

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
 : PENNSYLVANIA
 v. :
 :
 SCOTT LEWIS HOY, : No. 2131 MDA 2012
 :
 :
 Appellant :
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Appeal from the PCRA Order, November 28, 2012,
in the Court of Common Pleas of Centre County
Criminal Division at No. CP-14-CR-0001733-2005

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
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 SCOTT LEWIS HOY, : No. 2132 MDA 2012
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 Appellant :
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Appeal from the Order, November 9, 2012,
in the Court of Common Pleas of Centre County
Criminal Division at No. CP-14-CR-0001731-2005

BEFORE: FORD ELLIOTT, P.J.E., PANELLA AND FITZGERALD,* JJ.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED SEPTEMBER 09, 2013**

Scott Lewis Hoy appeals from the orders of November 9, 2012 and
November 28, 2012, denying his petition for post-conviction collateral relief.
We affirm.

* Retired Justice specially assigned to the Superior Court.

This court previously summarized the facts and procedural history of this matter as follows:

In July 2005, Appellant's daughter made a report to the state police that Appellant had engaged in sexual contact with her over the course of a number of years (1993-2003). The victim was 20 years of age at the time of this report. A state trooper called Appellant and asked him to come to the station to talk about the allegations. Appellant went to the state police station on September 8, 2005 and spoke with a state trooper then agreed to provide a statement on audiotape. He was subsequently arrested and charged with rape, incest, endangering the welfare of children, and numerous counts of indecent assault.

Commonwealth v. Hoy, No. 441 MDA 2007, unpublished memorandum at 1-2 (Pa.Super. filed February 5, 2008) (footnote omitted).

Appellant filed a pre-trial motion to suppress his audiotaped statement which was denied. ***Id.*** at 2.

Appellant proceeded to a bench trial at which the suppression transcript was admitted into evidence as was the audiotape. The trial court convicted him of all offenses.[Footnote 2] Appellant was subsequently sentenced to an aggregate term of incarceration of 7-14 years followed by a term of probation,[Footnote 3] and he was also designated a sexually violent predator.

[Footnote 2] The Commonwealth agreed to withdraw one count of indecent assault. N.T. Trial, 9/29/06, at 6.

[Footnote 3] Appellant's sentence of probation included separate convictions at a different trial court docket number which are not implicated in this appeal.

Id. at 2-3.

Appellant filed a timely direct appeal from the judgment of sentence challenging the trial court's denial of his suppression motion, and on February 5, 2008, this court affirmed. **Commonwealth v. Hoy**, 951 A.2d 1211 (Pa.Super. 2008) (unpublished memorandum). Appellant's petition for allowance of appeal was denied on August 25, 2008. **Commonwealth v. Hoy**, 598 Pa. 756, 955 A.2d 356 (2008).

Appellant filed a timely **pro se** PCRA¹ petition on March 23, 2009. Counsel was appointed and filed an amended petition on appellant's behalf. An evidentiary hearing was held on September 13, 2012, at which trial counsel, George Lepley, Esq., testified. By orders filed November 9 and 28, 2012, appellant's petition was denied. This timely appeal followed. Appellant has complied with Pa.R.A.P., Rule 1925(b), 42 Pa.C.S.A., and the PCRA court has filed an opinion, relying on its prior opinions accompanying the orders denying appellant's petition.

Appellant has raised the following issues for this court's review:

- I. Did the PCRA Court err in denying Appellant Hoy's PCRA Petition, in that Trial Counsel was ineffective in failing to advise Appellant Hoy of his statutory right to an independent Sexually Violent Predator ["SVP"] assessment and to request and/or obtain an independent [SVP] assessment?

¹ Post-Conviction Relief Act, 42 Pa.C.S.A. §§ 9541-9546.

- II. Did the PCRA Court err in denying Appellant Hoy's PCRA Petition, in that Trial Counsel was ineffective in stipulating to the Commonwealth's [SVP] expert's report and in failing to challenge the Commonwealth's Praeceptum to designate Defendant [an SVP]?

Appellant's brief at 5.

Initially, we recite our standard of review:

This Court's standard of review regarding an order denying a petition under the PCRA is whether the determination of the PCRA court is supported by the evidence of record and is free of legal error. **Commonwealth v. Halley**, 582 Pa. 164, 870 A.2d 795, 799 n. 2 (2005). The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record. **Commonwealth v. Carr**, 768 A.2d 1164, 1166 (Pa.Super.2001).

Commonwealth v. Turetsky, 925 A.2d 876, 879 (Pa.Super. 2007), **appeal denied**, 596 Pa. 707, 940 A.2d 365 (2007).

"To prevail on a claim alleging counsel's ineffectiveness, Appellant must demonstrate (1) that the underlying claim is of arguable merit; (2) that counsel's course of conduct was without a reasonable basis designed to effectuate his client's interest; and (3) that he was prejudiced by counsel's ineffectiveness." **Commonwealth v. Wallace**, 555 Pa. 397, 407, 724 A.2d 916, 921 (1999), citing **Commonwealth v. Howard**, 538 Pa. 86, 93, 645 A.2d 1300, 1304 (1994) (other citation omitted). In order to meet the prejudice prong of the ineffectiveness standard, a defendant must show that there is a "reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different." **Commonwealth v. Kimball**, 555 Pa. 299, 308, 724 A.2d 326, 331 (1999), quoting **Strickland v. Washington**, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). A "[r]easonable probability"

is defined as 'a probability sufficient to undermine confidence in the outcome.'" *Id.* at 309, 724 A.2d at 331, quoting *Strickland*, 466 U.S. at 694, 104 S.Ct. 2052.

Commonwealth v. Jones, 811 A.2d 1057, 1060 (Pa.Super. 2002), **appeal denied**, 574 Pa. 765, 832 A.2d 435 (2003). "We presume counsel is effective and place upon Appellant the burden of proving otherwise. Counsel cannot be found ineffective for failing to pursue a baseless or meritless claim." *Commonwealth v. Poplawski*, 852 A.2d 323, 327 (Pa.Super. 2004) (citations omitted).

Appellant argues that Attorney Lepley was ineffective for failing to obtain an independent SVP assessment. Appellant also argues that Attorney Lepley was ineffective for stipulating to the contents of the SOAB² evaluator's report.³

Initially, we must determine whether appellant's allegations are cognizable under the PCRA.

The PCRA "is not intended to . . . provide relief from collateral consequences of a criminal conviction." 42 Pa.C.S.A. § 9542. The registration, notification, and counseling requirements for offenders under Megan's Law II^[4] **are not criminal punishment**, but represent non-punitive, regulatory measures designed to safeguard the public. *Commonwealth v. Williams*, 574 Pa. 487, 832 A.2d 962 (2003). In

² Sexual Offenders Assessment Board.

³ Additional allegations set forth in appellant's PCRA petition were withdrawn. (Notes of testimony, 9/13/12 at 35-36.)

⁴ 42 Pa.C.S.A. §§ 9791-9799.7.

reliance on **Williams**, this Court has determined the registration, notification, and counseling requirements under Megan's Law II are collateral consequences of guilty plea convictions. **Commonwealth v. Benner**, 853 A.2d 1068, 1070 (Pa.Super.2004) (citing **Commonwealth v. Leidig**, 850 A.2d 743 (Pa.Super.2004)).

Commonwealth v. Williams, 977 A.2d 1174, 1176-1177 (Pa.Super. 2009), **appeal denied**, 605 Pa. 700, 990 A.2d 730 (2010), quoting **Commonwealth v. Price**, 876 A.2d 988, 992 (Pa.Super. 2005) (emphasis added in **Williams**) (footnote omitted). **See also Commonwealth v. Masker**, 34 A.3d 841 (Pa.Super. 2011) (*en banc*), **appeal denied**, ___ Pa. ___, 47 A.3d 846 (2012) (a challenge to the classification of the defendant as an SVP is not a challenge to the conviction or sentence, and therefore is not cognizable under the PCRA).

The PCRA does not provide relief from collateral consequences of a criminal conviction. 42 Pa.C.S.A. § 9542. Because the registration requirements of Megan's Law II are collateral consequences of appellant's conviction and are not considered part of his sentence, appellant's challenge to SVP classification, even framed as a trial counsel ineffectiveness claim, falls outside the ambit of the PCRA. **Masker, supra**. Therefore, the trial court did not err in denying appellant's petition.⁵

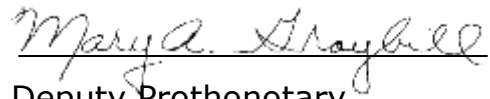
⁵ We note that the PCRA court denied appellant's petition on the merits, finding that trial counsel was not ineffective for the reasons discussed in its opinions. However, to the extent our reasoning differs from that of the PCRA court, it is well settled that this court may affirm the PCRA court's

J. S39014/13

Orders affirmed.

Fitzgerald, J. files a Concurring Statement.

Judgment Entered.


Deputy Prothonotary

Date: 9/9/2013

decision on any basis. **Williams**, 977 A.2d at 1177 n.8, citing **Commonwealth v. McCulligan**, 905 A.2d 983, 988 (Pa.Super. 2006).