NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
DAQUAWAN REDMOND,	:	No. 1393 EDA 2019
Appellant	:	

Appeal from the PCRA Order Entered April 8, 2019,
in the Court of Common Pleas of Philadelphia County
Criminal Division at No. CP-51-CR-0002241-2016

BEFORE: BOWES, J., KING, J., AND FORD ELLIOTT, P.J.E.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED MAY 27, 2020**

Daquawan Redmond appeals from the April 8, 2019 order denying his petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-9546. After careful review, we affirm.

The PCRA court summarized the relevant facts of this case as follows:

> On November 3, 2015, at approximately 1:52 p.m., William Brandon Bland[] was killed as a result of a drug deal gone awry.
>
> The decedent and Mark Edwards went to 417 North 55th Street, Philadelphia, to meet with [appellant] and sell him $100 worth of marijuana. When they arrived, [appellant] only had $80. Mark Edwards and [appellant] walked to the Chinese food/American food store that was close to the address, where an ATM was located. However, video surveillance showed that Edwards and [appellant] never entered the store. At this time, the decedent was still in the vehicle.

> While [appellant] and Edwards were talking, [appellant] reached for his waistband and a gun fell out of his hand, onto the ground. As he was picking the weapon up, the decedent came around the corner and began flailing his arms at [appellant]. A struggle ensued where a small piece of fabric was ripped from [appellant's] shirt, which was later recovered by police. The decedent fell to the ground. While on the ground, video surveillance captured [appellant] firing his gun at the decedent several times while he was on the ground and thereafter he ran from the scene.
>
> Video evidence also showed that ten minutes prior to the arrival of Mr. Edwards and [decedent], [appellant] is seen walking in the area securing something to his right waistband. [A] witness remained on the scene, called 9-1-1 at approximately 1:52 p.m., and stayed with the decedent until the police arrived. After the police arrived, they immediately rushed decedent to Presbyterian Medical Center of Philadelphia, where he was pronounced dead at 2:19 p.m.
>
> The medical examiner, Dr. Lindsay Simon, determined to a reasonable degree of medical certainty, that the cause of [decedent's] death was multiple gunshot wounds, and the manner of death was homicide. Aside from Mr. Edwards being an eye-witness to the crime, DNA evidence also matched [appellant] with the torn piece of fabric that was ripped from [appellant's] shirt during his struggle with the decedent.

PCRA court opinion, 7/19/19 at 2-3 (citation to notes of testimony omitted).

On January 10, 2017, appellant plead guilty following a comprehensive guilty plea colloquy to third-degree murder, firearms not to be carried without a license, and carrying firearms on public streets or public property in Philadelphia.[1] That same day, the trial court sentenced appellant to an

[1] 18 Pa.C.S.A. §§ 2502(c), 6106(a)(1), and 6108, respectively.

aggregate term of 25 to 50 years' imprisonment. Appellant did not file post-sentence motions or a direct appeal. On September 19, 2017, appellant filed a timely ***pro se*** PCRA petition. The PCRA court appointed David Rudenstein, Esq., to represent appellant, but he withdrew shortly thereafter. On April 9, 2018, the PCRA court appointed Mark S. Keenheel, Esq. ("PCRA counsel"), to represent appellant, who filed an amended PCRA petition on appellant's behalf on August 10, 2018. Thereafter, on February 22, 2019, the PCRA court provided appellant with notice of its intention to dismiss his petition without a hearing, pursuant to Pa.R.Crim.P. 907(1). Appellant did not file a response to the PCRA court's Rule 907 notice. On April 8, 2019, the PCRA court dismissed appellant's petition. This timely appeal followed.[2]

Appellant raises the following issue for our review:

> Should the [PCRA] court require[] that prior to the acceptance of a guilty plea, that a defendant: First[,] appear in court and be explained the terms and conditions of the guilty plea then[;] Second[,] return in a reasonable amount of time (10-21 days) to affirm the guilty plea and to execute the written guilty plea colloquy[?]

[2] On May 9, 2019, the PCRA court directed appellant to file a concise statement of errors complained of on appeal, in accordance with Pa.R.A.P. 1925(b). Appellant filed his timely Rule 1925(b) statement on May 30, 2019, and the PCRA court filed its Rule 1925(a) opinion on July 19, 2019.

Appellant's brief at 8 (emphasis and extraneous capitalization omitted).[3]

Proper appellate review of a PCRA court's dismissal of a PCRA petition is limited to the examination of "whether the PCRA court's determination is supported by the record and free of legal error." ***Commonwealth v. Miller***, 102 A.3d 988, 992 (Pa.Super. 2014) (citation omitted). "The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record." ***Commonwealth v. Lawson***, 90 A.3d 1, 4 (Pa.Super. 2014) (citations omitted). In order to be eligible for PCRA relief, a defendant must plead and prove by a preponderance of the evidence that his conviction or sentence arose from one or more of the errors listed at 42 Pa.C.S.A. § 9543(a)(2). Further, these issues must be neither previously litigated nor waived. 42 Pa.C.S.A. § 9543(a)(3).

Here, the crux of appellant's claim is that he was entitled, as a matter of due process, to a 10- to 21-day period to consider his guilty plea before it became final. (Appellant's brief at 8, 13.) Appellant contends that his plea counsel[4] was ineffective "for failing to request a reasonable amount of time for [him] to be able to deliberate the acceptance of the guilty plea[] as well as time to sum up courage to proceed to trial." (***Id.*** at 14 (emphasis

---

[3] As more clearly set forth by the Commonwealth, appellant argues "[w]as [he] entitled, as a matter of Due Process, to a ten-to-twenty-one-day period to consider whether to accept a guilty plea or, in the alternative, was plea counsel ineffective for not asserting that claim?" (Commonwealth's brief at 1.)

[4] Appellant was represented during his guilty plea hearing by Edward Meehan, Esq. (hereinafter, "plea counsel" or "Attorney Meehan").

omitted).) Appellant avers that this time period would have afforded plea counsel the opportunity to discuss the plea with appellant and afforded appellant the opportunity to "discuss [the plea] with his family or loved ones[.]" (***Id.*** at 13.) Appellant intimates that plea counsel's ineffectiveness in this regard induced him to enter an unknowing and involuntary plea. (***Id.***) For the following reasons, we disagree.

To prevail on a claim of ineffective assistance of counsel under the PCRA, a petitioner must plead and prove by a preponderance of the evidence that counsel's ineffectiveness "so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place." 42 Pa.C.S.A. § 9543(a)(2)(ii). We apply a three-pronged test for determining whether trial counsel was ineffective, derived from the test articulated by the United States Supreme Court in ***Strickland v. Washington***, 466 U.S. 668, 687 (1984), and as applied in ***Commonwealth v. Pierce***, 527 A.2d 973 (Pa. 1987). ***Commonwealth v. Simpson***, 66 A.3d 253, 260 (Pa. 2013).

> The ***Pierce*** test requires a PCRA petitioner to prove: (1) the underlying legal claim was of arguable merit; (2) counsel had no reasonable strategic basis for his action or inaction; and (3) the petitioner was prejudiced—that is, but for counsel's deficient stewardship, there is a reasonable likelihood the outcome of the proceedings would have been different.

Id., citing ***Pierce***, 527 A.2d at 975.

This court has explained that a petitioner "must meet all three prongs of the test for ineffectiveness[.]" ***Commonwealth v. Charleston***, 94 A.3d

1012, 1020 (Pa.Super. 2014) (citation and internal quotation marks omitted), ***appeal denied***, 104 A.3d 523 (Pa. 2014). "[C]ounsel is presumed to be effective and the burden of demonstrating ineffectiveness rests on appellant." ***Commonwealth v. Ousley***, 21 A.3d 1238, 1244 (Pa.Super. 2011) (citation omitted), ***appeal denied***, 30 A.3d 487 (Pa. 2011). Additionally, we note that counsel cannot be found ineffective for failing to raise a claim that is devoid of merit. ***See Commonwealth v. Ligons***, 971 A.2d 1125, 1146 (Pa. 2009).

Upon review, we find that appellant's ineffectiveness claim fails because he failed to satisfy the first prong of the ***Pierce*** test; namely, that the underlying legal claim was of arguable merit. ***See Simpson***, 66 A.3d at 260.

It is well settled that allegations of ineffectiveness in connection with the entry of a guilty plea will serve as a basis for relief only if the ineffectiveness caused the defendant to enter an involuntary or unknowing plea. ***Commonwealth v. Orlando***, 156 A.3d 1274, 1281 (Pa.Super. 2017). This court has explained that in order to ensure a voluntary, knowing, and intelligent plea, the trial court, at a minimum, must ask the following questions during the guilty plea colloquy:

> 1) Does the defendant understand the nature of the charges to which he or she is pleading guilty or nolo contendere?
>
> 2) Is there a factual basis for the plea?
>
> 3) Does the defendant understand that he or she has the right to a trial by jury?

> 4) Does the defendant understand that he or she is presumed innocent until found guilty?
>
> 5) Is the defendant aware of the permissible ranges of sentences and/or fines for the offenses charged?
>
> 6) Is the defendant aware that the judge is not bound by the terms of any plea agreement tendered unless the judge accepts such agreement?

Commonwealth v. Zeigler, 112 A.3d 656, 660 (Pa.Super. 2015) (citation omitted). "A defendant is bound by the statements which he makes during his plea colloquy. As such, a defendant may not assert grounds for withdrawing the plea that contradict statements made when he entered the plea." ***Orlando***, 156 A.3d at 1281 (citations and internal quotation marks omitted).

Instantly, appellant has failed to cite any case law or other statutory authority in support of his contention that the trial court was obligated to provide him with a 10-to-21-day period within which to consider his guilty plea or discuss it with family members. On the contrary, there exists no requirement in this Commonwealth that a defendant be afforded a specific period of time to deliberate and discuss his guilty plea with his family before it becomes final. Our supreme court has long recognized that "where an appellate brief fails to provide any discussion of a claim with citation to relevant authority or fails to develop the issue in any other meaningful fashion capable of review," the claim is waived and meritless and cannot serve as the

basis for relief. ***Commonwealth v. Wilson***, 147 A.3d 7, 22 (Pa. 2016) (citation omitted).

Moreover, to the extent appellant argues that plea counsel was ineffective in failing to provide him with the opportunity to discuss his plea with his family, this claim is belied by the record. During the guilty plea hearing, plea counsel testified as follows:

> THE COURT: Let me try that once again. [Attorney] Meehan, is it fair to say you discussed this negotiation with [appellant] before commencing this colloquy?
>
> [PLEA COUNSEL]: As well as his family, yes.

Notes of testimony, 1/10/17 at 32. Appellant, in turn, did not contest plea counsel's averments.

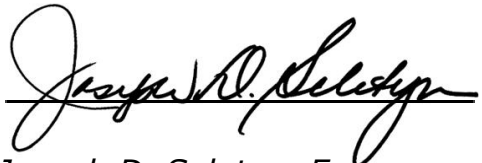
As recognized by the PCRA court, even a cursory review of the record reveals that appellant entered his guilty plea knowingly, intelligently, and voluntarily. (***See*** PCRA court opinion, 7/19/19 at 5-7.) On January 10, 2017, the trial court conducted an extensive guilty plea colloquy, wherein appellant testified that he understood the nature of the charges to which he was pleading guilty, his right to a jury trial, and the fact that he is presumed innocent until found guilty. (Notes of testimony, 1/10/17, at 4-5, 7-9, 11-16.) Appellant also indicated that he could read and write English proficiently, was not under the influence of drugs or alcohol, and was not undergoing treatment for mental illness. (***Id.*** at 6.) Appellant was also provided a factual basis for the guilty plea and was informed of the elements of the offenses to which he

was pleading guilty, as well as the permissible ranges of sentences for each charge. (***Id.*** at 22-25, 28.) Appellant further indicated that he was entering a guilty plea of his own free will and understood that the trial court was not bound by the terms of the plea agreement unless it decided to accept such agreement. (***Id.*** at 29, 34-35.) Additionally, appellant testified that he discussed his case with plea counsel, that no one had threatened, forced, or induced him to plead guilty, and that he was satisfied with plea counsel's representation. (***Id.*** at 30.) The record further indicates that appellant executed a written guilty plea colloquy indicating, ***inter alia***, that he was satisfied with counsel's legal representation. (***See*** "Written Guilty Plea Colloquy," 1/10/17 at 3.)

Based on the foregoing, we conclude that appellant's underlying claim is devoid of arguable merit, and plea counsel cannot be found ineffective for failing to pursue a meritless claim. ***See Ligons***, 971 A.2d at 1146. Accordingly, we affirm the PCRA court's April 8, 2019 order denying appellant's PCRA petition.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 5/27/2020