

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

VANCE SHAWN WALKER, A/K/A  
DESHAWN WILSON,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 244 WDA 2013

Appeal from the PCRA Order January 8, 2013  
In the Court of Common Pleas of Allegheny County  
Criminal Division at No(s): CP-02-CR-0006093-2011

BEFORE: BOWES, ALLEN, and LAZARUS, JJ.

MEMORANDUM BY BOWES, J.: FILED: December 10, 2013

Vance Shawn Walker, a/k/a Deshawn Wilson, appeals from the January 8, 2013 order denying PCRA relief. After careful review, we affirm.

We have gleaned the facts giving rise to the charges from the notes of testimony from the suppression hearing. On May 5, 2011, at approximately 5:30 p.m., Pittsburgh Police Officers William Churilla and two fellow officers were patrolling the Bentley housing complex in Pittsburgh in plain clothes and in an unmarked vehicle. They observed two individuals running toward their vehicle through the rear part of Bentley Drive, one of whom was Appellant. As Appellant neared, Officer Churilla observed that the right side of Appellant's clothing was weighted, and that when Appellant noticed the car, he clutched the right side of his body. Based on his experience,

Officer Churilla believed that Appellant was carrying a firearm. The officers stopped the men, displayed their badges and identified themselves as Pittsburgh Police officers. A uniformed officer joined them.

The officers asked the two men whether they lived in the complex and what they doing there. Throughout the questioning, Appellant had his right arm clutched to the right side of his body. When Officer Churilla asked Appellant whether he was carrying any firearms, Appellant first looked down, then back up, and responded that he was going to his girlfriend's house. The officer described Appellant as evasive, repositioning his feet, sweating, nervous, and looking around for an avenue to escape. When Appellant refused to answer whether he had a firearm, the officers asked him to place his hands on top of his head so they could pat him down for a weapon. He placed his hands on his head but almost immediately brought his right arm back down. A pat down revealed a firearm in Appellant's waistband. Appellant clenched, and the officer took him to the ground, recovered the firearm, and handcuffed him. The firearm was a Taurus 9 mm semi-automatic pistol with one round in the chamber. Appellant admitted that he did not have a permit to carry a firearm.

While conducting a search incident to arrest, Officer Churilla also noticed a black sock tied to Appellant's belt loop and tucked inside his pants. The weight of it indicated that it contained something. The sock contained

heroin and cocaine packaged for sale in glassine stamp bags, rice, and a large chunk of crack cocaine. Appellant's wallet contained \$586 in cash.

Appellant was charged with possession of a firearm, firearms not to be carried without a license, possession of cocaine, possession of heroin, receiving stolen property, false identification to law enforcement, and summary trespass. He filed a motion to suppress, alleging that he was unlawfully seized without probable cause, reasonable suspicion, or a warrant, and that the gun and narcotics seized should be suppressed. After a hearing, the trial court denied the suppression motion. Immediately thereafter, Appellant waived his right to a jury trial.

On May 3, 2012, Appellant appeared before the court to enter a negotiated guilty plea. The trial court conducted an on-the-record colloquy to establish that Appellant was entering a knowing and voluntary plea. It informed Appellant that he could receive a maximum of forty-two years imprisonment on the charges. Appellant acknowledged that he completed the guilty plea explanation of defendant's rights form, that he understood all of the questions, that he was satisfied with the services of plea counsel, and that his plea was knowingly, intelligently, and voluntarily entered. After completion of the colloquy, the Commonwealth withdrew four of the charges and the trial court sentenced Appellant to four to twelve years incarceration at Count IV, possession with intent to deliver heroin, with credit for time served.

Appellant did not file a post-sentence motion or a direct appeal. Rather, on July 16, 2012, Appellant filed a *pro se* PCRA petition alleging ineffectiveness of plea counsel. Counsel was appointed, an amended PCRA was filed, and the PCRA court held an evidentiary hearing. Thereafter, relief was denied. Appellant appealed to this Court and complied with the court's order to file a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal. The PCRA court subsequently issued its Pa.R.A.P. 1925(a) opinion and the matter is ripe for our review.

Appellant's sole issue on appeal is "Did the trial court err in denying Appellant's PCRA petition since trial counsel Albert Reese, Jr., was ineffective for promising Appellant that if he pled guilty he could raise issues regarding the denial of the suppression motion in a superior court appeal, thereby rendering Appellant's plea involuntary since counsel's incorrect assurance was the sole motivation factor that induced Appellant to plead guilty?" Appellant's brief at 3.

We note at the outset that our "standard of review of the denial of PCRA relief is whether the record supports the PCRA court's determination, and whether the PCRA court's determination is free of legal error." ***Commonwealth v. Hernandez***, 2013 PA Super 243, \*4 (Pa.Super. 2013). We will not disturb the findings of the PCRA court unless there is no support for the findings in the certified record. ***Id.*** Furthermore, "[w]e review an order dismissing a petition under the PCRA in the light most favorable to the

prevailing party at the PCRA level.” **Commonwealth v. Burkett**, 5 A.3d 1260, 1267 (Pa.Super. 2010). This review is limited to the findings of the PCRA court and the evidence of record. **Commonwealth v. Ford**, 44 A.3d 1190 (Pa.Super. 2012).

Appellant’s claim is one of plea counsel’s ineffectiveness. With regard to ineffective assistance of counsel claims, “[c]ounsel is presumed effective and will only be deemed ineffective if the petitioner demonstrates that counsel’s performance was deficient and he was prejudiced by that deficient performance. **Ford, supra** at 1194-95. In order to achieve relief, a petitioner must plead and prove all three prongs: (1) that the underlying issue has arguable merit; (2) counsel’s actions lacked an objective reasonable basis; and (3) actual prejudice resulted from counsel’s act or failure to act. **Id.** “Prejudice is established if there is a reasonable probability that, but for counsel’s errors, the result of the proceeding would have been different.” **Id.**

The law is settled that “[a] criminal defendant has the right to effective counsel during a plea process as well as during trial.” **Commonwealth v. Hickman**, 799 A.2d 136, 141 (Pa.Super. 2002). However, claims of counsel’s ineffectiveness in connection with a guilty plea will provide a basis for PCRA relief only if the ineffectiveness caused an involuntary or unknowing plea. **Commonwealth v. Diaz**, 913 A.2d 871, 873 (Pa.Super. 2006) (case remanded for an evidentiary hearing to determine whether

counsel misrepresented to defendant that he was boot camp eligible and whether that was material to the decision to accept plea bargain); **see also Hickman, supra** (PCRA relief granted where defendant pled guilty based upon counsel's erroneous representation that he would be eligible for boot camp). In **Commonwealth v. Rathfon**, 899 A.2d 365 (Pa.Super. 2006), we affirmed the PCRA court's grant of relief where it concluded that the inmate had entered into a plea agreement in reliance on his plea counsel's misapprehension that his sentence would be served in a county facility rather than a state facility.

Herein, Appellant claims that counsel's ineffective assistance caused an involuntary and unknowing plea. Specifically, Appellant avers that, "after the suppression motion was denied, he decided to take the plea offer because Trial Counsel told him that even if he pled guilty and was sentenced he could still file a Superior Court Appeal challenging the suppression ruling." Appellant's brief at 13. He maintains further that counsel's assurance that he could do both "was the sole reason that [he] pled guilty instead of going to trial." **Id.** Had he known that he could not challenge the suppression ruling if he accepted the plea, Appellant states that he would have elected to go to trial.

In order to prevail, Appellant had the burden of proving that, as a result of counsel's deficient representation, he entered an involuntary or unknowing plea and was prejudiced thereby. In reviewing the evidence in

the light most favorable to the Commonwealth, as we are compelled to do, we find no abuse of discretion on the part of the PCRA court for the following reasons.

Appended to the amended PCRA petition was PCRA counsel's certificate that he spoke to plea counsel, Attorney Albert R. Reese, Jr., and inquired whether he told Appellant that he could take the plea agreement and still appeal the suppression ruling. Mr. Reese responded, "No, I did not tell Mr. Wilson [Walker] that." Amended PCRA Petition Exhibit 1. Thus, the PCRA petition alleged conflicting facts and the court properly ordered an evidentiary hearing to resolve fact and credibility issues. ***See Diaz, supra*** at 874-875.

At the January 8, 2013 PCRA hearing, conflicting testimony was adduced. Appellant testified that Mr. Reese advised him he could accept the plea agreement and appeal the suppression issue. He averred that had he known that acceptance of the plea would preclude him from appealing the suppression order, he would not have pled guilty. N.T., 1/8/13, at 7. Furthermore, Appellant maintained that he asked counsel to file an appeal on his behalf after he entered the guilty plea and that counsel agreed to notify the Public Defender's office of his desire. However, no appeal was filed. When confronted on cross-examination with his Guilty Plea Explanation form, Appellant verified that it contained his initials and

signature, and acknowledged that he told the court that he read and understood the form.

Attorney Reese refuted Appellant's account of their discussions. He stated, "No, I did not tell [Appellant] that he could appeal after he was sentenced." N.T., 1/8/13, at 15-16. According to Attorney Reese, the only discussion of an appeal took place at the time the suppression motion was denied and prior to Appellant's guilty plea. *Id.* at 18-19. Following denial of the suppression motion, Mr. Reese explained to Appellant that he did not call the other police officers because he had spoken to them earlier and they were going to testify consistently with Officer Churilla. In response to Appellant's question about what would happen now, counsel advised him that either he accepted the plea or proceeded to trial. *Id.* at 16. They discussed the maximum sentence of forty-two years Appellant faced versus the plea's four-to-twelve-year sentence with credit for time served. There were no further discussions about the suppression issue. Mr. Reese testified that he never advised Appellant that he could have the best of both worlds, that he could he could still appeal the suppression ruling even if he accepted the negotiated plea. *Id.* at 17.

Counsel did not recall Appellant asking whether the suppression issue was waived once he accepted the plea or any specific conversation to that effect. *Id.* at 19. They did, however, review the written colloquy. *Id.* Mr. Reese also confirmed that he discussed the advantages and



disadvantages of the plea versus trial, and that it was Appellant's decision to plead guilty. *Id.* at 21. In Mr. Reese's opinion, the plea was a good deal and he offered that opinion to Appellant. *Id.* at 21. Mr. Reese testified that Appellant never indicated after he pled guilty that he wanted to appeal and denied that that he promised to pursue an appeal on Appellant's behalf. He recalled that Appellant asked him to seek return of his girlfriend's money, that he discussed it with the district attorney and subsequently prepared a formal motion, and that the court granted the motion. *Id.* at 18.

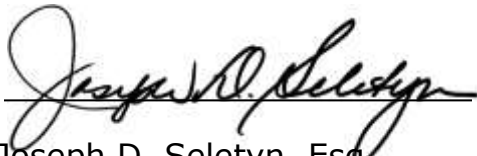
The PCRA court credited Attorney Reese's testimony and found that counsel did not make the alleged incorrect legal representations to Appellant. We cannot disturb the court's credibility determinations as they are supported by the record. The court noted further that the written guilty plea colloquy that Appellant signed and understood foreclosed any notion that he could both accept the plea and appeal the suppression issue. On the written guilty plea form, Appellant stated that he understood that by pleading guilty, he was abandoning any pretrial motions that had already been decided. Guilty Plea Explanation of Defendant's Rights, at 5. Furthermore, he acknowledged that he was giving up the right to appeal except on four enumerated grounds, none of which involved a suppression ruling. *Id.* In short, Appellant failed to prove his claim that plea counsel's ineffectiveness induced him to plead guilty; hence, the plea was knowing,

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voluntary, and intelligent. Since the record supports the PCRA court's findings, we have no basis to disturb its determination.

Order affirmed.

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: 12/10/2013