it is respectfully suggested that defendant be denied relief with respect to his first claim.

In his second and final 1925(b) claim, defendant argues that he is entitled to an evidentiary hearing because at the time he entered his plea he was unaware of evidence accusing Detective Dove of tampering with evidence. The claim should be rejected.

There is no absolute right to an evidentiary hearing on a PCRA petition. If the court can decide the matter without an evidentiary hearing, it may do so. Commonwealth v. Springer, 961 A.2d 1262, 1264 (Pa. Super. 2008); Commonwealth v. Johnson, 945 A.2d 185, 187 (Pa. Super. 2008). Where, as here, a PCRA petition is dismissed without an evidentiary hearing pursuant to Pa.R.Crim.P. 907, the standard of review on appeal is

whether the PCRA court abused its discretion in doing so. Commonwealth v. Thomas, 744 A.2d 713 (Pa. 2000).

No abuse of discretion occurred here because defendant presented nothing to support his claim that Detective Dove's future criminal conduct induced him to confess or to plead guilty. Our Supreme Court has unequivocally held that a motion for a new trial based on after-discovered evidence "must, at the very least, describe the evidence that will be presented at the hearing" with a reasonable degree of specificity and that "[s]imply relying on conclusory accusations made by another, without more, is insufficient to warrant a hearing." Commonwealth v. Castro, 93 A.3d 818, 827 (Pa. 2014). Otherwise, any hearing granted would consist of no more than a "a fishing expedition for any possible evidence that may support some speculative claim[.]" Id. at 827-28 (quoting Commonwealth v. Scott, 752 A.2d 871, 877 n.8 (Pa. 2000)).

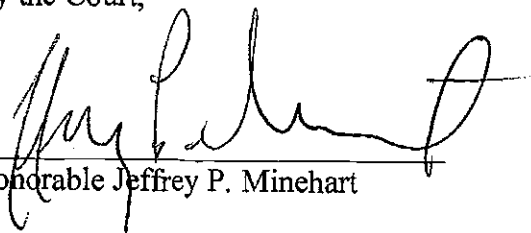
Here, any such hearing would be a fishing expedition and moreover, because defendant's first issue wholly lacked merit, no abuse of discretion occurred as a result of the lack of an evidentiary hearing. Accordingly, it is respectfully suggested that defendant be denied relief with respect to this claim.

### CONCLUSION

Based on the foregoing, the order denying defendant PCRA relief should be affirmed.

DATE: \_\_\_\_\_

By the Court,

  
Honorable Jeffrey P. Minehart

**CERTIFICATION OF SERVICE**

I, John Belli, Esquire, Law clerk to the Honorable Jeffrey P. Minehart, hereby certifies that on the 16<sup>TH</sup> day of February, 2017, a true and correct copy of the attached opinion was served upon the following:

John P. Cotter, Esquire  
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Hugh Burns, Esquire  
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District Attorney  
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John Belli, Esquire