

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF  
: PENNSYLVANIA

v.

FRANK AIELLO

Appellant

: No. 2117 EDA 2021

Appeal from the PCRA Order Entered September 20, 2021  
In the Court of Common Pleas of Philadelphia County Criminal Division at  
No(s): CP-51-CR-0001922-2015

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF  
: PENNSYLVANIA

v.

FRANK AIELLO

Appellant

: No. 2118 EDA 2021

Appeal from the PCRA Order Entered September 20, 2021  
In the Court of Common Pleas of Philadelphia County Criminal Division at  
No(s): CP-51-CR-0001923-2015

BEFORE: PANELLA, P.J., OLSON, J., and STEVENS, P.J.E.\*

MEMORANDUM BY OLSON, J.:

**FILED JULY 25, 2022**

Appellant, Frank Aiello, appeals from the order entered on September 20, 2021, which dismissed his petition filed under the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-9546. We affirm.

The trial court ably summarized the underlying facts of this case:

---

\* Former Justice specially assigned to the Superior Court.

On November 29, 2014, [C.M. (hereinafter "the Victim")] invited Appellant over her house for Thanksgiving leftovers. Appellant had recently been struggling because he had not seen his kids in a long time. [The Victim] invited him over to see if he was doing alright. After [the Victim] made Appellant a plate of leftovers, she asked Appellant to leave, but he refused. During the argument that followed, Appellant said that he was going to kill himself and [the Victim]. Appellant then began to hit [the Victim] with a closed fist to her head and body. [The Victim] rushed to the bathroom and called the neighbors by cell phone to tell them to call the police. As [the Victim] was in the bathroom, Appellant asked her if she was calling the cops and if she had her cell phone. When [the Victim] came out of the bathroom, Appellant retrieved a butcher's knife from the kitchen. Shortly after, there was a knock on the front door and Appellant told [the Victim] not to answer. When [the Victim] went toward the door, Appellant put the knife up to her chest. Appellant stabbed [the Victim] in the chest, leaving a penetrating wound just above her heart. As a result, [the Victim has] a scar that is approximately [two to two-and-a-half] inches long. At this time, police entered the residence.

[Philadelphia] Police Officer [Philip] Cherry stated that he pulled up to the [the Victim's house] behind Lieutenant [Kevin] Wong. Officer Cherry exited his vehicle and approached [the Victim's] house. As he approached, he could hear a lot of yelling, screaming and some banging. He and Lieutenant Wong knocked on the front door several times trying to gain entry. After the officers made entry into the home, they observed [the Victim] standing just to the left of the front door and Appellant standing on a landing area with a knife in his hand waving it back and forth with the blade facing outward. Officer Cherry then pulled [the Victim] behind him, pulled his firearm and kept Appellant at gunpoint. Officer Cherry gave Appellant several verbal commands to put the knife down but he did not comply. Appellant then stated that if the officers took a step towards him that there are going to be problems and it will not end well. He also stated that if they took a step towards him that he would kill them.

Officer Cherry then asked Officer [Michael] Edwards to deploy his taser to avoid any bloodshed. Officer Edwards deployed

the taser and struck Appellant. Appellant fell backwards but still clenched [] the knife. The officers then approached Appellant and as Officer Cherry got close to get the knife out of his hand, Appellant swung the knife downward toward Officer Cherry's right foot. Fortunately, Officer Cherry was quick enough to jump back to avoid the knife. Officer Edwards deployed another charge of the taser to keep Appellant from swinging the knife again. Once he hit Appellant again, the knife flew out of his hand and landed towards the bathroom. The officers then handcuffed Appellant. After the incident, [the Victim] was taken to the hospital and as a result of Appellant's assault, sustained a punctured lung. She remained at Temple Hospital for about [five] days.

Trial Court Opinion, 9/1/17, at 2-4 (citations omitted).

Following a bench trial, Appellant was convicted of attempted murder, aggravated assault, possessing instruments of crime ("PIC"), terroristic threats, and recklessly endangering another person ("REAP") at docket number CP-51-CR-0001922-2015<sup>1</sup> and PIC, terroristic threats, REAP, and aggravated assault at docket number CP-51-CR-0001923-2015.<sup>2</sup> On July 18, 2016, the trial court sentenced Appellant to serve an aggregate term of 11 to 30 years in prison for his convictions. **See** N.T. Sentencing, 7/18/16, at 53. We affirmed Appellant's judgment of sentence on October 25, 2018; Appellant did not file a petition for allowance of appeal with the Pennsylvania Supreme Court. **Commonwealth v. Aiello**, 200 A.3d 602 (Pa. Super. 2018) (unpublished memorandum) at 1-8.

---

<sup>1</sup> 18 Pa.C.S.A. §§ 901(a), 2702(a), 907(a), 2706(a)(1), and 2705, respectively.

<sup>2</sup> 18 Pa.C.S.A. §§ 907(a), 2706(a)(1), 2705, and 2702(a)(1), respectively.

On September 30, 2019, Appellant filed a timely, *pro se* PCRA petition. The PCRA court appointed counsel to represent Appellant during the proceedings and counsel filed an amended petition on Appellant's behalf. Within the amended petition, Appellant claimed that trial counsel was ineffective, as counsel: "fail[ed] to properly investigate, subpoena and present available defense evidence and witnesses;" "fail[ed] to appropriately cross-examine Commonwealth witnesses;" and, improperly "conced[ed] an essential element of the crime charged during closing arguments." Amended PCRA Petition, 4/22/21, at 2. Further, Appellant claimed that his "constitutional rights were violated by multiple instances of prosecutorial misconduct, as well as a conviction based on evidence that did not establish his guilt beyond a reasonable doubt." *Id.* (some capitalization omitted).

On August 13, 2021, the PCRA court notified Appellant that it intended to dismiss his petition in 20 days, without a hearing, as the petition was without merit. PCRA Court Notice, 8/13/21, at 1; *see also* Pa.R.Crim.P. 907(1). Appellant did not respond to the PCRA court's Rule 907 notice and, on September 20, 2021, the PCRA court finally dismissed Appellant's petition. PCRA Court Order, 9/20/21, at 1.

Appellant filed a timely notice of appeal. He raises four claims to this Court:

1. Whether the PCRA court erred by dismissing the PCRA petition when clear and convincing evidence was presented to establish that trial counsel was ineffective for failing to properly investigate, subpoena and present available defense evidence and witnesses; failing to appropriately

cross-examine Commonwealth witnesses; and conceding an essential element of the crime charged during closing arguments.

2. Whether the PCRA court erred by dismissing the PCRA petition when clear and convincing evidence was presented to establish that appellate counsel was ineffective for failing to pursue in the appellate brief the claim of the sentencing court's abuse of discretion, despite raising the issue in the 1925(b) statement.

3. Whether the PCRA court erred by dismissing the PCRA petition when clear and convincing evidence was presented to establish violations of [Appellant's] constitutional rights under the United States and Pennsylvania Constitutions, including multiple instances of prosecutorial misconduct, as well as a conviction based on evidence that did not establish his guilt beyond a reasonable doubt.

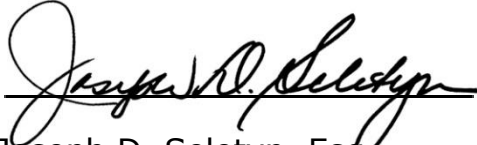
4. Whether the PCRA court erred by failing to grant an evidentiary hearing.

Appellant's Brief at 9.

We have reviewed the briefs of the parties, the relevant law, the certified record, the notes of testimony, and the opinion of the able PCRA court judge, the Honorable Diana L. Anhalt. We conclude that Appellant is not entitled to relief in this case, for the reasons expressed in Judge Anhalt's December 17, 2021 opinion. Therefore, we affirm on the basis of Judge Anhalt's thorough opinion and adopt it as our own. In any future filing with this or any other court addressing this ruling, the filing party shall attach a copy of Judge Anhalt's December 17, 2021 opinion.

Order affirmed. Jurisdiction relinquished.

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: 7/25/2022