

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

GERALD STOKES

Appellant

No. 702 EDA 2021

Appeal from the PCRA Order Entered March 9, 2021
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0011050-2015

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

GERALD STOKES

Appellant

No. 703 EDA 2021

Appeal from the PCRA Order Entered March 9, 2021
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0011073-2015

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

GERALD STOKES

Appellant

No. 995 EDA 2021

Appeal from the PCRA Order Entered March 9, 2021
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0014259-2013

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

MEMORANDUM BY STEVENS, P.J.E.:

FILED JUNE 28, 2022

In these consolidated Appeals,¹ Appellant Gerald Stokes appeals from the Order entered in the Court of Common Pleas of Philadelphia County on March 9, 2021, denying his petition filed pursuant to the Post Conviction Relief Act (PCRA).² We affirm.

In 2015, Appellant was charged in three, separate informations of raping three underage girls when he was a teenager. On October 11, 2016, following a consolidated jury trial, Appellant was found guilty of: rape of a child, rape by forcible compulsion, corruption of a minor, and two counts of unlawful contact with a minor (docket no. CP-51-CR-0014529-2013); rape by forcible compulsion (docket no. CP-51-CR-0011050-2015); and rape of a child (docket no. CP-52-CR-0011073-2015). He was sentenced on February 13, 2017, to an aggregate term of thirty (30) to sixty (60) years in prison, and his motion for reconsideration was denied on March 23, 2017.

* Former Justice specially assigned to the Superior Court.

¹The record reflects that Appellant complied with ***Commonwealth v. Walker***, 185 A.3d 969, 976 (Pa. 2018) by filing a separate notice of appeal at each docket number. ***See Walker*** (stating that when an order “resolves issues arising on more than one docket or relating to more than one judgment, separate notices of appeals must be filed” (quoting Pa.R.A.P. 341, Official Note)). On May 11, 2021, Appellant filed a Motion to Consolidate, and in a *Per Curiam* Order entered on May 28, 2021, this Court consolidated the appeals.

² 42 Pa.C.S.A. §§ 9541-9546.

Appellant filed a notice of appeal on April 21, 2017, wherein he challenged the sufficiency of the evidence to sustain his convictions. Following review, a prior panel of this Court found Appellant's claims waived for his failure to offer any analysis or caselaw in support of them in his appellate brief. **Commonwealth v. Stokes**, Nos. 2485–87 EDA 2017, 2018 WL 6715522 (Pa. Super. Dec. 21, 2018).

On October 22, 2019, Appellant filed a PCRA petition, *pro se*. Counsel was appointed and filed an amended petition asserting trial counsel had been ineffective for failing to object to the trial court's anti-deadlock jury instruction, commonly referred to as an **Allen** charge.^{3,4} After providing

³ In **Allen v. United States**, 164 U.S. 492, 501-02, 17 S.Ct. 154, 41 L.Ed. 528 (1896) the United States Supreme Court held that a trial court may instruct a deadlocked jury to continue the deliberations while keeping an open mind to reconsideration of the jurors' individual views, but without giving up their firmly held convictions.

⁴ That instruction reads as follows:

Jurors, I am in receipt of both of your questions, 3 and 4, in which you believe you're at an impasse or deadlock in resolving the case. I just want to emphasize to you your role is deciding the facts.

You are to determine the credibility, believability of a witness, and use the same standard that you would in every[]day life. You figure out who's lying, who's telling the truth. You re-evaluate the evidence. You determine the facts. The [c]ourt instructs you on the law. You heard the arguments of counsel. You heard the witness[es'] testimony. Now it's your job to sort that out and come to a verdict.

(Footnote Continued Next Page)

I saw your notes, but I want to emphasize to you the seriousness of this matter. You heard the testimony. This is a matter that stretches back ten years. This matter has been in litigation for three years. Some of you— and I'm not going to call anybody out—have not been taking it very seriously. You've been coming in here late, holding everything up, and the focus is not there. You need to focus. This is a serious matter and needs to be treated in that manner.

The defendant deserves the matter to be taken seriously. The complainants deserve to be treated seriously. Everyone involved deserves this matter to be taken seriously and given the focus it deserves.

Now, you [have] been presented with the law. You asked for the law. That's been provided to you. You did ask for statements and for legal reasons, we could not provide that to you. However, when you go back you can use your notes. Use your recollection. You can use the board. Identify what the points of deadlock are. Reach out to the [c]ourt to question to see whether or not you can see certain evidence. You may even consider whether you can rehear certain testimony. You may take a look at that and consider that in view of the facts that the statements for legal reasons cannot be given to you. And I understand that that may be a challenge for you. But you need to go back and look at this case. You need to take it seriously and use the tools that you have which are primarily, your recollection, your notes, and each other to reach a resolution of this case.

Now, we have today. We have next week. You know, but this case needs to be taken seriously. So I'm going to encourage you to go back and do just that. All right? And then we'll check in with you later at lunch. All right?

N.T. 10/14/2016 at 4-6

It is noteworthy that Appellant misrepresents the trial court's instruction by quoting only part of it in his appellate brief to support his argument that the instruction was unlawfully coercive. Significantly, Appellant omits the portion that begins on page 5 with "However, when you go back. . . ." and ends on page 6 of the October 14, 2016, notes of testimony. Brief for Appellant at 3-4, 10-11.

Appellant with proper notice pursuant to Pa.R.CrimP. 907, the PCRA court dismissed Appellant's petition without a hearing on March 9, 2021.

Appellant filed a timely notice of appeal on April 8, 2021. On May 11, 2021, Appellant filed his concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). The PCRA court filed its Rule 1925(a) Opinion on July 23, 2021.

In his brief, Appellant presents the following issue for this Court's consideration:

Did the PCRA court err by dismissing Appellant's PCRA petition because under the law governing jury-instructions in this Commonwealth a new trial is compelled without any development of any additional facts thru [sic] an evidentiary hearing and the error is clear and prejudicial requiring a new trial?

Brief for Appellant at 2.

This Court's scope and standard of review of decisions denying PCRA relief are limited to examining whether the PCRA court's findings of fact are supported by the record, and whether its legal conclusions are free from error. ***Commonwealth v. Chmiel***, 173 A.3d 617, 624 (Pa. 2017). We review questions of law *de novo*. ***Id.*** at 625.

Before we consider the merits of Appellant's issue, we must determine whether he has preserved it for our review. Importantly, Appellant did not couch his claim in his appellate brief in terms of ineffective assistance of counsel, but rather he stated that "[t]his case boils down to resolving two interconnected issues as to (1) whether or not the instruction

given to a 'deadlocked' jury was incorrect and (2) if yes, whether or not a new trial is due." Brief for Appellant at 3. Appellant goes on to summarize his argument in his brief as follows:

The jury instruction given here was incorrect, and incorrect jury instructions were influential on juries and therefore prejudicial. Thus, since this instruction was clearly the 'but for' proximate cause of Appellant's conviction, and it was improper, the only proper and logical relief due here would be to order a new trial or grant an acquittal. The instruction at issue is specifically designed to cause or create an agreement and therefore a verdict; the "Spencer-Allen" instruction is meant to influence and therefore prejudice by design as it is meant to cause those of the minority-opinion in the jury to reconsider their position in the effort to reach a unanimous verdict, the only way to reach a verdict of course. See **Commonwealth v. Greer**, 951 A.2d 346, 389-390 (Pa. 2008). Here it was incorrect and therefore Appellant's conviction was improper and a new trial is due.

Brief for Appellant at 7.

In the argument portion of his brief, Appellant's sole, bald allegation pertaining to trial counsel's alleged ineffective representation is as follows:

Appellant should be given a new trial because trial counsel failed to object to a coercive jury instruction to a deadlocked jury who came back approximately 2 hours later with a guilty verdict; the instruction caused the conviction and thus Appellant was prejudiced to the point for this Court to say that if trial counsel objected to it the result could have been different. (N.T. 10/14/16, at 4-5); **see generally Commonwealth v. Pierce**, 527 A.2d 973(Pa. 1987). There was no rational basis for said trial counsel to allow this erroneous charge to stay unremedied[.]

Brief for Appellant at 11.

Although Appellant challenged trial counsel's failure to object to the trial court's **Allen** charge before the PCRA court, he has neglected to assert and develop that ineffective assistance claim in his appellate brief. Instead, he

argues the merits of the underlying contention that the trial court committed reversible error when providing the jury with the alleged erroneous instruction. However, that specific claim is waived pursuant to both Pa.R.A.P. 302(a) and 42 Pa.C.S.A. § 9543(a)(3).

Rule 302(a) provides, “Issues not raised in the lower court are waived and cannot be raised for the first time on appeal”; **see also Commonwealth v. Edmiston**, 851 A.2d 883, 889 (Pa. 2004) (“Claims not raised in the PCRA court are waived and cannot be raised for the first time on appeal to this Court.”). As Appellant neglected to assert this allegation of trial court error before the PCRA court, it is waived.

For similar reasons, Appellant's argument is thwarted by § 9543(a)(3), which requires a PCRA petitioner to plead and prove that the claim has not been previously litigated or waived. Instantly, Appellant could have asserted trial court error on direct appeal, but he did not. Accordingly, Appellant cannot satisfy the threshold eligibility requirements outlined in § 9543.

Moreover, the failure to develop a legal argument with citation to relevant authority is fatal to Appellant’s claim, for he has neither cited to nor discussed the legal framework necessary to attain relief in his appellate brief. **See e.g., Commonwealth v. Spatz**, 84 A.3d 294, 311-312 (Pa. 2014) (outlining three-prong test required to prevail on an ineffectiveness claim: (1) arguable merit; (2) absence of reasonable trial strategy; and (3) prejudice).

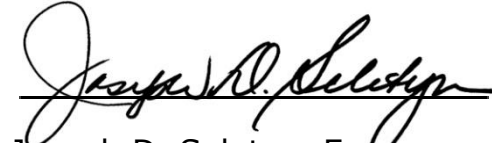
We presume that counsel was effective; a petitioner bears the burden of proving that counsel's performance was deficient and that such deficiency prejudiced him. **Id.** A petitioner's failure to prove any of the three prongs of the aforementioned test is fatal to an ineffective assistance of counsel claim. **Id.** at 311.

It is well-settled 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, that claim is waived." **In re W.H.**, 25 A.3d 330, 339 n.3 (Pa.Super. 2011) (quoting **In re A.C.**, 991 A.2d 884, 897 (Pa.Super. 2010)); **see e.g., Commonwealth v. Bullock**, 948 A.2d 818, 823 (Pa.Super. 2008) ("As Appellant has not developed a weight of the evidence claim in his brief, he has abandoned the same"). Similarly, since Appellant's brief is utterly devoid of any discussion relating to the issue he presents for our review, we are precluded from reviewing it on appeal.

As Appellant failed to properly preserve or present any meaningful legal argument in support of his contention that trial counsel provided ineffective assistance, the issue is waived.

Order affirmed.^{5,6}

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: 6/28/2022

⁵ Even if this issue were not waived, we would affirm the PCRA court's conclusion on the basis of its well-reasoned opinion to this Court. PCRA Court Opinion, 7/23/21, at 3-5.

⁶ This Court may affirm the decision of a PCRA court denying relief if it is correct on any basis. ***Commonwealth v. Beatty***, 207 A.3d 957, 964 (Pa. Super. 2019).