

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
PHILLEPE S. BIBBS,		
Appellant		No. 2455 EDA 2011

Appeal from the PCRA Order of August 3, 2012,
in the Court of Common Pleas of Philadelphia County,
Criminal Division at No. CP-51-CR-0301621-2006

BEFORE: OLSON, WECHT and COLVILLE*, JJ.

MEMORANDUM BY COLVILLE, J.:

Filed: February 21, 2013

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

The background underlying this matter can be summarized as follows. A jury found Appellant guilty of attempted murder, aggravated assault, criminal trespass, possession of an instrument of crime and various weapons-related offenses. The trial court sentenced Appellant to an aggregate term of sixteen to thirty-two years of incarceration. This Court affirmed the judgment of sentence. *Commonwealth v. Bibbs*, 963 A.2d 562 (Pa. Super. 2008) (unpublished memorandum). Appellant then filed a petition for allowance of appeal with our Supreme Court, which was denied. *Commonwealth v. Bibbs*, 967 A.2d 957 (Pa. 2009).

*Retired Senior Judge assigned to the Superior Court.

Appellant, acting *pro se*, timely filed a PCRA petition. The PCRA court appointed counsel; counsel filed two amended PCRA petitions. After the Commonwealth filed a motion to dismiss, the PCRA court issued a notice stating its intent to dismiss the petition without holding an evidentiary hearing. On August 3, 2011, the court formally denied Appellant's petition. This timely appeal followed.

In his brief to this Court, Appellant asks us to consider the following question,

Did the Lower Court err in denying PCRA relief where counsel was ineffective for failing to file a post sentence motion preserving a weight of the evidence argument?

Appellant's Brief, at 8.

We view Appellant's claim with the following consideration.

In reviewing the propriety of a PCRA court's order dismissing a PCRA petition, we are limited to determining whether the PCRA court's findings are supported by the record and whether the order in question is free of legal error. The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record. Moreover, "[t]here is no absolute right to an evidentiary hearing on a PCRA petition, and if the PCRA court can determine from the record that no genuine issues of material fact exist, then a hearing is not necessary." A reviewing court must examine the issues raised in the PCRA petition in light of the record in order to determine whether the PCRA court erred in concluding that there were no genuine issues of material fact and in denying relief without an evidentiary hearing.

Commonwealth v. Springer, 961 A.2d 1262, 1264 (Pa. Super. 2008) (internal citations omitted).

In addition,

The standard for deciding ineffective assistance of counsel claims is well settled. In order to review an ineffectiveness of counsel claim, Appellant is required to make a showing that: (1) the claim is of arguable merit; (2) counsel had no reasonable basis for his or her action or inaction; and (3) but for the errors and omissions of counsel, there is a reasonable probability that the outcome of the case would have been different. We presume counsel is effective and place upon Appellant the burden of proving otherwise. Further, this Court will grant relief only if Appellant satisfies each of the three prongs necessary to prove counsel ineffective. In other words, we may deny any ineffectiveness claim if "the evidence fails to meet a single one of these [three] prongs."

Id. at 1266-67.

Appellant did not make any argument regarding counsel's reasons for not pursuing a weight-of-the-evidence claim. As set forth above, it is Appellant's burden to prove each of the three prongs necessary to prove counsel ineffective. Appellant has failed to satisfy each of the three prongs in order to prove his claim. Thus, he has failed to persuade us that he is entitled to relief.

Accordingly, we affirm the order denying Appellant's PCRA petition.

Order affirmed.

Judge Olson concurs in the result.