

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

STAN L. BELLAMY,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 2191 EDA 2012

Appeal from the PCRA Order of July 12, 2012,  
in the Court of Common Pleas of Bucks County,  
Criminal Division at No. CP-09-CR-0004654-2007

BEFORE: OLSON, WECHT and COLVILLE\*, JJ.

MEMORANDUM BY COLVILLE, J.:

Filed: March 13, 2013

This is an appeal from an order denying Appellant's petition filed pursuant to the Post Conviction Relief Act ("PCRA"). We affirm.

The relevant background underlying this matter can be summarized in the following manner. Prior to his trial, Appellant filed a motion to suppress the evidence, which the trial court denied. A jury subsequently convicted Appellant of robbery of a motor vehicle, receiving stolen property, and related crimes. The trial court sentenced Appellant to ten to twenty years of prison for his robbery conviction, to a consecutive term of three and one-half years to seven years of prison for the receiving stolen property conviction, and to a consecutive term of one to two years of prison for his conviction for fleeing or attempting to elude police officers. Appellant appealed.

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\*Retired Senior Judge assigned to the Superior Court.

On appeal, Appellant argued, *inter alia*, that his convictions for robbery and receiving stolen property should have merged for purposes of sentencing. This Court agreed with Appellant; therefore, it affirmed in part and vacated in part Appellant's judgment of sentence, and remanded the matter to the trial court for resentencing. ***Commonwealth v. Bellamy***, 987 A.2d 809 (Pa. Super. 2009) (unpublished memorandum). The certified record indicates that Appellant petitioned our Supreme Court for allowance of appeal and that the Supreme Court denied Appellant's petition on May 3, 2010. The trial court resentenced Appellant on August 12, 2010. Appellant did not appeal his judgment of sentence.

On May 5, 2011, Appellant, acting *pro se*, filed a PCRA petition. The PCRA court appointed counsel to represent Appellant, and counsel filed an amended PCRA petition. After the court held an evidentiary hearing, it denied the petition. This appeal followed.

In his brief to this Court, Appellant asks us to consider one question, namely:

Was trial counsel was [sic] ineffective when he failed to preserve a challenge to the suppression court's ruling that the Commonwealth had probable cause to arrest him based on discrepancies between the probable cause affidavit and descriptions of witnesses and omissions of salient facts from the probable cause affidavit which made it untruthful?

Appellant's Brief at 3.

Generally speaking, "[o]n appeal from the denial of PCRA relief, an appellate court's standard of review is whether the ruling of the PCRA court

is free of legal error and supported by the record." *Commonwealth v. Jones*, 932 A.2d 179, 181 (Pa. Super. 2007). Appellant's issue concerns a claim of ineffective assistance of counsel.

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. The PCRA court may deny an ineffectiveness claim if the petitioner's evidence fails to meet a single one of these prongs. . . . [An appellant appealing an order denying PCRA relief] is challenging the PCRA court's finding that he did not satisfy his burden of proof. Because courts must presume that counsel was effective, it is the petitioner's burden to prove otherwise. [Appellate courts] cannot grant relief on an ineffectiveness claim unless the appellant proves the PCRA court wrongly determined that he failed to satisfy all of the *Pierce* elements. . . .

. . . [A]ppellants continue to bear the burden of pleading and proving each of the [three prongs of ineffective assistance of counsel standard] on appeal . . . .

*Commonwealth v. Natividad*, 938 A.2d 310, 321-22 (Pa. 2007) (citations and quotation marks omitted).

The exact nature of Appellant's claim is difficult to discern. Moreover, Appellant has failed to meet his burden on appeal of discussing all three prongs of the ineffective-assistance-of-counsel standard. For example, Appellant's brief to this Court fails to specifically address the second prong of this standard.

As to the merit of Appellant's claim, we observe that Officer Krotz signed the affidavit of probable cause attached to Appellant's criminal complaint. In the argument portion of his brief, Appellant begins by briefly summarizing the suppression hearing testimony of Detective Belinsky and Officer Tomko. He then offers an even more brief summary of Detective Belinsky's preliminary hearing testimony and Officer Krotz's affidavit of probable cause.

Appellant seems to suggest that there are inconsistencies between Detective Belinsky's testimony, Officer Tomko's testimony, and the affidavit of probable cause. As best we can discern, Appellant claims that trial counsel rendered ineffective assistance by failing to point out these inconsistencies to the suppression court. Yet, the only "inconsistency" Appellant highlights is that Detective Belinsky did not observe Appellant with a bag and Officer Tomko observed Appellant with a bag. A review of the record, particularly the affidavit of probable cause, indicates that this difference in observations did not constitute an inconsistency.

According to the relevant portions of the affidavit of probable cause, at two p.m. on February 23, 2007, Officer Krotz observed a stolen vehicle parked and unoccupied at Pennsbury Court Apartments. Officer Krotz advised Detective Belinsky of the vehicle, and the detective responded and observed the vehicle. At 4:06 p.m., Detective Belinsky advised Officer Krotz that a black male wearing jeans and a black puffy coat with fur on it entered the vehicle and drove away. The affidavit goes on to describe Appellant's attempt to flee officers in the vehicle and then on foot. The affidavit states

that Officer Tomko pursued Appellant on foot and observed him jumping a fence with a bag in his hand. Appellant then was taken into custody.

Appellant fails to explain how Detective Belinsky's observation of Appellant **before** he entered the stolen vehicle is inconsistent with Officer Tomko's observation of Appellant carrying a bag **after** he entered the vehicle, engaged in a traffic pursuit in the vehicle, exited the vehicle, and then attempted to flee the police on foot. Appellant simply has failed to convince us that the PCRA court erred by denying his petition or that he otherwise is entitled to relief. *See Commonwealth v. Wrecks*, 931 A.2d 717, 722 (Pa. Super. 2007) ("An appellant also has the burden to convince us that there were errors and that relief is due because of those errors."). For these reasons, we affirm the court's order.

Order affirmed.