

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

GERMAN SANTINI

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 3472 EDA 2010

Appeal from the PCRA Order December 6, 2010  
In the Court of Common Pleas of Philadelphia County  
Criminal Division at No(s): CP-51-CR-1207531-2002

BEFORE: PANELLA, J., OLSON, J., and FITZGERALD, J.\*

MEMORANDUM BY PANELLA, J.

Filed: March 5, 2013

Appellant, German Santini, appeals *pro se* from the order entered on December 6, 2010, which denied his petition for relief filed pursuant to the Post Conviction Relief Act (PCRA), 42 PA.CON.S.TAT.ANN. § 9541, et seq.

Following a jury trial on December 8-9, 2004, Santini was convicted of two counts each of robbery and violating the Uniform Firearms Act ("UFA") and one count each of criminal conspiracy, theft by unlawful taking, simple assault and possessing an instrument of crime for his role in the armed robbery of a corner grocery store. Santini was subsequently sentenced on February 8, 2005, to concurrent terms of 10-20 years for each robbery conviction, 5-10 years for conspiracy and 1-2 years for possessing

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\* Former Justice specially assigned to the Superior Court.

instruments of crime and UFA. The other convictions merged for sentencing purposes. Santini filed a direct appeal to this Court challenging the trial court's denial of his motion to suppress the identifications and his motion for discharge pursuant to Rule 600. This Court affirmed Santini's judgment of sentence on January 16, 2007. ***See Commonwealth v. Santini***, 919 A.2d 976 (Pa. Super. 2007) (Table). Our Supreme Court denied Santini's petition for allowance of appeal on July 6, 2007. ***See Commonwealth v. Santini***, 927 A.2d 624 (Pa. 2007) (Table).

Santini filed the instant PCRA petition on November 19, 2007, after which the PCRA court appointed counsel. Counsel subsequently filed a petition to withdraw pursuant to ***Turner/Finley***. The PCRA court issued notice of its intention to dismiss pursuant to Pa.R.Crim.P. 907 and, on December 6, 2010, after an independent review of the record, along with counsel's findings and Santini's objections thereto, the PCRA court dismissed Santini's PCRA petition without a hearing and granted counsel's petition to withdraw. This appeal followed.

On appeal, Santini raises the following issues for our review:

- I. WERE PRETRIAL/TRIAL/DIRECT APPEAL AND COLLATERAL COUNSELS [sic] INEFFECTIVE IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS FOR THEIR FAILURE TO CHALLENGE THE RULING ISSUED BY THE DISTRICT JUSTICE DENYING THE MOTION FOR A LINE-UP AND NOT FILING A MOTION TO SUPPRESS THE IDENTIFICATION OF APPELLANT?
- II. WAS COUNSEL INEFFECTIVE IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS FOR PERMITTING THE PROSECUTION TO AMEND THE CRIMINAL COMPLAINT TO

ADD A CHARGE OF VIOLATION OF THE UNIFORM FIREARMS ACT WITHOUT GIVING PRIOR NOTICE?

- III. DID APPELLATE COUNSEL COMMIT SIXTH AMENDMENT VIOLATION FOR HIS FAILURE TO CHALLENGE TRIAL COUNSEL'S INEFFECTIVENESS WHEN TRIAL COUNSEL FAILED TO OBJECT TO THE AMENDED COMPLAINT FROM SECOND DEGREE ROBBERY TO FIRST DEGREE ROBBERY AS RETALIATION FOR THE DECLARATION OF MISTRIAL IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT?
- IV. WAS THERE LAYERED INEFFECTIVE ASSISTANCE OF COUNSEL FOR THEIR FAILURE TO OBJECT AND RAISE THE TRIAL JUDGE INVOLVEMENT IN THE TRIAL TO SUBSTANTIALLY PREJUDICE THE CASE IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENT [sic]?
- V. WAS INEFFECTIVE ASSISTANCE OF COUNSEL COMMITTED WHEN DETECTIVE HARLEY WAS ALLOWED TO TESTIFY ABOUT OTHER CODEFENDANTS [sic] STATEMENTS?
- VI. WAS THERE LAYERED INEFFECTIVE ASSISTANCE OF COUNSELS [sic] FOR THEIR FAILURE TO RAISE THE SIXTH AMENDMENT'S SPEEDY TRIAL RULE VIOLATION?

Appellant's Brief, at 4.

Our standard of review of a PCRA court's denial of a petition for post-conviction relief is well-settled. We must examine whether the record supports the PCRA court's determination, and whether the PCRA court's determination is free of legal error. **See Commonwealth v. Hall**, 867 A.2d 619, 628 (Pa. Super. 2005). The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record. **See Commonwealth v. Carr**, 768 A.2d 1164, 1166 (Pa. Super. 2001). Our scope of review is limited by the parameters of the PCRA. **See Commonwealth v. Heilman**, 867 A.2d 542, 544 (Pa. Super. 2005).

To demonstrate eligibility for relief under the PCRA, a petitioner must plead and prove, *inter alia*, that the allegation of error has not been previously litigated. **See *Commonwealth v. Kimbrough***, 938 A.2d 447, 451 (Pa. Super. 2007). An issue is deemed previously litigated if “the highest appellate court in which the petitioner could have had review as a matter of right has ruled on the merits of the issue.” 42 PA.CON.S.TAT.ANN. § 9543 (a)(3).

Our review of Santini’s issues raised herein on appeal reveals that several of his claims were previously litigated and, as such, are not eligible for PCRA review: (1) that counsel failed to request a pre-trial lineup;<sup>1</sup> (2) that counsel did not object to the Bill of Information being amended by the Commonwealth from an F2 to F1 Robbery prior to trial<sup>2</sup>; and (3) that counsel

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<sup>1</sup> Santini does not allege that counsel was ineffective for failing to ask for a lineup; rather, his argument is centered upon his belief that counsel was ineffective for failing to petition the court to suppress the identification as suggestive. As established on direct appeal, counsel did seek to suppress the identification made by Frank Torres and appealed the denial of that motion. This Court affirmed the denial of suppression, on the grounds that “although single photograph identifications can be unduly suggestive, under the totality of circumstances in this case, Mr. Torres’ identification was made under circumstances indicating its reliability.” ***Commonwealth v. Santini***, 718 EDA 2005, p. 8 (Pa. Super., filed 1/16/07). Specifically, Mr. Torres made a positive photograph identification of Santini only minutes after calling the police. As such, this claim as been previously litigated.

<sup>2</sup> As discussed on direct appeal, Santini was charged with F2 Robbery, had a preliminary hearing on this charge on December 12, 2003, and was arraigned on January 2, 2004 after the Commonwealth generated the bills for F1 Robbery. On February 10, 2004, the Commonwealth informed the Court of this issue. No written motion was filed and a hearing was scheduled  
(Footnote Continued Next Page)

failed to raise a speedy trial claim.<sup>3</sup> All of these claims were, as the trial court aptly states in its memorandum opinion filed pursuant to Pa.R.A.P. 1925(a), previously litigated on direct appeal. Santini “cannot [now] obtain review of claims that were previously litigated by presenting new theories of relief, including allegations of ineffectiveness, to relitigate previously litigated claims.” ***Commonwealth v. Bond***, 819 A.2d 33, 39, (Pa. 2002).

Three issues remain on appeal which, have not been previously litigated: (1) that counsel failed to object to Detective Harley’s “slip of the tongue” mention of his co-defendant; (2) whether counsel was ineffective for permitting the Commonwealth to amend the criminal complaint to add a

(Footnote Continued) \_\_\_\_\_

for one week later. Following a hearing, the court allowed the amendment to conform to the allegations. Santini’s second trial started on December 8, 2004, almost two years after Santini and counsel had notice of the original grading charge. As Santini’s F1 Robbery Bill was generated from the same set of facts as the earlier F2 Bill, he clearly had notice of the impending F1 charge and did not deny it in court. As such, this claim was previously litigated as counsel did present testimony to challenge the amendment at a hearing.

<sup>3</sup> Santini’s speedy trial claim was also previously litigated. On direct appeal, this Court reviewed the trial court’s denial of Santini’s Rule 600 motion. ***Commonwealth v. Santini***, 718 EDA 2005, pp. 11-12 (Pa. Super., filed 1/16/07) In affirming, this Court opined that the Commonwealth exercised due diligence in bringing the case to trial for a second time. Santini’s first trial ended in a mistrial because the jury was hung. A key witnesses and complainant, Nidia Torres was in the latter terms of a difficulty pregnancy and having complications about the time the second trial was scheduled. As such, the witness was unavailable and need enough time to recover from her pregnancy. The trial court found, and this Court agreed, that the Commonwealth was clearly acting with concern for the witness’ health and welfare and as such, there was no merit to Santini’s Rule 600 claim.

charge of violation of the UFA without giving prior notice;<sup>4</sup> and (3) whether counsel was ineffective for failing to object and raise the trial judge involvement in the trial to substantially prejudice the case.

To determine whether the PCRA court erred in dismissing Santini's petition on the claims of ineffectiveness of counsel, we turn to the following principles of law:

In order for Appellant to prevail on a claim of ineffective assistance of counsel, he must show, by a preponderance of the evidence, ineffective 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 ... Appellant must demonstrate: (1) the underlying claim is of arguable merit; (2) that counsel had no reasonable strategic 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 proceedings would have been different.

***Commonwealth v. Johnson***, 868 A.2d 1278, 1281 (Pa. Super. 2005).

Moreover, "[w]e presume counsel is effective and place upon Appellant the burden of proving otherwise." ***Commonwealth v. Springer***, 961 A.2d 1262, 1267-1268 (Pa. Super. 2008). "This Court will grant relief only if Appellant satisfies each of the three prongs necessary to prove counsel ineffective." ***Commonwealth v. Natividad***, 938 A.2d 310, 322 (Pa. 2007).

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<sup>4</sup> In actuality, based upon our review of Santini's appellate brief, he is arguing that counsel was ineffective for severing the violation of the UFA § 6105 charge.

Thus, we may deny any ineffectiveness claim if “the evidence fails to meet a single one of these prongs.” *Id.*, at 321.

Santini’s first claim that counsel was ineffective for failing to object to Detective Harley’s “slip of the tongue” mention of his co-defendant is without arguable merit. The record shows that on direct examination by the Commonwealth, Detective Harley was asked how many people he interviewed. He named both complainants, the police officers, and began to say “a co-defendant” when counsel objected and the trial court ordered the statement stricken. N.T., Trial, 12/10/04, at 54-55. As such, counsel cannot be deemed ineffective for failing to object when in fact, he objected and advocated on behalf of Santini.<sup>5</sup>

Santini’s next claim that counsel was ineffective for severing the violation of the UFA § 6105 charge, was denied by the PCRA court without a hearing because it lacked merit. We agree.

The purpose of conducting a separate bench trial for a § 6105 charge is to prevent the very prejudice that Santini now claims he was subjected to. Trial counsel agreed to the separate UFA trial outside the presence of the jury because he did not want the jury to hear about Santini’s prior gun conviction. **See** N.T., Trial, 12/6/04, at 2-4. Clearly, trial counsel had a

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<sup>5</sup> We further note that “[j]uries are presumed to follow a court’s instructions.” *Commonwealth v. Naranjo*, 53 A.3d 66, 71 (Pa. Super. 2012) (citation omitted).

reasonable basis for employing such a strategy, which benefited Santini. Santini fails to provide any substantive evidence in his PCRA petition that the strategy employed by trial counsel prejudiced him. Accordingly, this claim was properly denied without a hearing.

In his last issue, Santini claims that he “did not waive his right to a jury trial and there was not a colloquy in the record indicating that he did.” Appellant’s Brief, at 22. This issue is apparently linked to Santini’s argument regarding the separate bench trial on the UFA charge. We are constrained to find this issue waived as it is merely a bald assertion with no factual background or argument and lacks citation to supporting authority as required by the Rules of Appellate Procedure. Rule 2119 requires an appellate brief to provide “discussion and citation of authorities as are deemed pertinent.” Pa.R.A.P. 2119(a). Without adequate citations, an appellate court will not consider the issues because a failure to provide factual background and supporting authority impedes review. ***Commonwealth v. Gould***, 912 A.2d 869, 873 (Pa. Super. 2006). In his brief, Santini provided no supporting authority for this issue. This Court has ruled that such a lack of citations constitutes a lack of authority and analysis. ***Commonwealth v. Hakala***, 900 A.2d 404, 406 (Pa. Super. 2006). Accordingly, this claim is waived.

Order affirmed. Jurisdiction relinquished.