NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. MELVIN BROWN, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 417 EDA 2012

Appeal from the PCRA Order January 20, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0903441-2005

BEFORE: STEVENS, P.J., GANTMAN, J., and LAZARUS, J.

MEMORANDUM BY STEVENS, P.J. Filed: February 14, 2013

This is a *pro se* appeal from the order entered in the Court of Common Pleas of Philadelphia County denying, without a hearing, Appellant Melvin Brown's petition filed under the Post-Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-46. After a careful review of Appellant's twelve issues, we affirm.

This Court previously set forth the relevant facts and procedural history, in part, as follows:

> At approximately 10:45 p.m., on August 26, 2005, the victim exited a convenience store at 19th and Dauphin Streets. Appellant and a cohort approached the victim as he walked to his van. Appellant and his cohort brandished knives, rifled through the victim's pockets, and took the victim's cellular phone and wallet before fleeing on foot. Five to ten minutes later, the police detained Appellant, and the victim positively identified him as one of the robbers. The police also recovered the victim's wallet from Appellant.

On August 28, 2005, the Commonwealth filed its criminal complaint, charging Appellant with robbery, conspiracy, PIC, and related offenses. Appellant posted bail and proceeded to his preliminary hearing on September 16, 2005. The court conducted Appellant's arraignment on September 27, 2005. Between October 31, 2005 and November 28, 2005, the court held three pre-trial conferences regarding discovery. On December 12, 2005, the parties completed discovery, and the court continued the matter for a scheduling conference. On January 9, 2006, the court scheduled trial for February 6, 2006.

On January 10, 2006, Appellant filed a suppression motion, claiming the police lacked probable cause to effectuate his warrantless arrest. On February 6, 2006, the trial judge was unavailable due to a death in his family. Consequently, the court "rolled" the case to February 8, 2006. On February 8th, defense counsel requested a continuance. The court granted counsel's request, rescheduling the matter for March 8, 2006. On March 8th, the defense requested another continuance. The court again granted counsel's request, re-scheduling trial for April 27, 2006. On April 27th, the trial judge was unavailable, and trial was inadvertently rescheduled for January 29, 2007. The January 29, 2007 trial date was then cancelled and the court scheduled a status conference for September 7, 2006. At that conference, the court rescheduled trial for November 15, 2006.

On October 13, 2006, Appellant filed a *pro se* motion to dismiss, pursuant to Pa.R.Crim.P. 600. On November 15, 2006, the parties appeared for trial and defense counsel sought to litigate the Rule 600 motion. However, Appellant's quarter sessions files were unavailable, and the court continued the matter until January 8, 2007. On January 8th, the court continued the matter until February 12, 2007. Following the February 12th hearing, the court denied Appellant's Rule 600 and suppression motions. Appellant's trial began on February 13, 2007.

On February 15, 2007, the jury convicted Appellant of robbery, conspiracy, and PIC. On March 22, 2007, the court sentenced Appellant to ten (10) to twenty (20) years' incarceration for the robbery conviction. The court also sentenced Appellant to consecutive terms of seven and one-half (7½) to fifteen (15) years' incarceration for the conspiracy conviction and one (1) to two (2) years' incarceration for the PIC conviction. Appellant did not file post-sentence motions.

On April 20, 2007, Appellant timely filed a notice of appeal.

Commonwealth v. Brown, 1103 EDA 2007, at 1-4 (Pa.Super. filed 9/19/08) (unpublished memorandum) (citation and footnotes omitted).

On direct appeal, Appellant contended the trial court erred in failing to grant his motion to dismiss under Pa.R.Crim.P. 600 and the prosecutor committed misconduct in her opening statement. Finding no merit to Appellant's issues, we affirmed his judgment of sentence on September 19, 2008. ***See Brown***, ***supra***. Appellant did not file a petition for allowance of appeal with the Pennsylvania Supreme Court.

On or about August 27, 2009, Appellant filed a timely *pro se* PCRA petition, and thereafter, Appellant filed numerous *pro se* amended PCRA petitions. Assistant Public Defender Emily Beth Cherniack was appointed to represent Appellant; however, Appellant continued to file *pro se* amended PCRA petitions. On October 28, 2011, Attorney Cherniack filed a ***Turner/Finley***[1] no-merit letter and a petition seeking to withdraw as counsel. On or about November 30, 2011, Appellant filed a *pro se* response to Attorney Cherniack's no-merit letter, and on December 19, 2011, the PCRA court provided Appellant with notice of its intention to dismiss Appellant's PCRA petition without an evidentiary hearing. By order entered on January 20, 2012, the PCRA court dismissed Appellant's PCRA petition and permitted Attorney Cherniack to withdraw her representation. This

---

[1] ***Commonwealth v. Turner***, 518 Pa. 491, 544 A.2d 927 (1988); ***Commonwealth v. Finley***, 550 A.2d 213 (Pa.Super. 1988) (*en banc*).

timely *pro se* appeal followed. The PCRA court directed Appellant to file a Pa.R.A.P. 1925(b) statement, Appellant filed a timely statement, and the PCRA court filed a responsive Pa.R.A.P. 1925(a) opinion.

Initially, we note our standard of review in PCRA cases:

> We review an order granting or denying PCRA relief to determine whether the PCRA court's decision is supported by evidence of record and whether its decision is free from 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. Burkhardt, 833 A.2d 233, 236 (Pa.Super. 2003) (*en banc*) (quotations, quotation marks, and citations omitted).

Here, in his two-page Statement of Questions Involved, Appellant lists twelve separate issues, some of which contain numerous sub-issues. We find many of Appellant's issues to be waived due to lack of adequate development in his brief. That is, Appellant has failed to set forth a cogent argument with citation to relevant authority. Specifically, we find issues one, two, three, four, five,[2] six, eight,[3] ten, and eleven to be waived on this

---

[2] We note that, in issue five, Appellant seeks a remand for new counsel under this Court's Opinion in ***Commonwealth v. Warren***, 979 A.2d 920 (Pa.Super. 2009). ***See*** Appellant's Brief at 7. However, our Supreme Court vacated this Court's Opinion in ***Warren***, and thus, the Opinion relied upon by Appellant has no precedential value. ***See Commonwealth v. Warren***, 611 Pa. 617, 29 A.3d 367 (2011).

[3] In his eighth claim, Appellant contends his sentence is illegal on the basis his sentences for criminal conspiracy and possessing an instrument of crime merged pursuant to 18 Pa.C.S.A. § 906. We simply note possessing an instrument of crime, 18 Pa.C.S.A. § 907, is not an inchoate crime. ***See*** 18

(Footnote Continued Next Page)

basis. ***See*** Appellant's Brief at 5-7, 8, 18, 22, 23. A case such as this one brings to mind several interrelated principles which, while both obvious and already made plain by case law, are nonetheless worth noting. Assuming an appellant states the intended legal issues, this Court could, at least in theory, set forth the applicable law, construct arguments on behalf of the appellant, analyze the relative merits of the arguments we have constructed, and reach a decision. However, doing so would be improper. ***Commonwealth v. Frey***, 41 A.3d 605, 613 (Pa.Super. 2012) ("It would be improper for this Court to act as counsel for a party. That is, we must not write a party's brief and develop the analysis necessary to support the party's position.") (citations omitted).

Additionally, while we acknowledge Appellant has filed this appeal *pro se*, we note the following:

> While this Court is willing to liberally construe materials filed by a *pro se* litigant, we note that Appellant is not entitled to any particular advantage because [he] lacks legal training. As our Supreme Court has explained, any layperson choosing to represent [himself] in a legal proceeding must, to some reasonable extent, assume the risk that [his] lack of expertise and legal training will prove [his] undoing.
>
> Consequently, [w]e decline to become the appellant's counsel. When issues are not properly raised and developed in briefs…a Court will not consider the merits thereof.

(Footnote Continued) ––––––––––––––––––––

Pa.C.S.A. § 906 ("A person may not be convicted of more than one of the inchoate crimes of criminal attempt, criminal solicitation or criminal conspiracy for conduct designed to commit or to culminate in the commission of the same crime.").

Commonwealth v. Greenwalt, 796 A.2d 996, 997 (Pa.Super. 2002) (quotation and quotation marks omitted).

Accordingly, we shall not further consider Appellant's issues one, two, three, four, five, six, eight, ten, and eleven.

As to Appellant's remaining issues, we conclude Appellant is not otherwise entitled to PCRA relief. For example, in issue seven, Appellant presents twelve sub-issues, which he lists as 7-A to 7-L, involving allegations that PCRA counsel was ineffective in failing to present in her ***Turner/Finley*** letter various layered claims of appellate counsel's and trial counsel's ineffectiveness.[4] To the extent we are able to discern a cogent argument as to each sub-issue,[5] we dispose of Appellant's seventh claim simply by noting that Appellant is mistaken in his assertion. That is, contrary to Appellant's assertion, PCRA counsel did raise each of the argued

---

[4] We acknowledge that, under ***Commonwealth v. Pitts***, 603 Pa. 1, 981 A.3d 875 (2009), in order to preserve his challenges o PCRA counsel's effectiveness, Appellant was required to raise the claims in the PCRA court below. As discussed *infra*, assuming, *arguendo*, Appellant properly did so in one of his numerous *pro se* filings, Appellant is not otherwise entitled to relief.

[5] Appellant notes in his brief that he is withdrawing one of his claims of PCRA counsel's ineffectiveness, namely, sub-issue 7-K, and accordingly, he has presented no argument for this claim. ***See*** Appellant's Brief at 18. Thus, this sub-issue is waived on this basis. ***See Frey***, ***supra***; ***Greenwalt***, ***supra***. We note we are unable to discern what Appellant is attempting to argue in sub-issue 7-J. ***See*** Appellant's Brief at 18.

layered claims of ineffectiveness in her ***Turner/Finley*** letter.[6] ***See*** PCRA Court's Opinion filed 7/11/12 at 10-14 (listing Appellant's claims and noting that all of the claims were presented in PCRA counsel's ***Turner/Finley*** letter); PCRA Counsel's No-Merit ***Turner/Finley*** letter, filed 10/28/11, at 2-7 (listing and discussing Appellant's claims of ineffectiveness).

In issue nine, Appellant asserts he was denied his constitutional right to the Confrontation Clause of the Sixth Amendment. As the PCRA court noted in its Pa.R.A.P. 1925(a) Opinion:

> [Appellant] next questions [in his court-ordered Rule 1925(b) statement:] "**Whether petitioner was denied a Constitutional right to the Confrontation Clause of the 6th Amendment?"**
>
> This court has no idea to what facts [Appellant] is referring, and could locate no such claim in any of his Petitions. This claim is too general for this court to answer and, therefore, [is] waived.

PCRA Court's Opinion filed 7/11/12 at 15 (bold in original).

---

[6] One notable exception is Appellant's sub-issue 7-L, in which Appellant argues PCRA counsel was ineffective in failing to allege appellate/trial counsel's ineffectiveness in failing to raise the claim of Appellant being improperly sentenced on two inchoate crimes. ***See*** Appellant's Brief at 18. Assuming, *arguendo*, Appellant properly raised this claim of PCRA counsel's ineffectiveness in the PCRA court below, ***see Pitts***, ***supra***, we agree this issue was not presented in PCRA counsel's ***Turner/Finley*** letter. However, as discussed *supra*, possessing an instrument of crime is not an inchoate offense under 18 Pa.C.S.A. § 906.

We agree with the PCRA court in this regard and specifically point Appellant to Pa.R.A.P. 1925(b)(4)(v)[7] and Pa.R.A.P. 1925(b)(4)(vii).[8] In sum, Appellant's constitutional issue, as presented in his court-ordered Rule 1925(b) statement, was not clearly delineated so as to give the PCRA court proper notice as to the precise claim Appellant was intending to raise on appeal. Additionally, to the extent Appellant now attempts to present in his appellate brief the issue as an after-discovered evidence claim[9] the issue is waived under the Rules discussed *supra*. ***See*** Pa.R.A.P. 1925(b)(v), (vii).

Finally, in issue twelve, Appellant seeks "*de novo*" review of whether the trial court erred in denying his Pa.R.Crim.P. 600 motion to dismiss. This Court thoroughly analyzed this claim on direct appeal and found no merit to the claim. Thus, under the PCRA, the claim has been previously litigated, and Appellant is not entitled to relief. ***See*** 42 Pa.C.S.A. § 9544(a)(2) (indicating an issue has been previously litigated if "the highest appellate

---

[7] Pa.R.A.P. 1925(b)(4)(v) indicates "[e]ach error identified in the Statement will be deemed to include every subsidiary issue contained therein, which was raised in the trial court; this provision does **not** in any way limit the obligation of a criminal appellant to delineate clearly the scope of claimed constitutional errors on appeal." (bold added).

[8] Pa.R.A.P. 1925(b)(4)(vii) indicates "[i]ssues not included in the Statement and/or not raised in accordance with the provisions of this paragraph (b)(4) are waived."

[9] The PCRA court considered and rejected Appellant's claim he had after-discovered evidence regarding contradictory testimony a police officer allegedly gave during Appellant's parole revocation hearing, as opposed to Appellant's trial.

court in which the petitioner could have had review as a matter of right has ruled on the merits of the issue.").

For all of the foregoing reasons, we affirm.

Affirmed.