

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
Appellee	:	PENNSYLVANIA
	:	
	:	
v.	:	
	:	
	:	
EDWARD GREEN,	:	
Appellant	:	No. 2941 EDA 2011

Appeal from the PCRA Order October 31, 2011
 In the Court of Common Pleas of Philadelphia County
 Criminal Division No(s): CP-51-CR-0906991-2003

BEFORE: PANELLA, OLSON, and FITZGERALD, * JJ.

MEMORANDUM BY FITZGERALD, J.:

Filed: January 29, 2013

Appellant, Edward Green, appeals from the order entered in the Philadelphia County Court of Common Pleas dismissing his timely, first Post Conviction Relief Act¹ ("PCRA") petition. He alleges that counsel was ineffective for failing to call a witness at a suppression hearing. We affirm.

We adopt the facts as set forth in the PCRA court's opinion. **See** PCRA Ct. Op., 4/18/12, at 2-4. On April 28, 2009, Appellant was sentenced to a mandatory five to ten years in prison after his conviction for possession with intent to distribute a controlled substance.² Appellant timely appealed, and

* Former Justice specially assigned to the Superior Court.

¹ 42 Pa.C.S. §§ 9541-9546.

² 35 P.S. § 780-113(a)(30).

this Court affirmed on August 6, 2010. **Commonwealth v. Green**, No. 1288 EDA 2009 (unpublished memorandum) (Pa. Super. Aug. 6, 2010).³

On October 19, 2010,⁴ Appellant, *pro se*, filed his first PCRA petition. Counsel was appointed and filed an amended PCRA petition on July 25, 2011. On October 3, 2011, the PCRA court issued a Pa.R.Crim.P. 907 notice of intent to dismiss.⁵ Appellant did not file an opposition. The court formally dismissed Appellant's petition on October 31, 2011. Appellant filed a timely appeal on November 2, 2011. The PCRA court did not order Appellant to comply with Pa.R.A.P. 1925(b).

Appellant raises the following issue on appeal:

Did the PCRA court err in dismissing Appellant's PCRA petition without an evidentiary hearing when suppression counsel was ineffective for failing to call a witness who

³ On direct appeal, Appellant claimed (1) the trial court erred in finding probable cause to search and (2) the affiant's medical history and alleged recantation of statement giving rise to search warrant justified reopening the suppression motion. We also acknowledge that this Court's prior decision referred to the affiant as both Edward Tucker and Edward Felder. **Green**, No. 1288 EDA 2009. The PCRA court's opinion, however, refers to the affiant as both Richard Felder and Robert Felder. **Cf.** PCRA Ct. Op. at 1, **with id.** at 4. Because Mr. Felder averred his first name was "Richard," we refer to him as such.

⁴ The envelope containing Appellant's petition was postmarked on this date. **See generally Commonwealth v. Wilson**, 911 A.2d 942, 944 n.2 (Pa. Super. 2006) (discussing prisoner mailbox rule).

⁵ The PCRA court's decision contained erroneous dates. **See** PCRA Ct. Op. at 2 (stating incorrect dates of August 12, 2011, for issuance of Rule 907 notice, October 17, 2011, for order dismissing PCRA petition, and November 16, 2011, for notice of appeal).

allegedly provided police with the basis for its search warrant but who did not remember giving a statement to police?

Appellant's Brief at 4.

Appellant contends that his suppression counsel was ineffective for failing to call Mr. Felder as a witness at the suppression hearing. He insists that because Mr. Felder recanted the statement forming the basis of the search warrant, the PCRA court should have held an evidentiary hearing. We hold Appellant is not entitled to relief.

"On appeal from the denial of PCRA relief, our standard and scope of review is limited to determining whether the PCRA court's findings are supported by the record and without legal error." *Commonwealth v. Abu-Jamal*, 941 A.2d 1263, 1267 (Pa. 2008).

[C]ounsel is presumed to have provided effective representation unless the PCRA petitioner pleads and proves that: (1) the underlying claim is of arguable merit; (2) counsel had no reasonable basis for his or her conduct; and (3) Appellant was prejudiced by counsel's action or omission. To demonstrate prejudice, an appellant must prove that a reasonable probability of acquittal existed but for the action or omission of trial counsel. A claim of ineffective assistance of counsel will fail if the petitioner does not meet any of the three prongs. Further, a PCRA petitioner must exhibit a concerted effort to develop his ineffectiveness claim and may not rely on boilerplate allegations of ineffectiveness.

Commonwealth v. Perry, 959 A.2d 932, 936 (Pa. Super. 2008)

(punctuation marks and citations omitted).

After a careful review of the record, the parties' briefs, and the decision by the Honorable Sandy Byrd, we affirm the order based on the reasoning set forth in the PCRA court's opinion. **See** PCRA Ct. Op. at 5-10 (holding (1) Mr. Felder's inability to remember proffering statement forming basis for search warrant five years later does not invalidate search; (2) Appellant failed to establish that suppression counsel's failure to call Mr. Felder as witness at suppression hearing would have led to different result; (3) suppression counsel had reasonable basis for challenging search warrant on alternative grounds; and (4) suppression counsel was not ineffective). Accordingly, having discerned no legal error, we affirm. **See *Abu-Jamal***, 941 A.2d at 1267.

Order affirmed.