

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
DAMERE H. TALMADGE,	:	
	:	
Appellant	:	No. 674 WDA 2012

Appeal from the PCRA Order Entered March 27, 2012,  
In the Court of Common Pleas of Erie County,  
Criminal Division, at No. CP-25-CR-0002094-2008.

BEFORE: SHOGAN, LAZARUS and PLATT\*, JJ.

MEMORANDUM BY SHOGAN, J.: FILED: MAY 28, 2013

Appellant, Damere H. Talmadge, appeals *pro se* from the order entered on March 27, 2012, in the Erie County Court of Common Pleas that denied his petition for relief filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-9546. We affirm.

The PCRA court set forth the relevant facts and procedural history of this matter as follows:

The Petitioner murdered three-month old Tah-Meere Johnson Talmadge, who died on June 16, 2008 as a result of a catastrophic brain injury inflicted by Petitioner. The relevant factual background was previously summarized by this Court in its Memorandum Opinion dated August 17, 2009.

On April 2, 2009, following a five day jury trial, Petitioner was found guilty of Murder of the Third Degree, Aggravated Assault, Recklessly Endangering Another Person, and Endangering Welfare of Children.<sup>1</sup> On June 1, 2009, he was sentenced to a term of 240 months to 480 months of

---

\*Retired Senior Judge assigned to the Superior Court.

incarceration on the murder charge, and a consecutive term of 9 months to 24 months of incarceration on the endangering charge. The aggravated assault and recklessly endangering another person counts merged for sentencing purposes.

<sup>1</sup> 18 Pa.C.S.A. §§ 2502, 2702, 2705 and 4304, respectively.

Petitioner filed a timely appeal and on May 24, 2010, his judgment of sentence was affirmed.<sup>2</sup> *Commonwealth v. Talmadge*, 4 A.3d 201 (Pa. Super 2010) (unpublished memorandum). Petitioner filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court, which was denied on January 13, 2011. *Commonwealth v. Talmadge*, 15 A.3d 490 (Pa. 2011).

<sup>2</sup> On appeal, Petitioner raised the following claims: (1) it was error not to sever the charge of endangering the welfare of a child; (2) it was unfairly prejudicial to allow the jury to hear evidence regarding unrelated, non-fatal injuries to Tah-Meere; and, (3) it was error not to grant a mistrial for the Commonwealth's failure to provide critical medical report regarding the age of prior injuries to Tah-Meere.

On December 14, 2011, Petitioner filed a timely *pro se* PCRA petition. In his petition, Petitioner asserts he is innocent and makes the following claims: (1) the verdict was against the weight of the evidence; (2) denial of a fair trial because Tonya Williams (Tah-Meere's maternal grandmother) lied at trial and was "most likely" the perpetrator; (3) Bertha Lee Henley (Tah-Meere's great grandmother and Tonya's mother) lied at trial; (4) there is after discovered evidence that could have changed the outcome of the trial (Petitioner refers to letters allegedly sent from Ciarra Johnson to Petitioner's grandmother); and, (5) generally, trial counsel was ineffective. . . .

On December 19, 2011, this Court appointed PCRA counsel. On February 1, 2012, PCRA counsel filed a *Turner/Finley*<sup>3</sup> "no-merit" letter and a Petition For Leave To Withdraw As Counsel. In the no-merit letter, PCRA counsel addressed Petitioner's claims, detailing the nature and extent of

his review.<sup>4</sup> PCRA counsel served the Petitioner with copies of his no-merit letter and petition, and advised him of his right to proceed *pro se* or with the assistance of privately retained counsel.

<sup>3</sup> *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988); *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988) (*en banc*).

<sup>4</sup> This Court has had some difficulty deciphering the Petitioner's claims. PCRA counsel seems to have had the same problem.

PCRA Court Opinion, 2/17/12, at 1-2. The PCRA court granted counsel's petition to withdraw, and in an order filed on March 27, 2012, the PCRA Court dismissed Appellant's PCRA petition. Appellant, opting to move forward *pro se*, filed the instant appeal.<sup>1</sup>

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

I. Whether Post- Conviction Counsel was ineffective for failing to properly investigate and develop the claims presented before filing a No- Merit Letter?

II. Whether the Post- Conviction Court erred in accepting Post- Conviction Counsel's No- Merit Letter where the record demonstrated that Post-Conviction Counsel failed to properly investigate and develop the claims presented.

Appellant's Brief at 3 (*verbatim*).

---

<sup>1</sup> "[C]ounsel may withdraw at any stage of collateral proceedings if, in the exercise of his or her professional judgment, counsel determines that the issues raised in those proceedings are meritless and if the post-conviction court concurs with counsel's assessment." *Commonwealth v. Glover*, 738 A.2d 460, 463 (Pa. Super. 1999) (citing *Commonwealth v. Bishop*, 645 A.2d 274, 275 (Pa. Super. 1994)). "The post-conviction petitioner then may proceed *pro se*, by privately retained counsel, or not at all." *Id.* As noted above, the PCRA court accepted counsel's no merit letter, and after review, granted counsel's petition to withdraw.

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). 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).

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*, 920 A.2d 790, 805 (Pa. 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*, 10 A.3d 282, 291 (Pa. 2010).

Additionally, our Supreme Court has explained the requirements for utilizing after-discovered evidence as follows:

After-discovered evidence is the basis for a new trial when it: 1) has been discovered after the trial and could not have been obtained at or prior to the conclusion of trial by the exercise of reasonable diligence; 2) is not merely corroborative or cumulative; 3) will not be used solely for impeaching the credibility of a witness; and 4) is of such nature and character that a new verdict will likely result if a new trial is granted. Further, the proposed new evidence must be producible and admissible.

***Commonwealth v. Chamberlain***, 30 A.3d 381, 414 (Pa. 2011) (internal citations and quotation marks omitted).

In the argument section of his brief, Appellant does not separate his allegations as he did in his statement of questions presented. Rather, Appellant focuses his attack on one issue: Ciarra Johnson, the mother of the victim, allegedly wrote letters recanting her testimony, accusing her mother of the murder, and exonerating Appellant. Appellant's Brief at 15-16. It is counsel's alleged failure to investigate these letters, which Appellant claims are after-discovered evidence, that forms the basis of Appellant's claims of ineffective assistance of counsel.

We discern no error in the PCRA court dismissing Appellant's petition. As the PCRA court explained:

To the extent that Petitioner is referring to purported letters from Ciarra Johnson to Petitioner's Grandmother, he failed to provide the letters or a proffer of their content to PCRA counsel when counsel requested them. (See, PCRA counsel's letter, 02/01/12, at unnumbered 5). In brief, the purported

evidence is not producible and admissible. *Chamberlain, Id.* Accordingly, this claim is nothing more than an undeveloped assertion that does not merit consideration.

PCRA Court Opinion, 2/17/12, at 8.

Upon review, we agree with the PCRA court's conclusion. Appellant has failed to produce copies of the letters or provide any evidence of their existence. As this alleged evidence is neither producible nor admissible, it cannot serve as the basis for Appellant's claims of ineffective assistance of counsel or after-discovered evidence. *Chamberlain*, 30 A.3d at 414. Accordingly, as there is not a scintilla of evidence that these letters exist, we conclude there was no error in the PCRA court's decision, and we affirm the order denying Appellant's petition for relief.

Order affirmed.

Judgment Entered

A handwritten signature in black ink, appearing to read "Nicholas V. Cozzitelli", is written over a grey rectangular background. A horizontal line extends to the right from the end of the signature.

Deputy Prothonotary

Date: 5/28/2013