

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

JERRID ROLLE

Appellant

No. 478 EDA 2011

Appeal from the PCRA Order January 20, 2011
In the Court of Common Pleas of Bucks County
Criminal Division at No(s): CP-09-CR-0006499-2007

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

MEMORANDUM BY PANELLA, J.

Filed: February 4, 2013

Appellant, Jerrid Rolle, appeals from the order entered January 20, 2011, by the Honorable Jeffrey L. Finley, Court of Common Pleas of Bucks County, which denied his petition filed pursuant to the Post Conviction Relief Act¹ ("PCRA"). We affirm.

On October 25, 2007, Rolle was convicted of possession of a controlled substance with intent to deliver (cocaine),² possession of a controlled substance (marijuana),³ possession of drug paraphernalia,⁴ and receiving stolen property.⁵ Thereafter, on December 13, 2007, the trial court

* Former Justice specially assigned to the Superior Court.

¹ 42 PA.CON.S.TAT.ANN. §§ 9541-9546

² 35 PA.STAT. § 780-113(a)(30).

³ 35 PA.STAT. § 780-113(a)(31).

⁴ 35 PA.STAT. § 780-113(a)(32).

⁵ 18 PA.CON.S.TAT.ANN. § 3925(a).

sentenced Rolle to an aggregate term of six to twelve years' imprisonment. This Court affirmed Rolle's judgment of sentence on February 18, 2009. Rolle did not file a petition for allowance of appeal with the Pennsylvania Supreme Court.

On December 14, 2009, Rolle filed a timely *pro se* PCRA petition. The PCRA court subsequently appointed counsel and an amended PCRA petition was filed on April 13, 2010. Following a hearing, the PCRA court ultimately dismissed Rolle's petition on January 18, 2011. This timely appeal followed.⁶

On appeal, Rolle raises several allegations of trial and appellate counsels' ineffectiveness. 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

⁶ Although still represented by PCRA counsel, Rolle filed a *pro se* appeal and a *pro se* Rule 1925(b) statement. On August 8, 2011, this Court dismissed Rolle's appeal for failure to file a brief. After review of Rolle's motion for reconsideration, however, we reinstated Rolle's appeal and ordered PCRA counsel's representation withdrawn. ***See*** Order, 10/12/11. Thereafter, the PCRA court appointed Rolle's current counsel, Niels C. Ericksen, Esquire. Order, 11/15/11.

PCRA. *See Commonwealth v. Heilman*, 867 A.2d 542, 544 (Pa. Super. 2005).

To determine whether the PCRA court erred in dismissing Rolle's petition on 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*, 595 Pa. 188, 208, 938 A.2d 310, 322 (2007). Thus, we may deny any ineffectiveness claim if "the evidence fails to meet a single one of these prongs." *Id.*, 595 Pa. at 207-208, 938 A.2d at 321.

Rolle first argues that appellate counsel was ineffective for failing to file a petition for allowance of appeal with the Pennsylvania Supreme Court.

A claim of ineffective assistance of counsel for failure to provide adequate consultation to a petitioner with respect to the filing of a petition for allowance of appeal with the Pennsylvania Supreme Court constitutes a cognizable issue under the PCRA. *See Commonwealth v. Gadsden*, 832 A.2d 1082, 1088 (Pa. Super. 2003). In considering a claim of ineffectiveness for failure to seek discretionary review, a PCRA court must consider whether counsel adequately and timely consulted with the defendant before the filing deadline and whether counsel's failure or refusal to file a petition for allowance of appeal was justified. *Id.*

Herein, Rolle argues that although appellate counsel informed Rolle that he would not file a petition for allowance of appeal with the Pennsylvania Supreme Court, counsel never adequately communicated his reasons for failing to do so or notified Rolle of the required 30-day deadline for filing a petition for allowance of appeal. Appellant's Brief at 15.

At the PCRA evidentiary hearing, appellate counsel testified that he received a letter from Rolle on March 10, 2009, requesting that he file a petition for allowance of appeal. N.T., PCRA Hearing, 1/18/11 at 14. If counsel did not intend to pursue a discretionary appeal, Rolle requested that counsel "please respond to me as soon as possible so that I can take the steps I need to take in order to pursue my rights." *Id.* at 15. Counsel wrote two letters dated March 12 and March 15, 2009, explaining that he would not file a petition for allowance of appeal as he did "not feel there are

any applicable or appealable issues to pursue” and that such an appeal would be frivolous. *Id.* at 16. Although counsel could not recall whether he had informed Rolle of the 30-day time period in which to file a petition for allowance of appeal, he believed he had advised a family member. *Id.* at 28.

Based on the foregoing testimony, we do not find appellate counsel’s representation with regards to Rolle’s appellate rights to have been deficient. The PCRA court determined that counsel “did in fact advise Mr. Rolle that he did not intend to take the additional step of seeking the Petition for Allowance of Appeal as he thought there was no merit.” *Id.* at 99. Based on counsel’s conclusions that any further appeal would be frivolous and that this Court’s opinion on direct appeal thoroughly disposed of Rolle’s issues, *see id.* at 19-20, we cannot find counsel ineffective in this regard.

Rolle next argues that appellate counsel was ineffective for failing to include five issues raised in his Rule 1925(b) statement on direct appeal. Preliminarily, we note that Rolle’s current PCRA counsel fails to identify the issues appellate counsel allegedly failed to raise, or provide any meaningful analysis thereon. In his PCRA petition, however, Rolle identifies the following five issues counsel allegedly failed to raise on appeal:

1. The [t]rial [c]ourt erred as a matter of law in denying defendant’s request for a [c]ontinuation to obtain new counsel.

2. The Commonwealth failed to prove beyond a reasonable doubt that the defendant committed the crime of Receiving Stolen Property.
3. The Commonwealth failed to prove beyond a reasonable doubt that the defendant committed the crime of Possession of Cocaine with Intent to Deliver.
4. The Commonwealth failed to prove beyond a reasonable doubt that the defendant committed the crime of Possession of Marijuana.
5. The [t]rial [c]ourt erred as a matter of law in denying Defendant's Motion to Suppress the Defendant's initial arrest.

Brief in Support of PCRA Petition, 12/14/09 at 8. Although Rolle alleges that these issues are "of arguable merit[]," he provides no legal argument or other meaningful discussion in support of his bald claim. Accordingly, having failed to establish the first prong necessary to prove counsel ineffective, we cannot find counsel's failure to raise these claims on appeal rendered his representation deficient. Accordingly, this claim fails.

Rolle further argues that trial counsel was ineffective for failing to file a pretrial motion to suppress incriminating statements. Although PCRA counsel on appeal identifies various incriminating statements Rolle allegedly made both prior to and during trial, *see* Appellant's Brief at 17-18, Rolle testified unequivocally during the PCRA hearing that no incriminating statements were admitted during trial. N.T., 1/18/11 at 41-43. Therefore, we are precluded from addressing the allegedly incriminating statements raised by counsel on appeal as these were never raised in the court below.

See Pa.R.A.P. 302(a) (“Issues not raised in the lower court are waived and cannot be raised for the first time on appeal.”).

Rolle additionally challenges trial counsel’s effectiveness for failing to call a third officer at trial to testify to the length of time waited before entering Rolle’s hotel room without a warrant prior to his arrest. Rolle contends that all three officers who were present at the hotel room “would have testified to a different amount of time that they waited after the announce and before entering the hotel room.” Appellant’s Brief at 19.

This Court previously rejected Rolle’s allegation that police officers violated the “knock and announce” rule on direct appeal. **See Commonwealth v. Rolle**, No. 1 EDA 2008 at 3-7 (Pa. Super., filed Feb. 18, 2009). In that decision, this Court noted that although Sergeant Robert Race testified that they waited “[a]pproximately 30 to 40 seconds” before entering the hotel room, and Officer Adam Schwartz testified that they waited approximately fifteen seconds after knocking and announcing before entering the hotel room, the PCRA court explicitly credited Sergeant Race’s testimony over Officer Schwartz’s. *Id.* at 5-6. Although Rolle contends on appeal that a third officer, if called to testify, would have estimated a different time than either Officer Schwartz or Sergeant Race, Rolle does not provide this Court with the officer’s identity or with precisely what the officer would have stated differently. We are therefore unable to determine that but for counsel’s alleged failure to call the unidentified officer to testify at

trial, the outcome of the proceedings would have been different. Accordingly, this claim also fails.

In his next issue on appeal, Rolle alleges prior counsel were ineffective for committing “other cumulative error[s] and mistakes in the [d]efense of the Appellant.” Appellant’s Brief at 21. Rolle does not detail the nature of these alleged errors with any specificity in his brief, or provide any citation to supporting legal authority. **See** Appellant’s Brief at 21. We are therefore constrained to find this completely undeveloped claim waived on appeal. ***Commonwealth v. Love***, 896 A.2d 1276, 1278 (Pa. Super. 2005) (“Arguments not appropriately developed are waived.”), ***appeal denied***, 596 Pa. 704, 940 A.2d 363 (2007); ***Commonwealth v. Russell***, 665 A.2d 1239 (Pa. Super. 1995), ***appeal denied***, 544 Pa. 628, 675 A.2d 1246 (1996) (Superior Court would not review argument that contained no citation to or discussion of relevant legal authority).

Lastly, Rolle argues that trial counsel was ineffective for failing to timely request a continuance in order to allow Rolle to obtain private counsel. Appellant’s Brief at 22. The record reveals that trial counsel notified the trial court of Rolle’s desire to seek new counsel and his request for a continuance following the suppression hearing and immediately prior to jury selection. N.T., Jury Selection and Trial, 10/24/07 at 2. The trial court ultimately denied the continuance request. At the PCRA hearing, Rolle testified that he informed counsel of his desire to seek a continuance “a

week or like seven or eight days" before trial. N.T., PCRA Hearing, 1/18/11 at 33. However, trial counsel testified that the first time Rolle informed her that he wanted new counsel was after the suppression hearing, immediately prior to the start of trial. *Id.* at 73. The PCRA court, the sole arbiter of credibility, explicitly credited trial counsel's testimony in this regard. PCRA Court Opinion, 5/23/11 at 17. We cannot disturb this finding. ***Commonwealth v. Birdsong***, 611 Pa. 203, ---, 34 A.3d 319, 347 (2011) (citation omitted). Thus, we find Rolle's claim that counsel was ineffective for failing to file a timely continuance request to be meritless.

Order affirmed. Jurisdiction relinquished.