J-S19007-13

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
GLENN M. SHUFORD,	:	
	:	
Appellant	:	No. 563 WDA 2012

Appeal from the PCRA Order Entered March 7, 2012,
In the Court of Common Pleas of Fayette County,
Criminal Division, at No. CP-26-CR-0001142-2008.

BEFORE: SHOGAN, OTT and STRASSBURGER*, JJ.

MEMORANDUM BY SHOGAN, J.: Filed: May 15, 2013

Appellant, Glenn M. Shuford, appeals from the order entered on March 7, 2012 in the Fayette County Court of Common Pleas that denied his petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-9546. We affirm.

The record reflects that on May 11, 2007, Uniontown Police Officers David Hromada, Jr. and Jonathan Grabiak were at the intersection of Searlight and Dunlap Streets in the City of Uniontown, Fayette County, Pennsylvania. N.T., 10/9/08, at 7-8. The officers were at this location for an incident unrelated to Appellant's case. ***Id***. at 8. While at the intersection, Officers Hromada and Grabiak saw a white Oldsmobile approach and park near their location. ***Id***. at 10. The driver of the

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*Retired Senior Judge assigned to the Superior Court.

Oldsmobile, who was later identified as Appellant, exited the vehicle. ***Id***. At this time, the officers saw that Appellant was having difficulty keeping his balance. ***Id***. at 11. The officers approached Appellant and saw that he had glassy, bloodshot eyes. ***Id***. at 11-12. Appellant spoke to the officers in a loud voice, slurred his speech, and smelled of alcohol. ***Id***. at 12, 23. As a result of these observations, Appellant was arrested on suspicion of driving under the influence. ***Id***. at 12. Officer Grabiak searched Appellant incident to the arrest and discovered that Appellant was in possession of crack cocaine and $1532.20 in cash. ***Id***. at 12-13, 25. Appellant was then transported to the police station. ***Id***. at 37. Prior to any questioning, Appellant spontaneously stated that he had ingested ecstasy and beer. ***Id***. Appellant then said that he would go to jail for the drugs and that he liked it in jail. ***Id***. at 38. Appellant then stated "I really fucked up." ***Id***. at 38.

Following a jury trial, Appellant was found guilty of one count of possession with intent to deliver a controlled substance (cocaine), 35 P.S. § 780-113(a)(30), one count of possession of a controlled substance (cocaine) by a person not registered, 35 P.S. § 780-113(a)(16), and one count of driving under the influence, 75 Pa.C.S.A § 3802(a)(1). N.T., 10/9/08, at 86-87. Appellant was sentenced to an aggregate term of three to six years of incarceration. N.T., 10/21/08, at 4-6. Appellant filed a direct appeal, and this Court affirmed the judgment of sentence on June 15, 2009.

Commonwealth v. Shuford, 1842 WDA 2008, unpublished memorandum, 981 A.2d 322 (Pa. Super. 2009), *appeal denied*, 603 Pa. 709, 985 A.2d 219 (2009).

On April 29, 2010, Appellant filed a timely PCRA petition. The PCRA court appointed counsel, and Appellant filed an amended PCRA petition on October 22, 2010. Following a hearing, the PCRA court denied Appellant's petition for relief in an order filed March 7, 2012. Appellant timely appealed.

On appeal, Appellant raises the following issues for this Court's consideration:

> I. WHETHER TRIAL COUNSEL [WAS] INEFFECTIVE BY FAILING TO FILE ANY PRETRIAL SUPPRESSION MOTIONS AS TO THE FOLLOWING ISSUES
>
> > A. THE APPELLANT'S STOP WAS ILLEGAL AND WITHOUT PROBABLE CAUSE;
> >
> > B. THE APPELLANT, ALTHOUGH IN CUSTODY WAS NEVER PROVIDED HIS MIRANDA WARNINGS IN VIOLATION OF STATE AND FEDERAL CONSTITUTIONAL RIGHTS AND THESE STATEMENTS WERE ILLEGALLY USED AT TRIAL IN THE MATTER;
> >
> > C. TRIAL COUNSEL FAILED TO MOVE TO SEVER THE CHARGES?
>
> 2. WHETHER TRIAL COUNSEL WAS INEFFECTIVE BY FAILING TO CALL WITNESSES ON THE APPELLANT'S BEHALF WITH REGARD TO HIS PERSONAL DRUG PROBLEM AND THAT THE DRUGS FOUND IN ONE BAGGIE IN HIS POCKET WERE FOR HIS PERSONAL USE?
>
> 3. WHETHER TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO FILE ANY POST-SENTENCE MOTIONS ON THE APPELLANT'S BEHALF AND FOR FAILING TO PROPERLY

> PRESERVE OBJECTIONS TO INADMISSIBLE STATEMENTS MADE AT TRIAL REGARDING STATEMENTS DEFENDANT MADE WHILE IN CUSTODY BUT WITHOUT THE CONSTITUTIONALLY MANDATED MIRANDA WARNINGS?
>
> 4. WHETHER TRIAL COUNSEL WAS INEFFECTIVE IN THAT THE HABEAS CORPUS HEARING WAS NOT A PRE-TRIAL SUPPRESSION MOTION AND EVIDENCE ELICITED FROM SAID HEARING WOULD HAVE LED A REASONABLE ATTORNEY TO FILE THE NECESSARY PRE-TRIAL MOTIONS DUE TO ADMISSIONS UNDER OATH THAT THE APPELLANT WAS STOPPED WITHOUT PROBABLE CAUSE, THUS ELICITING TESTIMONY THAT THE SEARCH OF HIS PERSON AND THE VEHICLE WERE ILLEGAL AS WERE ANY STATEMENTS MADE BY THE APPELLANT AT THIS TIME?

Appellant's Brief at 6.

When reviewing the propriety of an order granting or denying PCRA relief, this Court is limited to determining whether the evidence of record supports the determination of the PCRA court and whether the ruling is free of legal error. ***Commonwealth v. Boyd***, 923 A.2d 513, 515 (Pa. Super. 2007), *appeal denied*, 593 Pa. 754, 932 A.2d 74 (2007). 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. Wilson***, 824 A.2d 331, 333 (Pa. Super. 2003), *appeal denied*, 576 Pa. 712, 839 A.2d 352 (2003).

PCRA relief may be granted for "ineffective assistance of counsel" that "so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place." 42 Pa.C.S.A. § 9543(a)(2)(ii). When analyzing an ineffectiveness claim, we begin with the presumption

that counsel is effective, meaning that the burden of establishing the opposite falls on the petitioner. ***Commonwealth v. Rios***, 591 Pa. 583, 609, 920 A.2d 790, 805 (2007). In order to obtain relief on an ineffectiveness claim under the PCRA, a petitioner must prove that: 1) the underlying claim is of arguable merit; 2) the counsel's performance lacked a reasonable basis; and 3) the ineffectiveness of counsel caused petitioner prejudice. ***Id***. A failure to satisfy any one of the three prongs of the test for ineffectiveness requires rejection of the claim. ***Commonwealth v. Ali***, 608 Pa. 71, 86, 10 A.3d 282, 291 (2010).

Upon review, we are constrained to point out that Appellant's brief is largely repetitive with minimal actual argument. Additionally, we conclude that the issues raised on appeal were comprehensively and correctly addressed by the PCRA court in its opinion.[1] Accordingly, after reviewing the briefs, the certified record, and the applicable authority, we affirm the PCRA court's order, and we do so based on the PCRA court's March 7, 2012 opinion. The parties are directed to attach a copy of that opinion in the event of further proceedings in this matter.

Order affirmed.

OTT, J., Concurs in the Result.

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[1] While the trial court does not address Appellant's claim concerning severance, we conclude this issue is waived for the failure to develop any argument in support. ***Commonwealth v. Palo***, 24 A.3d 1050, 1059 (Pa. Super. 2011).

Judgment Entered

Deputy Prothonotary

Date: May 15, 2013

J-S19007-13

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	CRIMINAL DIVISION
v.	No. 1142 of 2008
GLENN M. SHUFORD,	
Defendant.	

POST-CONVICTION RELIEF ACT OPINION & ORDER

LESKINEN, J.

Before this Court is the Post-Conviction Relief Act Petition (PCRA) filed by Defendant Glenn M. Shuford. Defendant was convicted by a jury on October 9, 2008, of one count of possession with intent to deliver a controlled substance, 35 P.S. § 780-113(a)(30); one count of possession of a controlled substance by a person not registered, 35 P.S. § 780-113(a)(16); and one count of driving under the influence, 75 Pa.C.S.A. § 3802(a)(1). Defendant was sentenced by the Court on October 21, 2008, to serve not less than three (3) years but not more than six (6) years, which was to run consecutively to his sentence at number 1611 of 2006.

The facts are set forth at length in the Honorable President Judge Conrad B. Capuzzi's Rule 1925(a) Opinion, dated and filed on November 25, 2008, and in the Superior Court's Memorandum, dated and filed on June 15, 2009.

Defendant was represented at trial by the Fayette County Public Defender's Office, and he now asserts that his trial counsel was ineffective for the following

reasons:

1) Failure to file pre-trial suppression motions (in part, due to the characterization of Defendant's Habeas Corpus Hearing);

2) Failure to call witnesses; and

3) Failure to file post-sentence motions, nor preserve objections to inadmissible statements made at trial

(*See* Defendant's Amended Petition Under Post-Conviction Relief Act, pp. 3-4.) Defendant requests relief in the form of a correction of sentence with credit for time served based upon the asserted errors. *Id.* at 3.

DISCUSSION

To overcome the strong presumption of effectiveness and find trial counsel to be constitutionally ineffective, the Court must find that all three prongs of the well-known test have been met. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *Commonwealth v. Colavita*, 993 A.2d 874, 886-87 (Pa. 2010). The first prong of the test requires that the action counsel failed to pursue have "arguable merit." *Colavita*, 993 A.2d at 887. The second prong requires that counsel's action or failure to act have no "objective reasonable basis." *Id.* The third prong requires that "actual prejudice befell petitioner from counsel's act or omission." *Id.* "Generally, where matters of strategy and tactics are concerned, counsel's assistance is deemed constitutionally effective if he [or she] chose a particular course that has some reasonable basis designed to effectuate his client's interests." *Id.*

Failure to File Pre-trial Suppression Motions

The action that counsel failed to pursue here has no arguable merit. Defendant argues that the public defender's office should have filed a Motion to Suppress

regarding Defendant's statements to the police about being under the influence of beer and Ecstasy. However, based on Officer Grabiak's testimony that the Defendant's statements were spontaneous, and that he "didn't advise [Defendant] of his rights, but I never asked him any questions," counsel had no reason to file a suppression motion. (*See* PCRA Proceedings, pp. 13-14.)

Additionally, Defendant argues that the public defender's office should have filed a Motion to Suppress regarding the vehicle stop. This "stop," which Defendant executed without police aid, was not in violation of any of Defendant's rights, and counsel had no reason to file a suppression motion. Officer Grabiak, who was at the relevant scene regarding another incident, saw Defendant driving a vehicle toward him, recognized the vehicle and the Defendant, and also recognized that the Defendant was "a non-driver, suspended in the Commonwealth of Pennsylvania." (*See* OPT Hearing transcript, p. 11.)

Defendant exited the vehicle as Officer Grabiak and Officer Hromada approached. Based on Officer Grabiak's observations (glassy eyes, slurred speech, trouble walking), his training and experience, Defendant "was driving under the influence of alcohol and/or narcotics." *Id.* at 12. This totality of the circumstances established the requisite probable cause for the officers to make contact with Defendant and, thereafter, arrest Defendant.

Trial counsel's decision not to file a suppression motion did have an objective reasonable basis. Filing such a motion would have been frivolous as there was no legal basis for filing such a motion, based on the facts and applicable law. If trial counsel filed such a motion, knowing it had no merit, he would have done more of a disservice to his

client.

No actual prejudice befell the Defendant as a result of counsel's failure to file a pre-trial suppression motion because there was no basis for doing so, and Defendant's statement(s) had no impact on the fact that he was exhibiting signs of intoxication immediately after exiting a vehicle he was driving or on his possession of crack cocaine.

Failure to Call Witnesses

The action that counsel failed to pursue here does have arguable merit, at least superficially, as witness testimony is integral to a party's defense. Defendant argues that he made available to counsel a list of witnesses who were willing and able to testify on Defendant's behalf at trial. Proceedings at p. 10. Defendant alleges that the witnesses would have testified to his personal drug problem, which would theoretically have supported his defense that 13 grams of crack cocaine were for Defendant's personal use. *Id.* at p. 13.

However, trial counsel had an objective reasonable basis for not presenting said witnesses. Defendant alleges that he presented to his trial counsel Deshaunte Douglas, Victor Tarpley, Uniontown Hospital Ambulance, Takeshia Shuford, Tiffany Gillen, Alfonso Pugh, and Glenn Shuford, Sr. to call as witnesses. *Id.* at 10, 12.

Ms. Douglas was unreachable. *Id.* at 11. Trial counsel testified that Ms. Gillen and Mr. Pugh were never listed as witness for the Defendant, so they would not have been called as witnesses. *Id.* at 12. Further, the witnesses that were listed would not have testified to Defendant's drug habit, so objectively, there was no reason to call them as witnesses to bolster a defense of personal use. *Id.* at 13. Specifically, trial counsel testified that he did not recall Defendant "saying to [him] anything about prior drug use

that these witnesses would testify about." *Id.* at 15. This Court finds trial counsel credible.

No actual prejudice befell the Defendant as a result of trial counsel's failure to call witnesses. If the witnesses were called, they would have provided nothing beneficial to Defendant's defense. Further, Defendant had a second opportunity to present these alleged witnesses at his PCRA Hearing. Of the individuals listed, only Defendant's father, Glenn Shuford, Sr., was present and testified. Mr. Shuford did testify to Defendant's drug use, but this Court finds Mr. Shuford's credibility wanting.[1]

As this Court stated at the OPT Hearing, even if Mr. Shuford's testimony was believed, it still does not explain "where the defendant would have had $1300 to finance a personal use of that cocaine [that he was found with]. In fact, that certainly would support the intent to deliver as a source of funding for the cocaine that he was found with." *Id.* at 32.

Failure to File Post-sentence Motions, Nor Preserve Objections

Defendant did not argue anything at his PCRA Hearing that would support this contention. The Court's analysis regarding "Failure to File Pre-trial Motions" applies because the same statements are at issue. Likewise, there were no meritorious objections because, based on trial counsel's understanding, the Defendant's statements were spontaneous and admissible.

[1] Mr. Shuford testified that he knew his son had a drug problem. Proceedings at 27. He also testified that his son was unemployed, and that he frequently gave Defendant money whenever it was requested. *Id.* at 29. However, Mr. Shuford testified that he did not know that his son was spending money on drugs, but that he would buy shoes, for example. *Id.* Mr. Shuford approximated that he gave Defendant $200.00 per week. *Id.* at 30. However, Mr. Shuford was earning roughly $1000.00 every two weeks, was the sole provider for his family, and supported a daughter, in addition to Defendant. *Id.*

CONCLUSION

With regard to Defendant's requested relief, modification of a state sentence is beyond this Court's discretion. In the aggregate, the Defendant is serving six (6) to 24 months at Case Number 1471 of 2006, which is concurrent with his sentence at Case Number 1611 of 2007, 12 to 60 months. Most recently, Defendant was sentenced to three (3) to six (6) years at Case Number 1142 of 2008, which is to run consecutively to his sentence at Case Number 1611 of 2007.

This Court also DENIES Defendant's Petition for Post-Conviction Relief based on the merits. For all of the above reasons, this Court enters the following order.