NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. DANNY JOHNSON Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2126 EDA 2012

Appeal from the PCRA Order July 20, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0001458-2008

BEFORE: BENDER, J., BOWES, J., and LAZARUS, J.

MEMORANDUM BY LAZARUS, J. **FILED MAY 06, 2013**

Danny Johnson appeals *pro se* from the trial court's order dismissing his petition filed pursuant to the Post Conviction Relief Act (PCRA).[1] In 2009, Johnson was convicted by a jury of first-degree murder and related offenses and ordered to serve a life sentence. Two eyewitnesses, standing less than five feet way from Johnson, observed him lift up his shirt, pull out a gun, aim the gun at the center of the victim's body and shoot the victim multiple times at point-blank range. After careful review, we affirm the dismissal of Johnson's PCRA petition based upon the opinion authored by the Honorable Glenn B. Bronson.

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[1] 42 Pa.C.S.A. §§ 9541-46.

In reviewing the denial of a PCRA petition, this Court is limited to determining whether the PCRA court's findings are supported by the record and whether the order is free of legal error. ***Commonwealth v. Van Horn***, 797 A.2d 983, 986 (Pa. Super. 2002).

On appeal, Johnson raises the following claims:

> (1) Whether the PCRA court erred by issuing a 907 notice that did not explain the reasons that appellant's claims were meritless, which denied the appellant the ability to adequately respond to the 907 notice.
>
> (2) Whether the PCRA court erred by not giving the appellant additional time to respond to the 907 notice after PCRA counsel was removed and appellant was permitted to proceed *pro se*.
>
> (3) Whether trial counsel was ineffective for failure to object and remind the trial court to give a cautionary instruction to the jury after the detective commented on the appellant's post-arrest silence.
>
> (4) Whether trial counsel was ineffective for failure to request an alibi jury instruction.
>
> (5) Whether trial counsel was ineffective for failure to object to hearsay testimony.
>
> (6) Whether trial counsel was ineffective for failure to inform the appellant that he also represent[s] one of the Commonwealth witness['s] co-defendant[s] in federal court at the time the appellant retained him.
>
> (7) Whether trial counsel was ineffective for failure to obtain the appellant's school records to impeach the testimony of two alleged Commonwealth witnesses.

After reviewing the parties' briefs, relevant case law and the record on appeal, we conclude that the PCRA court's findings are supported by the record and lack legal error: (1) no Pa.R.Crim.P. 907 violation where court

explained that no PCRA petition claims had merit at status listing and granted defense counsel additional time to brief one of claims raised in amended petition and to supplement legal memorandum; (2) no legal error where Johnson's petition was not dismissed for 50 days following Rule 907 notice, and where Rule permits the defendant to respond to notice to dismiss within 20 days, whether or not a defendant is represented by counsel; (3) no error in admitting evidence of defendant's post-arrest silence where counsel's objection or request for curative instruction would not have affected outcome of Johnson's trial due to overwhelming evidence of guilt; (4) where Johnson's testimony did not show that he was at home precisely at time of shooting and where defendant's own testimony actually placed himself in close proximity to shooting, counsel was not ineffective for failing to request alibi instruction; (5) counsel could not be ineffective for failing to object to witness's hearsay testimony that Johnson was referred to as "Poppy," where such testimony was merely cumulative of other witnesses' testimony regarding defendant's nickname; (6) where counsel represented Commonwealth witness's co-defendant in federal court on unrelated charges, there was no conflict of interest because federal client had pled guilty to charges and there could be no joint defense that would provide a motive for counsel to avoid impeaching testimony of witness in defendant's trial; (7) records showing that Commonwealth witnesses did not attend same school as defendant would have been irrelevant for impeachment

purposes where court clarified that witnesses did not testify that they attended same school as Johnson.[2]

We instruct the parties to attach a copy of Judge Bronson's opinion in the event of further proceedings in the matter.

Order affirmed.

Judgment Entered.

Prothonotary

Date: 5/6/2013

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[2] In his Pa.R.A.P. 1925(b) statement, Johnson raised an issue regarding counsel's ineffectiveness for failing to object to the prosecutor's reference of Johnson's pre-arrest silence. Johnson has abandoned this issue on appeal by failing to include it in his appellate brief. However, even if it were preserved for our review, we agree with the trial court that because Johnson testified at own trial that he had no involvement in the victim's shooting (and in fact tried to break up the altercation involving the victim), the prosecutor properly impeached defendant's credibility by referencing his pre-arrest silence and lack of cooperation in the police investigation.

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

COMMONWEALTH OF PENNSYLVANIA	:	CP-51-CR-0001458-2008
v.	:	
DANNY JOHNSON	:	

OPINION

BRONSON, J. October 22, 2012

I. PROCEDURAL BACKGROUND

On May 1, 2009, following a jury trial before the Honorable Renee Cardwell Hughes, defendant Danny Johnson was convicted of one count of murder of the first degree (18 Pa.C.S. § 2502(a)), one count of carrying a firearm without a license (18 Pa.C.S. § 6106(a)(1)), and one count of possessing an instrument of crime (18 Pa.C.S. § 907(a)) in the shooting death of Lafayette Williams. The Court immediately imposed an aggregate sentence of life in prison (18 Pa.C.S. § 1102(a)(1)). No post-sentence motions were filed. Defendant was represented at trial by Brian McMonagle, Esquire, who filed defendant's notice of appeal on May 20, 2009. Barbara McDermott, Esquire, was then appointed to represent defendant for the remainder of his appeal, and filed a 1925(b) statement on defendant's behalf on July 24, 2009. The Court filed its 1925(a) Opinion on September 18, 2009. Thereafter, defendant requested to proceed with the remainder of his appeal *pro se*, and, after a *Grazier* hearing, the Court permitted defendant to do so.

On September 23, 2010, the Superior Court affirmed defendant's judgment of sentence. Defendant then filed a timely *pro se* Motion for Post-Conviction Collateral Relief on November

15, 2010. Teri Himebaugh, Esquire, was retained to represent defendant on June 22, 2011. As Judge Hughes had retired from the bench, this PCRA matter was reassigned to the undersigned trial judge. On December 2, 2011, Ms. Himebaugh filed an amended PCRA petition ("PCRA Petition") and a Memorandum of Law in support of said petition ("Petitioner's Memorandum"), alleging six claims of ineffective assistance of counsel. *See* PCRA Petition at ¶¶ I-VII. On June 1, 2012, after reviewing defendant's PCRA Petition and Memorandum of Law and the Commonwealth's Motion to Dismiss, this Court ruled that the claims set forth in defendant's petition were without merit. Pursuant to Pa.R.Crim.P. 907, the Court issued notice of its intention to dismiss the petition without a hearing ("907 Notice"). Defendant did not respond to the 907 Notice and on July 20, 2012, the Court formally dismissed defendant's petition. On July 30, 2012, the Court held a *Grazier* hearing and granted defendant leave to proceed with an appeal *pro se*. Defendant filed a *pro se* notice of appeal on July 31, 2012.

Defendant has now appealed the Court's dismissal of his PCRA Petition, alleging that: 1) the PCRA Court erred by issuing a 907 Notice that did not explain the reasons that defendant's claims were meritless, and thereby denied defendant the ability to adequately respond to the 907 Notice; 2) the PCRA Court erred by not giving defendant additional time to respond to the 907 Notice after PCRA counsel was removed and defendant was permitted to proceed *pro se*; 3) trial counsel was ineffective for failing to object and to remind the trial court to give a cautionary jury instruction after a witness commented on defendant's post-arrest silence; 4) trial counsel was ineffective for failing to request an alibi jury instruction; 5) trial counsel was ineffective for failing to object to hearsay testimony; 6) trial counsel was ineffective for failing to inform defendant that he had previously represented the co-defendant of a Commonwealth witness in an unrelated case in federal court; 7) trial counsel was ineffective for not obtaining defendant's school records to impeach the testimony of two witnesses; and 8) trial counsel was ineffective

for not objecting, requesting a mistrial, or requesting a cautionary instruction when the Commonwealth questioned defendant about his pre-arrest silence. Concise Statement of Errors Complained of on Appeal Pursuant to Pa.R.A.P. 1925(b) ("Statement of Errors") at ¶¶ 1-8.[1] For the reasons set forth below, defendant's claims are without merit, and the PCRA Court's order dismissing his PCRA Petition should be affirmed.

II. FACTUAL BACKGROUND

The facts of this case are summarized in Judge Hughes's September 18, 2009 opinion regarding defendant's direct appeal. *See* Trial Court Opinion, filed 9/18/2009 at pp. 1-3.

III. DISCUSSION

An appellate court's review of a PCRA court's grant or denial of relief "is limited to determining whether the court's findings are supported by the record and the court's order is otherwise free of legal error." *Commonwealth v. Yager*, 685 A.2d 1000, 1003 (Pa. Super. 1996) (citations omitted). The reviewing court "will not disturb findings that are supported by the record." *Yager*, 685 A.2d at 1003.

A. Ineffective Assistance of Trial Counsel

Six of defendant's claims pertain to the alleged ineffective assistance of his trial counsel. Under Pennsylvania law, counsel is presumed effective and the burden to prove otherwise lies with the petitioner. *Commonwealth v. Basemore*, 744 A.2d 717, 728 (Pa. 2000). To obtain collateral relief based on the ineffective assistance of counsel, a petitioner must show that counsel's representation fell below accepted standards of advocacy and that as a result thereof, the petitioner was prejudiced. *Strickland v. Washington*, 466 U.S. 668, 694 (1984). In Pennsylvania, the *Strickland* standard is interpreted as requiring proof that: (1) the claim

[1] Defendant's claims have been re-ordered below for ease of disposition.

underlying the ineffectiveness claim had arguable merit; (2) counsel's actions lacked any reasonable basis; and (3) the ineffectiveness of counsel caused the petitioner prejudice. *Commonwealth v. Miller*, 987 A.2d 638, 648 (Pa. 2009); *Commonwealth v. Pierce*, 527 A.2d 973, 974-75 (Pa. 1987). To satisfy the third prong of the test, the petitioner must prove that, but for counsel's error, there is a reasonable probability that the outcome of the proceeding would have been different. *Commonwealth v. Sneed*, 899 A.2d 1067, 1084 (Pa. 2006) (citing *Strickland*, 466 U.S. at 694). If the PCRA court determines that any one of the three prongs cannot be met, then the court need not hold an evidentiary hearing as such a hearing would serve no purpose. *Commonwealth v. Jones*, 942 A.2d 903, 906 (Pa. Super. 2008).

1. Post –Arrest Silence

Defendant claims that he was "denied his Sixth Amendment right to effective counsel due to trial counsel failure to object and remind the trial court to give a cautionary instruction, after Detective White stated that, the 'appellant did not want to make a statement,' violating his Fifth Amendment right to post arrest silence." Statement of Errors at ¶ 3. Defendant is correct that the challenged testimony was objectionable and that he was entitled to a curative instruction. However, because the record establishes that defendant was not prejudiced by the offending remark, his ineffective assistance of counsel claim was properly rejected.

References at trial to a defendant's post-arrest silence are prohibited by the Fifth Amendment right against self-incrimination. However, the failure of defense counsel to object to such a reference will not deprive defendant of effective assistance of counsel unless there is a reasonable probability that such an objection would have affected the outcome of the trial. *See Commonwealth v. Spotz,* 870 A.2d 822, 833-835 (Pa. 2005); *Commonwealth v. Whitney*, 708 A.2d 471, 478 (Pa. 1998). Similarly, counsel's failure to request a curative instruction cannot give rise to a constitutional violation unless defendant can demonstrate prejudice from counsel's

error. *See, e.g., Commonwealth v. Douglas*, 737 A.2d 1188, 1199 (Pa. 1999). In determining whether defendant was prejudiced under this standard, the court must consider the strength of the evidence that was presented to the factfinder. *Spotz*, 870 A.2d at 834-835 & n.15.

Here, on direct examination, Detective White was asked by the assistant district attorney where he had picked defendant up after defendant was apprehended by the Fugitive Squad of the Philadelphia Police Department. Detective White responded, "[o]nce the [Fugitive Squad] pick him up, they will contact the assigned [Detective] which was myself and I spoke to Mr. Johnson and he did not wish to give a statement, so we just processed him." N.T. 4/27/2009 at 116. Defense counsel immediately asked to see the Court at sidebar, to which the Court replied: "Not right now. We can deal with it. Thank you." N.T. 4/27/2009 at 116. During a charging conference later in the day, the Court offered to give a curative instruction that would require the jury to disregard the comment by Detective White. N.T. 4/27/2009 at 287-289.[2] However, the next day, when the Court charged the jury, the Court neglected to give the curative instruction.

While defense counsel should have more vigorously presented his objection and reminded the Court to give the curative instruction, the record plainly establishes that his failure to do so could not have prejudiced the defendant. The evidence in the case was extremely compelling. Two eyewitnesses to the murder, Jermaine Williams and Amanda Williams, testified that from less than five feet away, defendant aimed a gun at the center of Lafayette Williams's body and shot him several times. N.T. 4/21/2009 at 182-183, 251-253. Defendant admitted at trial that he fled the state after the murder. N.T. 4/27/2009 at 164-165. Commonwealth witness Gary Creek testified that defendant admitted to the murder and provided both details of the murder and the motive behind the killing. N.T. 4/27/2009 at 24-38. Because of the strength of this evidence, defendant cannot demonstrate that the outcome of his trial was

[2] Defense counsel also made a motion for a mistrial based on the remark, which the Court denied. N.T. 4/27/2009 at 288-289.

affected by counsel's error. Accordingly, the Court properly rejected his claim of ineffective assistance of counsel.

2. Pre-Arrest Silence

Defendant claims that he was denied effective assistance of counsel "due to trial counsel failure to object and request a mistrial or cautionary instruction, when the prosecutor consistently questioned the appellant as to his pre-arrest silence violating his Fifth Amendment right to remain silent and under the Pennsylvania Constitution." Statement of Errors at ¶ 8. This claim is without merit.

It is well-established that "when a criminal defendant waives his right to remain silent and testifies at his own trial, neither the United States nor the Pennsylvania Constitution prohibit a prosecutor from impeaching a defendant's credibility by referring to his pre-arrest silence." *Commonwealth v. Bolus*, 680 A.2d 839, 844 (Pa. 1996). Here, defendant testified at trial on direct examination that he had no involvement in the shooting of the decedent, Lafayette Williams. N.T. 4/27/2009 at 168. Defendant testified that, on the day of the shooting, he observed Lafayette Williams and another man, "Tomato," fighting, and that he broke up the fight. N.T. 4/27/2009 at 158-159. Defendant testified that he then briefly fought with Lafayette Williams before walking home, where he remained until he received a phone call telling him that Lafayette Williams had been shot. N.T. 4/27/2009 at 160-161. After hearing that the police had gone to his grandmother's house looking for him, defendant testified that he then fled to Atlanta, Georgia. N.T. 4/27/2009 at 163-164. Defendant testified that he left the state because he was scared that he had been named in a homicide investigation, and because he wanted to get a lawyer. N.T. 4/27/2009 at 164.

On cross-examination, the assistant district attorney asked defendant why he did not cooperate with the police, and instead absconded to another state. *See* N.T. 4/27/2009 at 169,

Here, an alibi instruction was not warranted. On direct examination, defendant explained his version of the timeline of the day of the murder. Defendant testified that he tried to break up a fight between Lafayette Williams and "Tomato" on Somerset Street, but being unable to do so, told the two men to "take it down to the schoolyard" at the corner of 13th Street and Rush Street. N.T. 4/27/2009 at 158-159. He testified that he initially walked away, but then walked to the schoolyard where a crowd had gathered because he had misplaced his cell phone. N.T. 4/27/2009 at 159. According to the defendant, when he arrived there, Tomato and Lafayette Williams had stopped fighting, but defendant then argued and grappled with Lafayette Williams, rolling around on the ground together until someone broke up the fight. N.T. 4/27/2009 at 160-161. After that, defendant claimed that he returned to Somerset Street where he spoke to some relatives. N.T. 4/27/2009 at 161-162. He stated that he then went to his home, which was a few blocks away, and "sat in the house [for] a little bit." N.T. 4/27/2009 at 162-163. Defendant testified that he then received a phone call from his mother, who told him that someone had been shot and she heard that defendant had been "in a situation" with somebody. N.T. 4/27/2009 at 162-163. Five minutes later, defendant testified, his mother called back and told him not to go anywhere. N.T. 4/27/2009 at 163. Defendant testified that when defendant's mother arrived home, she informed him that the guy he "got into it with" had been shot. N.T. 4/27/2009 at 163.

On cross-examination, the assistant district attorney questioned defendant about the timing of his whereabouts around the time of Lafayette Williams's shooting. Defendant admitted that he was not sure about the timing. N.T. 4/27/2009 at 195. He claimed that when he left the scene of his fight with the decedent "[i]t could have been a little after 8:00, close to 9:00 [p.m.]." N.T. 4/27/2009 at 194-195. Defendant agreed that the shooting took place at approximately 9:10 to 9:15 p.m. N.T. 4/27/2009 at 195. At no time did defendant testify that he was at his home at precisely that time. Rather, his testimony placed him in close proximity to the

decedent and to the site of the murder at the approximate time that the decedent was shot and killed.

Accordingly, defendant's testimony did not render it impossible for him to have committed the crime. Therefore, defendant did not establish a true alibi defense, and his trial counsel could not have been ineffective for failing to request an alibi instruction. This claim lacks arguable merit.

4. Failure to Object to Hearsay Testimony

Defendant next claims that he was "denied his Sixth Amendment right to effective counsel due to trial counsel failure to object to the hearsay testimony of Gary Creek[,] denying the appellant a fair trial in accord to due process under the Fourteenth Amendment." Statement of Errors at ¶ 5. Specifically, defendant claims that trial counsel was ineffective for not objecting to Commonwealth witness Gary Creek's statement that he was introduced to defendant by a third man, Tyrone Clark, who referred to defendant as "Poppy." Statement of Errors at ¶ 5; *see* Memorandum of Law at pp. 37-42.

This claim is frivolous. Defendant himself, as well as two other witnesses, testified at trial that defendant's nickname was "Poppy." N.T. 4/21/2009 at 163-164; 4/27/2009 at 189, 204. Because it was not contested at trial that defendant's nickname was "Poppy," counsel could not have been ineffective for failing to object to hearsay that merely confirmed that nickname.

5. Failure to Inform Defendant about Alleged Conflict of Interest

Defendant claims that he was "denied his Sixth Amendment right to effective counsel and counsel of his choice due to trial counsel failure to inform the appellant that he also represents [a] Commonwealth witness['s] co-defendant in federal court." Statement of Errors at ¶ 6. This claim is without merit.

"To show an actual conflict of interest, the appellant must demonstrate that: (1) counsel 'actively represented conflicting interests'; and (2) those conflicting interests 'adversely affected his lawyer's performance.'" *Commonwealth v. Collins*, 957 A.2d 237, 251 (Pa. 2008) (quoting *Commonwealth v. Buehl*, 508 A.2d 1167, 1175 (Pa. 1986)). "Clients' interests actually conflict when 'during the course of representation' they 'diverge with respect to a material factual or legal issue or to a course of action.'" *Collins*, 957 A.2d at 251 (quoting *Commonwealth v. Padden*, 2001 PA Super 246, 783 A.2d 299, 310 (Pa. Super. 2001)).

Here, defendant cannot demonstrate either that his trial counsel actively represented conflicting interests or that those interests adversely affected trial counsel's performance. It is true that defendant's trial counsel also represented Desmond Faison, who was among Commonwealth witness Gary Creek's twenty-one co-defendants in an unrelated federal drug conspiracy case. N.T. 4/27/2009 at 82-84. Defendant argues that counsel had a motive to limit his cross-examination and investigation of Mr. Creek since any impeachment of Mr. Creek might adversely affect counsel's representation of Creek's co-defendant in the federal case. In particular, defendant claims that by impeaching Creek, counsel would undermine any joint defense or corroboration that Creek could provide to Faison in the federal case. *See* Petitioner's Memorandum at p. 16.

This argument is refuted by the record. It is uncontested that more than one year prior to defendant's trial, both Desmond Faison and Gary Creek had already pled guilty to the federal charges. As Mr. Faison and Mr. Creek had pled guilty to the federal charges, there could not have been any sort of joint defense that would provide a motive to defendant's trial counsel to avoid impeaching the testimony of Mr. Creek at defendant's trial. Defendant therefore cannot demonstrate that trial counsel actively represented conflicting interests and cannot demonstrate that trial counsel's performance was affected by his past representation of Mr. Faison.

Moreover, the record shows that trial counsel extensively and vigorously cross-examined Mr. Creek at defendant's trial. N.T. 4/27/2009 at 46-73. Accordingly, the Court properly rejected defendant's claim.

6. Failure to Obtain School Records

Defendant claims that he was "denied his Sixth Amendment right to effect [*sic*] counsel due to trial counsel failure to obtain the appellant school [*sic*] record, to impeach the deceased brother [*sic*] and sister's testimony that they went to Clymer School with the appellant." Statement of Errors at ¶ 7. Defendant is apparently claiming that trial counsel was ineffective for not obtaining school records of Jermaine Williams, the decedent's brother, and Amanda Williams, the decedent's sister, both of whom were eyewitnesses to the murder and testified at trial. Defendant appears to contend that Jermaine Williams and Amanda Williams testified that they went to the Clymer School with defendant, that this testimony was not true, and that the school records should have been obtained to refute this portion of their testimony and thereby attack their credibility. *See* Petitioner's Memorandum at p. 22 n.7.

Defendant's claim is refuted by the record. Amanda Williams never testified as to where she or defendant attended school. *See* N.T. 4/21/2009 at 155-233. It is true that Jermaine Williams testified that he knew defendant from his old school, and that he initially may have been misheard to have identified that school as Clymer. N.T. 4/21/2009 at 243-244. Later, however, it became clear that the school he was attempting to identify was actually Dobbins.[3] Accordingly, records showing that defendant did not attend Clymer would have been irrelevant.

[3] The transcript indicates that Jermaine Williams, as initially heard by the court reporter, first identified the school as "Clymer" although the trial judge believed that he had said "Chalmers" and one or more jurors thought he had said "Dobbins." N.T. 4/21/2009 at 244. Subsequently, the Court clarified that the school was Dobbins. N.T. 4/21/2009 at 244-245. The confusion may have been caused by a speech impediment that, according to Amanda Williams, renders it difficult for other people to understand Mr. Williams when he talks. N.T. 4/21/2009 at 158-160.

The record establishes, therefore, that defendant's claim is factually baseless and lacks arguable merit.

B. 907 Notice from PCRA Court

1. Failure of 907 Notice to Explain Reasons for Dismissal

Defendant claims that "the PCRA Court erred by using a multiple choice check box to issue a notice of intent to dismiss, which did not explain the reasons that the claims were meritless, denying the applicant for [*sic*] an adequate response." Statement of Errors at ¶ 1. This claim is without merit.

When a PCRA court concludes that a petition should be dismissed without a hearing, it is required, under Pennsylvania Rule of Criminal Procedure 907, to "give notice to the parties of the intention to dismiss the petition and shall state in the notice the reasons for the dismissal." Pa.R.Crim.P. 907(1).[4] "The purpose behind a Rule 907 pre-dismissal notice is to allow a petitioner an opportunity to seek leave to amend his petition and correct any material defects...the ultimate goal being to permit merits review by the PCRA Court of potentially arguable claims. The response is an opportunity for a petitioner and/or his counsel to object to the dismissal and alert the PCRA court of a perceived error, permitting the court to 'discern the potential for amendment.'" *Commonwealth v. Rykard*, 2012 PA Super 199; 2012 Pa. Super. LEXIS 2513, *26 (September 18, 2012) (quoting *Commonwealth v. Williams*, 782 A.2d 517, 526 (Pa. 2011)).

Here, at a status listing held on May 11, 2012, and after having reviewed defendant's amended petition and memoranda of law from both parties, the Court announced its finding that none of the claims briefed by defendant's attorney had merit. However, since defense counsel had neglected to brief one of the claims raised in the amended petition, the Court continued the

[4] Rule 907 applies to all non-capital cases. Capital cases are covered by Rule 909.

matter to permit counsel to supplement her legal memorandum. Counsel elected not to pursue the matter that had not been briefed, and on June 1, 2012, the Court issued its 907 Notice. The Notice, confirming what the PCRA judge had stated in open court, further advised defendant that the dismissal was premised upon a merits review of defendant's claims, and not because of a technical bar to review. That fully complied with the requirements of the Rule.

Moreover, because the Court ruled on the merits of all of defendant's claims, a more detailed notice could not have given defendant information that he could have used to amend his petition to correct any defects that were a bar to merits review. Since there were no such defects, the form of notice used by the Court could not have prejudiced the defendant. Accordingly, his claim does not warrant relief.

2. Lack of Opportunity to Respond to 907 Notice

Finally, defendant claims that the "PCRA Court erred by failing to give the appellant an opportunity to respond to the 907 Notice of Intent to Dismiss once the petitioner was granted permission to represent himself." Statement of Errors at ¶ 2. This claim is without merit.

The PCRA Court filed the 907 Notice on June 1, 2012. The Court did not dismiss the petition until July 20, 2012. There were thus 50 days between the date that the 907 Notice was sent to defendant and the date that defendant's PCRA Petition was dismissed. This was far more time than the 20 days required by Rule 907.

Defendant argues that the Court should have permitted him to respond to the 907 Notice after his *Grazier* hearing was held and he was permitted to proceed *pro se*. There is no authority, however, to support that contention. Whether or not a defendant is represented by counsel, Rule 907 permits *the defendant* to respond within 20 days. Pa.R.Crim.P. 907(1) ("The defendant may respond to the proposed dismissal within 20 days of the notice."). With defendant having failed

to file any response for 50 days, the PCRA Court fully complied with Rule 907 by then dismissing the petition.

IV. CONCLUSION

For the foregoing reasons, the Court's order denying dismissing defendant's PCRA Petition should be affirmed.

BY THE COURT:

GLENN B. BRONSON, J.