

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

DANIEL C. BOWIE,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 2511 EDA 2011

Appeal from the PCRA Order Entered September 9, 2011  
In the Court of Common Pleas of Philadelphia County  
Criminal Division at No(s): CP-51-CR-0011332-2008

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

MEMORANDUM BY BENDER, J.:

**FILED MAY 08, 2013**

Appellant, Daniel C. Bowie, appeals from the September 9, 2011 order denying his petition for post conviction relief filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. Appellant argues that his trial counsel was ineffective for failing to file a direct appeal on his behalf. After careful review, we affirm.

On June 25, 2009, Appellant was convicted, following a jury trial, of aggravated assault, endangering the welfare of a child, simple assault, possessing an instrument of crime, and recklessly endangering another person. He was sentenced on August 20, 2009, to a mandatory term of five to ten years' incarceration, followed by five years' probation. Appellant did not file a direct appeal.

On February 2, 2010, Appellant filed a timely *pro se* PCRA petition and counsel was appointed. In his petition, Appellant argued that his trial counsel, David Belmont, Esquire, acted ineffectively by failing to file a direct appeal on Appellant's behalf. A PCRA hearing was conducted on August 5, 2011. At that proceeding, Appellant testified that he asked Attorney Belmont to file a direct appeal both at the time he was convicted, and after his sentencing hearing. N.T. PCRA Hearing, 8/5/11, at 8. Appellant stated that Attorney Belmont adamantly assured him on both occasions that he would file an appeal for Appellant. ***Id.*** at 16. Appellant also testified that Attorney Belmont told him that he would communicate about the appeal with Appellant's family because Appellant "was being moved around a lot" while incarcerated. ***Id.*** at 12. However, Appellant and his family never heard from Attorney Belmont, and no appeal was filed on Appellant's behalf. ***Id.*** at 8. Appellant acknowledged that at his sentencing hearing, he was informed of his appeal rights and indicated that he understood the time-frame for filing an appeal. ***Id.*** at 11-12.

Attorney Belmont also took the stand at the PCRA hearing. He testified that he had been privately retained to represent Appellant at his trial. ***Id.*** Attorney Belmont remembered Appellant's case and Appellant being upset when he was convicted. ***Id.*** at 22. However, Attorney Belmont stated that when he met with Appellant after the trial, Appellant did not mention filing an appeal. ***Id.*** at 20. Instead, Appellant's main concern was

the effect that his instant convictions would have on his probationary sentence in an unrelated case. *Id.* at 20.

Attorney Belmont went on to testify that, after Appellant's sentencing proceeding, he had no discussion with Appellant regarding an appeal, and was never contacted by Appellant or his family about filing an appeal. *Id.* at 21-22. Attorney Belmont stated that Appellant's family knew how to reach him, and had done so throughout Appellant's trial. *Id.* at 21. Finally, Attorney Belmont testified that he would have filed an appeal if Appellant had asked him to. *Id.* at 20.

On September 9, 2011, the PCRA court denied Appellant's petition. He filed a timely notice of appeal and, herein, he raises the following issue: "Whether trial counsel was ineffective [for] failing to file a direct appeal?" In addressing this claim, we begin by noting that "[t]his Court's standard of review from the grant or denial of post-conviction relief is limited to examining whether the lower court's determination is supported by the evidence of record and whether it is free of legal error." ***Commonwealth v. Morales***, 701 A.2d 516, 520 (Pa. 1997) (citing ***Commonwealth v. Travaglia***, 661 A.2d 352, 356 n.4 (Pa. 1995)).

Where, as here, a petitioner claims that he received ineffective assistance of counsel, our Supreme Court has stated that:

[A] PCRA petitioner will be granted relief only when he proves, by a preponderance of the evidence, that his conviction or sentence resulted from the "[i]neffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable

adjudication of guilt or innocence could have taken place.” Generally, counsel’s performance is presumed to be constitutionally adequate, and counsel will only be deemed ineffective upon a sufficient showing by the petitioner. To obtain relief, a petitioner must demonstrate that counsel’s performance was deficient and that the deficiency prejudiced the petitioner. A petitioner establishes prejudice when he demonstrates “that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” ... [A] properly pled claim of ineffectiveness posits that: (1) the underlying legal issue has arguable merit; (2) counsel’s actions lacked an objective reasonable basis; and (3) actual prejudice befell the petitioner from counsel’s act or omission.

***Commonwealth v. Johnson***, 966 A.2d 523, 532-33 (Pa. 2009) (citations omitted). Moreover, it is well-settled that “before a court will find ineffectiveness of trial counsel for failing to file a direct appeal, Appellant must prove that he requested an appeal and that counsel disregarded this request.” ***Commonwealth v. Touw***, 781 A.2d 1250, 1254 (Pa. Super. 2001) (quoting ***Commonwealth v. Harmon***, 738 A.2d 1023, 1024 (Pa. Super. 1999)).

Here, Appellant testified that he repeatedly asked Attorney Belmont to file a direct appeal on his behalf. However, Attorney Belmont testified that no such request was ever made. Ultimately, the PCRA court credited the testimony of Attorney Belmont, which it was entitled to do. ***Commonwealth v. Philistin***, 53 A.3d 1, 25 n.7 (Pa. 2012) (“It is well-settled that PCRA courts make credibility determinations.”). As Appellant offered no other proof to buttress his testimony that he asked for an appeal, we are bound to affirm the PCRA court’s credibility determination and its

denial of Appellant's petition. ***Commonwealth v. Dennis***, 17 A.3d 297, 305 (Pa. 2011) (stating "[a] PCRA court's credibility findings are to be accorded great deference" and "where the record supports the PCRA court's credibility determinations, such determinations are binding on a reviewing court").

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Kevin Gambetti", written over a horizontal line.

Prothonotary

Date: 5/8/2013