

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
DWAYNE WRIGHT	:	
	:	
Appellant	:	No. 493 MDA 2022

Appeal from the PCRA Order Entered March 21, 2022
In the Court of Common Pleas of Lancaster County Criminal Division at
No(s): CP-36-CR-0004113-2018

BEFORE: PANELLA, P.J., BENDER, P.J.E., and LAZARUS, J.

MEMORANDUM BY BENDER, P.J.E.: **FILED: NOVEMBER 17, 2022**

Appellant, Dwayne Wright, appeals from the March 21, 2022 order denying his petition for relief under the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. After careful review, we affirm.

The PCRA court summarized the facts and procedural history of Appellant’s case, as follows:

On June 12, 2018, Officers Jacob Bingham and Timothy Sinnot[] of the Lancaster City Bureau of Police (“LCBP”) were on patrol when they stopped a vehicle with an expired registration. The vehicle, a 2001 Ford Focus, was registered to Bruce Dates, who Officer Bingham [*sic*] later learned lived in Alabama. Officer Bingham approached the vehicle and spoke with the driver, [Appellant] Dwayne Wright, who provided Officer Bingham with photo identification. Officer Bingham ran [Appellant’s] identification and discovered that [Appellant’s] license was suspended. During the vehicle stop, Dispatch also informed Officer Bingham that [Appellant] had an outstanding warrant for a state parole violation. At that point, Officer Bingham and Officer Sinnot removed [Appellant] from his vehicle, placed him under arrest, and searched [Appellant’s] person.

After [Appellant] was secured in the police cruiser, Officer Bingham conducted an inventory search of the Ford Focus and located a black jacket on the front passenger's seat. In the pocket of the black jacket, Officer Bingham found a clear plastic corner tie baggie containing cocaine. After finding the cocaine, Officers Bingham and Sinnot decided to obtain a warrant before searching the rest of the vehicle. Officer Bingham drove the vehicle to the police station and the [o]fficers obtained a search warrant for controlled substances.

When Officers Bingham and Sinnot executed the search warrant, they found a bag in the trunk containing powder cocaine, crack cocaine, and a firearm. The [o]fficers then applied for a second search warrant for firearms, weapons, and ammunition. When executing the second search warrant, the officers seized approximately 50 grams of cocaine, marijuana and related paraphernalia, two pistols, ammunition for both pistols, and cash totaling approximately \$1,579.

[Appellant] was subsequently charged with two counts of firearms not to be carried without a license, two counts of possession with intent to deliver controlled substances, one count of person not to possess firearms, receiving stolen property, possession of drug paraphernalia, and driving while operating privileges are suspended or revoked.

On September 5, 2018, [Appellant], through his attorney, Edwin Pfursich, Esq., filed a Motion to Suppress the physical evidence seized from the vehicle. In his Motion, [Appellant] argued that Officer Bingham's initial inventory search was conducted in violation of Pennsylvania Constitution Article I, Sections 8 and 9, as well as the United States Constitution Amendments 4, 5, and 6, and that all evidence discovered during that search and the subsequent searches should be suppressed. [The trial court] held a hearing on [Appellant's] Motion on November 15, 2018, during which the facts set forth above were established. Following the hearing, both [Appellant] and the Commonwealth submitted supporting briefs. After considering the factual record established during the hearing and the arguments of counsel, [the court] determined that although Officer Bingham's inventory search was improper under 75 Pa.C.S.[] § 6309.2—which governs the proper procedures for immobilization, towing, storage, and impoundment of vehicles driven without a license or proper registration—the inventory search and all subsequent searches were nonetheless valid pursuant to the inevitable discovery doctrine. Consequently,

on February 27, 2019, [the court] denied [Appellant's] Motion to Suppress.

[Appellant] was thereafter found guilty on all counts at a stipulated bench trial. [The court] ordered a pre-sentence investigation and, after receiving the report, sentenced [Appellant] to seven and a half to twenty years['] imprisonment. [Appellant] subsequently filed a Notice of Appeal challenging, among other things, [the] denial of his Motion to Suppress. On October 26, 2020, the Superior Court affirmed [the trial court's] decision to deny [Appellant's] Motion to Suppress[,] and on May 12, 2021, the Pennsylvania Supreme Court denied [Appellant's] Petition for Allowance of Appeal. [**See Commonwealth v. Wright**, 241 A.3d 461 (Pa. Super. 2020) (unpublished memorandum), *appeal denied*, 253 A.3d 222 (Pa. 2021).]

On July 17, 2021, [Appellant] filed the instant[,] *pro se* PCRA Petition. On August 10, 2021, [the court] appointed Christopher P. Lyden, Esq.[,] to represent [Appellant] and granted Attorney Lyden 60 days to file an amended petition. On September 23, 2021, Attorney Lyden filed a Motion to Extend Time to File Amended Petition. On September 27, 2021, [the PCRA court] granted Attorney Lyden 60 additional days to file an amended petition.

On December 7, 2021, [Appellant], through Attorney Lyden, filed the instant[,] Amended PCRA Petition (hereinafter "Amended Petition")[,] in which [Appellant] argued that Attorney Pfursich was ineffective for failing to call a key witness—[Appellant's] mother, Jacklyn Draughn—during the November 15, 2018[,] suppression hearing. [Appellant] contended that had Officers Bingham and Sinnot simply immobilized the vehicle without executing an unconstitutional, warrantless search, Ms. Draughn and Mr. Dates—the owner of the Ford Focus—were available to take the steps necessary to take possession of the vehicle before it was towed such that the vehicle would not have needed to be searched, negating the applicability of the inevitable discovery doctrine. In support of his argument, [Appellant] averred that although Ms. Draughn was present at the time of his arrest and approached Officers Bingham and Sinnot, the Officers refused to turn the Ford Focus over to her and instead drove the vehicle from the scene. [Appellant] also asserted that Ms. Draughn later went to the police station and was again denied access to the Ford Focus. Notably, although [Appellant] requested an evidentiary

hearing, he failed to include[,] as part of his Amended Petition[,] the witness certification required by 42 Pa.C.S.[] § 9545(d)(1).

On December 8, 2021, [the court] issued an Order directing the Commonwealth to file a response to the Amended Petition and the Commonwealth filed a response on December 28, 2021. On February 1, 2022, [the court] issued a Notice of Intent to Dismiss the Amended Petition without a hearing, explaining that [Appellant] had failed to comply with 42 Pa.C.S.[] § 9545(d)(1), that [Appellant] had previously litigated the claims set forth in his Amended Petition on direct appeal, that there were no genuine issues concerning any material fact, and that no purpose would be served by further proceedings. [The PCRA court] granted [Appellant] until February 21, 2022, to respond to the Notice.

In [Appellant's] February 9, 2022[] Response, he included a witness certification (hereinafter "Certification") for Ms. Draughn, signed by Attorney Lyden, setting forth Ms. Draughn's personal information and the content of her proposed testimony. According to the Certification, Ms. Draughn would have testified to the following at a PCRA hearing:

She was present during the arrest of [Appellant] and during the subsequent search of the vehicle. She resided in Lancaster City at the time of this incident. She asked to have the vehicle turned over to her, but the officers refused. She saw an officer drive the vehicle off from the scene of the arrest. She went to the police station and asked to have the vehicle turned over to her, but again was denied. The police delivered the keys of the vehicle to Ms. Draughn's residence the following Sunday. Mr. Bruce Dates, the owner of the vehicle, is her brother. She had the ability to communicate with Mr. Dates and, with his cooperation, do what was necessary to clear the registration and receive possession of the vehicle.

[Appellant's] Response to Pa.R.Crim.P. 907 Notice, Certification, Feb. 9, 2022.

After reviewing [Appellant's] response—including the attached Certification—in light of relevant case and statutory law, [the court] again found that no purpose would be served by holding a hearing and that [Appellant's] claim had been previously litigated.

Consequently, [the PCRA court] issued an Order dismissing [Appellant's] Amended Petition on March 21, 2022. On March 22,

2022, [Appellant] filed a counseled Notice of Appeal to the Superior Court from [the] March 21st Order. [Appellant] filed his [Pa.R.A.P. 1925(b)] Concise Statement of Errors [Complained of on Appeal] on March 29, 2022, to which the Commonwealth responded on April 11, 2022.

PCRA Court Opinion (PCO), 6/21/22, at 1-6 (footnotes and citations to the record omitted). The PCRA court filed its Rule 1925(a) opinion on June 21, 2022.

Herein, Appellant states one issue for our review: “Did the PCRA court err by concluding that Appellant’s claim raised in his PCRA petition was meritless and previously litigated?” Appellant’s Brief at 4 (unnecessary capitalization omitted).

Initially, it is well-settle that,

[o]n appeal from the denial of PCRA relief, our standard of review calls for us to determine whether the ruling of the PCRA court is supported by the record and free of legal error. We apply a *de novo* standard of review to the PCRA court’s legal conclusions.

Commonwealth v. Wharton, 263 A.3d 561, 567 (Pa. 2021) (cleaned up).

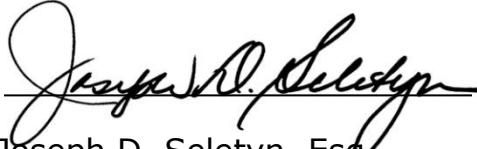
In assessing Appellant’s issue, we have reviewed the certified record, the briefs of the parties, and the applicable law. Additionally, we have examined the well-reasoned opinion of the Honorable Jeffery D. Wright of the Court of Common Pleas of Lancaster County. We conclude that Judge Wright’s comprehensive opinion accurately disposes of the issue presented by Appellant. **See** PCO at 7-13. Accordingly, we adopt Judge Wright’s opinion

as our own and affirm the order denying Appellant's PCRA petition for the reasons set forth therein.¹

¹ On November 2, 2022, Appellant filed a motion to proceed *pro se*, stating that he wishes to raise ineffective assistance of counsel claims against his current attorney, Christopher P. Lyden, Esq., under our Supreme Court's holding in ***Commonwealth v. Bradley***, 261 A.3d 381, 401 (Pa. 2021) (holding "that a PCRA petitioner may, after a PCRA court denies relief, and after obtaining new counsel **or acting pro se**, raise claims of PCRA counsel's ineffectiveness at the first opportunity to do so, even if on appeal") (emphasis added). We grant Appellant's motion to proceed *pro se* only to the extent that we will consider his *pro se* claims of ineffectiveness of PCRA counsel in accordance with ***Bradley***. In his motion, Appellant first alleges that Attorney Lyden was ineffective for failing "to comply with the requirements set forth in 42 Pa.C.S.[] § 9545(d)(1) by not attaching proper certifications for proposed PCRA hearing witnesses." Motion to Proceed *Pro Se*, 11/2/22, at 2 ¶ i(a) (unnumbered). However, Appellant cannot prove this claim has arguable merit. ***See Commonwealth v. Franklin***, 990 A.2d 795, 797 (Pa. Super. 2010) ("It is well-established that counsel is presumed to have provided effective representation unless the PCRA petitioner pleads and proves all of the following: (1) the underlying legal claim is of arguable merit; (2) counsel's action or inaction lacked any objectively reasonable basis designed to effectuate his client's interest; and (3) prejudice, to the effect that there was a reasonable probability of a different outcome if not for counsel's error.") (citations omitted). While Attorney Lyden did not attach proper certifications to his initial, amended petition filed on Appellant's behalf, he attached a witness certification for Ms. Draughn to his response to the court's Rule 907 notice. The court reviewed and considered that witness certification, but still determined no evidentiary hearing was warranted. ***See*** PCO at 6. Thus, Appellant is incorrect that Attorney Lyden failed to satisfy section 9545(d)(1) and, therefore, his first ineffectiveness claim fails. Likewise, his other two ineffectiveness claims also fail, as they are mere boilerplate assertions that are not specific enough to indicate they have any arguable merit. ***See*** Motion to Proceed *Pro Se* at 2 ¶ i(b), (c) (unnumbered) (alleging PCRA counsel "failed to properly inform Appellant of any and all decisions or circumstances with respect to which the client's informed consent [was required,]" and that "[c]ounsel was ineffective for failing to place the Commonwealth[']s case under the adversarial process as guaranteed by ***Commonwealth v. Crispell***, 193 A.3d 919 (Pa. 2017)"). Finally, we note that Appellant's Motion to Proceed *Pro Se* also raises claims that the PCRA judge should recuse from this case. (Footnote Continued Next Page)

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: 11/17/2022

However, Appellant cites no legal authority permitting him to raise this claim *pro se* when he is still represented by Attorney Lyden. ***See Commonwealth v. Williams***, 151 A.3d 621, 623 (Pa. Super. 2016) (“In this Commonwealth, hybrid representation is not permitted. Accordingly, this Court will not accept a *pro se* motion while an appellant is represented by counsel....”) (internal citation omitted). Therefore, we deny his Motion to Proceed *Pro Se* regarding this claim.