

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

TRENT MARSH,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2790 EDA 2012

Appeal from the PCRA Order of September 27, 2012
In the Court of Common Pleas of Bucks County
Criminal Division at No(s): CP-09-CR-0008656-2007

BEFORE: DONOHUE, OLSON AND MUNDY, JJ.

MEMORANDUM BY OLSON, J.:

FILED SEPTEMBER 04, 2013

Appellant, Trent Marsh, appeals from the order entered September 27, 2012, dismissing his petition filed pursuant to the Post Conviction Relief Act, 42 Pa.C.S.A. §§ 9541-9546 ("PCRA"). We affirm.

The PCRA court summarized the relevant factual and procedural background of this matter as follows.

On February 8, 2008, [Appellant] was found guilty of committing [r]obbery with the [t]hreat of [b]odily [i]njury,¹ [b]urglary,² [t]heft by [u]lawful [t]aking,³ and related offenses following a jury trial before the Honorable David E. Heckler. Appellant was sentenced to seven and a half (7 ½) to eighteen (18) years confinement on May 27, 2008. Appellant filed post-sentence

¹ 18 Pa.C.S.A. § 3701(a)(1)(ii).

² 18 Pa.C.S.A. § 3502(c)(1).

³ 18 Pa.C.S.A. § 3921(a).

motions, which were denied by Judge Heckler on November 6, 2008. Thereafter, Appellant filed a timely [*pro se* PCRA petition] on November 19, 2009, alleging ineffective assistance of trial counsel, Michael McDermott, Esquire. Appellant's [m]otion to [p]roceed without [c]ounsel was granted, following a hearing, on April 12, 2012. On May 13, 2012, Appellant filed a [m]otion for [r]econsideration and [a]ppointment of [c]ounsel. By [o]rder dated September 23, 2010, Stuart M. Wilder, Esquire, was appointed to represent [Appellant] on his PCRA [p]etition. On August 10, 2011, Appellant filed a [m]otion to [a]mend his PCRA [p]etition. A video conference hearing was commenced before the [PCRA court] on Appellant's [a]mended PCRA [p]etition⁴ on August 15, 2011. Due to trial counsel's failure to appear, the PCRA [h]earing was continued, and later held on May 14, 2012. Thereafter, Appellant and the Commonwealth filed [p]ost-[h]earing [b]riefs. [The PCRA court] reviewed the record in this case and the submissions of the parties and denied Appellant's PCRA [p]etition.

PCRA Court Opinion, 10/23/2012, at 1-2 (footnote in original).⁵ This timely appeal followed.

Appellant presents one issue for appeal:

Was counsel ineffective for failing to object to a mid-trial amendment of the information?

Appellant's Brief at 3.⁶

⁴ The [m]otion to [a]mend was granted after an oral motion was made by counsel at the start of the hearing.

⁵ We note that the PCRA court's opinion does not contain page numbers. We add numbers for ease of reference.

⁶ The requirements of Pennsylvania Rule of Appellate Procedure 1925 have been satisfied in this matter.

Our standard of review of a PCRA court's denial of petition for relief is well settled. We review an order of the PCRA court to determine whether the record supports the findings of the PCRA court and whether its rulings are free from legal error. ***Commonwealth v. Fiore***, 780 A.2d 704, 710 (Pa. Super. 2001), *appeal dismissed*, 813 A.2d 1080 (Pa. 2003). To be eligible for PCRA relief, a petitioner must plead and prove, by a preponderance of the evidence, that his conviction or sentence resulted from one or more of the violations set forth in 42 Pa.C.S.A. § 9543(a)(2). In this case, Appellant alleges that his convictions resulted from ineffective assistance of counsel, as set forth at 42 Pa.C.S.A. § 9543(a)(2)(ii).

Within an ineffectiveness claim, trial counsel is presumed to be effective, and Appellant has the burden of proving otherwise. ***Commonwealth v. Williams***, 570 A.2d 75, 81 (Pa. 1990). Appellant must prove: (1) his underlying claim is of arguable merit; (2) counsel's performance lacked a reasonable basis; and (3) counsel's action or inaction caused him prejudice. ***Commonwealth v. Gwynn***, 943 A.2d 940, 945 (Pa. 2008). Failure to meet any prong of the test will defeat an ineffectiveness claim. ***Commonwealth v. Rainey***, 928 A.2d 215, 224-225 (Pa. 2007). Counsel cannot be found ineffective for failure to assert a baseless claim. ***Commonwealth v. Payne***, 794 A.2d 902, 906 (Pa. Super. 2002).

Furthermore, to demonstrate prejudice, Appellant must show there is a reasonable probability that, but for counsel's error, the outcome of the proceeding would have been different. ***Commonwealth v. Spatz***, 870 A.2d

822, 833-834 (Pa. 2005). When it is clear that a petitioner's ineffective assistance claim has failed to meet the prejudice prong of the ineffectiveness test, the claim may be dismissed on that basis alone, without a determination of whether the first two prongs have been met. **Rainey**, 928 A.2d at 224-225; **Commonwealth v. Albrecht**, 720 A.2d 693, 701 (Pa. 1998) ("If it is clear that Appellant has not demonstrated that counsel's act or omission adversely affected the outcome of the proceedings, the claim may be dismissed on that basis alone and the court need not first determine whether the first and second prongs have been met.").

In this matter, Appellant claims that trial counsel was ineffective for failing to object to the Commonwealth's mid-trial amendment of the information, adding the lesser offense of robbery of the second degree. Appellant's Brief at 9. According to Appellant, counsel's failure to object to the mid-trial amendment denied him the opportunity to "defend against the more serious charge, and risk an 'all or nothing' consideration of his case by the jury." **Id.** Appellant believes that amendment of his information to include robbery of the second degree "unfairly increased his chances of being convicted of robbery." **Id.** at 10. Therefore, Appellant argues that his counsel was ineffective for not having objected to the amendment. **Id.**

After thorough review of the certified record, the parties' submissions, and the PCRA court's well-written opinion, filed October 23, 2012, we affirm on the basis of the trial court's opinion and adopt its reasoning as our own.

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The parties are directed to attach a copy of the PCRA court's October 23, 2012 opinion to all future filings involving this appeal.

Order affirmed.

Judgment Entered.

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

Prothonotary

Date: 9/4/2013