

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

DAMON WILLIAMSON

Appellant

No. 2229 EDA 2012

Appeal from the PCRA Order June 15, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0001493-2008

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

MEMORANDUM BY LAZARUS, J.

FILED MAY 21, 2013

Damon Williamson appeals from the order of the Court of Common Pleas of Philadelphia County dismissing his petition filed under the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-46, without a hearing. After careful review, we affirm.

On January 28, 2009, Williamson entered a negotiated plea of guilty to one count of aggravated assault in relation to an incident in which Williamson severely beat the mother of his child, breaking her cheek bone, eye socket and the floor of her orbital bone. Williamson received the negotiated sentence of nine to eighteen years' incarceration. Additionally, he avoided the potential imposition of a mandatory third-strike minimum

sentence¹ of twenty-five-years' to lifetime imprisonment. He filed neither post-sentence motions nor an appeal.

On January 20, 2010, Williamson filed a timely *pro se* PCRA petition. Counsel was appointed and filed an amended petition on November 22, 2010, in which Williamson alleged the ineffectiveness of plea counsel for failing to file a motion to withdraw his plea and/or post-sentence motions and/or an appeal. Without holding a hearing, the PCRA court issued a notice of intent to dismiss pursuant to Pa.R.Crim.P. 907 on May 21, 2012. Williamson did not file a response to the Rule 907 notice and, on June 15, 2012, the PCRA court formally dismissed his petition.

This timely appeal follows, in which Williamson asserts that the PCRA court erred in dismissing his petition without holding a hearing to determine whether Williamson had requested that plea counsel move to withdraw his guilty plea due to a manifest injustice.

This Court's standard of review regarding an order dismissing a petition under the PCRA is whether the determination of the PCRA court is supported by evidence of record and is free of legal error. In evaluating a PCRA court's decision, our scope of review is limited to the findings of the PCRA court and the evidence of record, viewed in the light most favorable to the prevailing party at the trial level.

Commonwealth v. Weatherill, 24 A.3d 435, 438 (Pa. Super. 2011).

¹ 42 Pa.C.S.A. § 9714(a)(2).

The right to an evidentiary hearing on a post-conviction petition is not absolute. **Commonwealth v. Payne**, 794 A.2d 902, 906 (Pa. Super. 2002). A court may dismiss a PCRA petition without holding a hearing if there are no genuine issues concerning any material fact. **Commonwealth v. Marshall**, 812 A.2d 539, 545 (Pa. 2002), citing Pa.R.Crim.P. 907(1).

Here, Williamson raises a claim of plea counsel's ineffectiveness for failure to file a motion to withdraw his guilty plea. In order to prevail on a claim of ineffectiveness of counsel, an appellant must demonstrate that: (1) his claims are of arguable merit; (2) counsel had no reasonable basis for his actions; and (3) counsel's actions prejudiced appellant. **Commonwealth v. Pierce**, 527 A.2d 973, 975 (Pa. 1987). When a petitioner under the PCRA alleges ineffectiveness of counsel in connection with a guilty plea, he will only be entitled to relief where he can plead and prove that counsel's ineffectiveness caused him to enter an involuntary or unknowing plea. **Commonwealth v. Allen**, 732 A.2d 582, 587 (Pa. 1999). A defendant alleging ineffectiveness must show that counsel's allegedly deficient stewardship resulted in a manifest injustice. **Commonwealth v. Morrison**, 878 A.2d 102, 105 (Pa. Super. 2005).

Accordingly, in order to obtain an evidentiary hearing on his ineffectiveness claim, Williamson was required to plead facts that would have supported all three prongs of the ineffectiveness test. He failed to do

so. Specifically, Williamson has not demonstrated that his underlying claim is arguably meritorious or that he was prejudiced.

In reviewing Williamson's ineffectiveness claim, we must first look to the standard applied in withdrawal of guilty plea cases. "When considering a petition to withdraw a guilty plea submitted to a trial court after sentencing, it is well-established that a showing of prejudice on the order of manifest injustice is required before withdrawal is properly justified." ***Commonwealth v. Gonzalez***, 840 A.2d 326, 329 (Pa. Super. 2003) (punctuation omitted). "To establish such manifest injustice, [appellant] must show that his plea was involuntary or was given without knowledge of the charge." ***Commonwealth v. Rachak***, 2012 PA Super 260, at *12 (Pa. Super. 2012).

The Pennsylvania Rules of Criminal Procedure mandate that a guilty plea be offered in open court and after inquiry of the defendant that the plea is voluntarily and understandingly tendered. Pa.R.Crim.P. 590(A)(1) and (3). The Comment to Rule 590 advises that the trial court should inquire into at least six areas in order to show that the plea was voluntarily, knowingly, and intelligently entered:

- (1) Does the defendant understand the nature of the charges to which he is pleading guilty?
- (2) Is there a factual basis for the plea?
- (3) Does the defendant understand that he has the right to trial by jury?

(4) Does the defendant understand that he is presumed innocent until he is found guilty?

(5) Is the defendant aware of the permissible range of sentences and/or fines for the offenses charged?

(6) Is the defendant aware that the judge is not bound by the terms of any plea agreement tendered unless the judge accepts such agreement?

Pa.R.Crim.P. 590 – Comment. A person who elects to plead guilty is bound by the statements he makes in open court while under oath and he may not later assert grounds for withdrawing the plea which contradict the statements he made at his plea colloquy. ***Commonwealth v. Pollard***, 832 A.2d 517, 523 (Pa. Super. 2003).

Here, the plea court engaged Williamson in an oral colloquy in which the court discussed: Williamson's ability to read and write English; the charges against him; the potential range of sentences and fines; his right to a jury trial; the limitation on potential appellate issues; the fact that he was voluntarily entering a plea; and the fact that he discussed the plea with his attorney. **See** N.T. Guilty Plea, 1/28/09, at 7-14. In addition, the prosecuting attorney stated for the record the factual basis for Williamson's plea. **Id.** at 15-16. Finally, Williamson read and signed a comprehensive written guilty plea colloquy advising him, *inter alia*, of the presumption of innocence and the fact that the court would not be bound by the Commonwealth's sentence recommendation.

The written and oral colloquies, and Williamson's responses thereto, demonstrate that his plea was knowing, intelligent and voluntary. As such, he is unable to establish that it resulted in "prejudice on the order of manifest injustice," **Gonzalez, supra**, and, thus, he could not have prevailed on a motion to withdraw his plea. As counsel cannot be deemed ineffective for failing to pursue a meritless claim, the PCRA court properly dismissed Williamson's petition without a hearing.

Order affirmed.
Judgment Entered.

A handwritten signature in cursive script, appearing to read "Kevin Gambitt", written over a horizontal line.

Prothonotary

Date: 5/21/2013