

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
CLIFFORD CLARK DERR,	:	
	:	
Appellant	:	No. 264 MDA 2013

Appeal from the Order entered on July 18, 2012
in the Court of Common Pleas of Lancaster County,
Criminal Division, No. CP-36-CR-0000443-2010

BEFORE: SHOGAN, ALLEN and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.: **FILED DECEMBER 03, 2013**

Clifford Clark Derr ("Derr") appeals from the Order denying his first Petition for relief pursuant to the Post Conviction Relief Act ("PCRA"). **See** 42 Pa.C.S.A. §§ 9541-9546. We affirm.

Derr pled guilty to simple assault and disorderly conduct arising out of a physical altercation between Derr and his ex-girlfriend, which caused the ex-girlfriend bodily injury. The trial court sentenced Derr to an aggregate probation term of three years, and ordered Derr to pay fines, costs and restitution in the amount of \$4,550.38. Derr did not file a direct appeal; however, Derr filed a timely PCRA Petition. In his Petition, Derr argued that his trial counsel was ineffective for failing to advise him of a permanent ban on possessing firearms as a consequence of the plea. The PCRA court held a hearing, wherein both Derr and his plea counsel testified. Derr stated that

while he had the opportunity to discuss the consequences of the guilty plea with counsel, he was never informed that he would never be able to possess a firearm again. Plea counsel testified that he had advised Derr that a guilty plea would lead to a permanent ban on possessing a firearm. Thereafter, the PCRA court, finding that plea counsel had informed Derr about the ban on possessing a firearm, denied Derr's PCRA Petition. Derr then filed the instant appeal.¹

On appeal, Derr raises the following question for our review:

Is [Derr] entitled to PCRA relief pursuant to Pa.C.S.[A.] § 9543(a)(2)(ii), where trial counsel failed to notify [Derr] of the consequences his guilty plea would have on his constitutional right to own and possess firearms, and where further the court failed to make any inquiry or colloquy of the loss of this important right?

Brief for Appellant at 4.

This Court's standard of review regarding a PCRA court's order is whether the determination of the PCRA court is supported by the evidence of record and is free of legal error. Great deference is granted to the findings of the PCRA court, and these findings will not be disturbed unless they have no support in the certified record.

Commonwealth v. Carter, 21 A.3d 680, 682 (Pa. Super. 2011) (citations and quotation marks omitted).

Derr contends that his plea counsel was ineffective for failing to notify him that he could not possess a firearm if he pled guilty. Brief for Appellant

¹ We note that Derr initially failed to file a timely appeal from the denial of his PCRA Petition. However, the PCRA court granted Derr the right to file a *nunc pro tunc* appeal of the denial.

at 8. Derr argues that his testimony at the evidentiary hearing on his PCRA Petition demonstrates that plea counsel failed to advise him of this consequence. *Id.* at 8-9, 12-13. Derr asserts that plea counsel's action had no reasonable basis and that he was prejudiced by counsel's failure because he would not have pled guilty. *Id.* at 9.

Derr also claims that the distinction between direct and collateral consequences should not have any bearing on this Court's analysis of the ineffective assistance of counsel. *Id.* at 9-11.² Derr likens this case to the Supreme Court of the United States's decision in *Padilla v. Kentucky*, 559 U.S. 356 (2010), wherein the Supreme Court held that a collateral versus direct consequences analysis was not needed where a failure to advise a client that his guilty plea would lead to deportation, and that this failure constituted ineffective assistance of counsel. Brief for Appellant at 9-11. Derr alternatively argues that if the collateral versus direct consequences analysis is applicable to this case, the forfeiture of a firearm is a direct consequence and, therefore, the ineffectiveness claim in this regard is reviewable. *Id.* at 11-12.

The Supreme Court of Pennsylvania recently held that *Padilla* did not abrogate its long-standing rule that plea counsel need not advise his client of the collateral consequences of a conviction. *See Commonwealth v. Abraham*, 62 A.3d 343, 350 (Pa. 2012). The Supreme Court stated that a

² The Commonwealth agrees with Derr's argument in this respect. *See* Brief for the Commonwealth at 10.

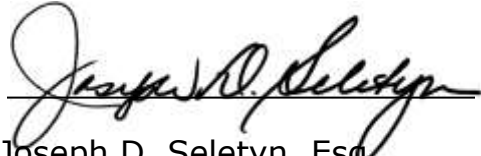
defendant must be advised of the *direct* consequences of a conviction, which under ***Padilla***, includes deportation. ***See id.*** “The distinction between a direct and collateral consequence of a guilty plea has been effectively defined by [the Pennsylvania Supreme] Court as the distinction between a criminal penalty and a civil requirement over which a sentencing judge has no control.” ***Id.*** (quotation marks and citations omitted). Our Supreme Court further noted that “the collateral consequences of pleading guilty are numerous, and include loss of the right to vote, enlist in the armed services, **own a firearm**, hold a fishing license, inherit property, or practice a particular profession.” ***Id.*** at 350 n.8 (emphasis added); ***see also Commonwealth v. Duffey***, 639 A.2d 1174, 1176 (Pa. 1994). The Supreme Court concluded that “a defendant’s lack of knowledge of collateral consequences of the entry of a guilty plea does not undermine the validity of the plea, and counsel is therefore not constitutionally ineffective for fail[ing] to advise a defendant of the collateral consequences of a guilty plea.” ***Abraham***, 62 A.3d at 350.

Based upon the foregoing, the ban on owning or possessing a firearm was a collateral consequence of Derr’s guilty plea. Because plea counsel cannot be deemed ineffective for failing to advise Derr about the collateral

consequences of a plea, Derr's ineffectiveness claim fails.³

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/3/2013

³ Even if we addressed Derr's underlying ineffectiveness claim, we would conclude that it is without merit. Indeed, at the evidentiary hearing on Derr's PCRA Petition, contrary to Derr's testimony, plea counsel testified that he advised Derr about the ban on owning a firearm and that he and Derr discussed this in light of the fact that Derr was a gun owner and hunted with his son. N.T., 1/23/12, at 18-22, 24, 27-28; **see also** PCRA Court Opinion, 7/18/12, at 7. The PCRA court found plea counsel's testimony to be credible. **See** PCRA Court Opinion, 7/18/12, at 7; **see also Commonwealth v. Spatz**, 47 A.3d 63, 112 (Pa. 2012) (stating that appellate courts will defer to the credibility determinations of the PCRA court). Thus, Derr's ineffectiveness claim does not have arguable merit. **See Commonwealth v. Martin**, 5 A.3d 177, 183 (Pa. 2010) (stating that a failure to satisfy any prong of the ineffectiveness test, including that the underlying claim has arguable merit, requires the rejection of the claim). Moreover, we note that Derr voluntarily and knowingly entered his guilty plea. Indeed, the record shows that Derr understood and accepted the nature of the charges, the factual basis of the plea, the permissible range of his sentence, his right to a trial by jury and the presumption of innocence, and that the trial judge was not bound by the terms of the plea agreement unless the judge accepted it. **See** N.T., 11/1/10, at 3-12; Written Guilty Plea Colloquy, 11/1/10, at 1-7; **see also Commonwealth v. McCauley**, 797 A.2d 920, 922 (Pa. Super. 2001) (stating that a defendant is bound by the statements he makes during the plea colloquy). After reviewing the totality of the circumstances, including the written and oral guilty plea colloquies, we conclude that the record demonstrates that Derr entered a voluntary guilty plea. Based on this conclusion, Derr did not establish that plea counsel's ineffectiveness caused him to enter an involuntary guilty plea.