

**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37**

|                              |   |                          |
|------------------------------|---|--------------------------|
| COMMONWEALTH OF PENNSYLVANIA | : | IN THE SUPERIOR COURT OF |
|                              | : | PENNSYLVANIA             |
| v.                           | : |                          |
|                              | : |                          |
| CHARLES EDWARD MOTTER,       | : | No. 692 WDA 2012         |
|                              | : |                          |
| Appellant                    | : |                          |

Appeal from the PCRA Order, March 22, 2012,  
in the Court of Common Pleas of Venango County  
Criminal Division at No. CP-61-CR-0000424-2010

BEFORE: FORD ELLIOTT, P.J.E., DONOHUE AND PLATT,\* JJ.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: FILED: March 4, 2014

Charles Edward Motter appeals from the order, which denied in part his first petition, brought pursuant to the Post Conviction Relief Act (“PCRA”).<sup>1</sup> We affirm.

On October 25, 2010, appellant pled guilty to kidnapping, 18 Pa.C.S.A. § 2901(a)(3), and firearms not to be carried without a license, 18 Pa.C.S.A. § 6106 in relation to an incident with his wife that occurred on June 23, 2010.<sup>2</sup> The couple began arguing at home and the fight escalated when they were driving in appellant’s vehicle along various back roads in Venango

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\* Retired Senior Judge assigned to the Superior Court.

<sup>1</sup> Post Conviction Relief Act, 42 Pa.C.S.A. §§ 9541-9546.

County. (Notes of testimony, 10/25/10 at 22-25.) Appellant prevented his wife from leaving the car and then subsequently ordered her out of his vehicle after pulling a handgun out of the glove compartment. At one point, he shot the handgun into the air. Appellant admitted that he did not have a license to carry a concealed weapon and that he intended to terrorize his wife. (*Id.* at 24.) Michael Antkowiak, Esq., represented appellant. On November 30, 2010, appellant was sentenced to an aggregate term of imprisonment of 8 to 17 years and \$500 in fines. On December 8, 2010, appellant filed a motion to modify sentence, which was subsequently denied.

On September 9, 2011, appellant filed a *pro se* PCRA petition and Pamela Logsdon Sibley, Esq., was appointed. Attorney Sibley filed a letter informing the court that she did not intend to amend appellant's *pro se* petition. (Docket #26.) Appellant's *pro se* petition requested permission to withdraw his guilty plea *nunc pro tunc* claiming that he was innocent and induced to plead guilty by counsel's ineffective assistance. Specifically, appellant argued that Attorney Antkowiak failed to conduct reasonable pre-trial investigation by challenging the method by which appellant's statements were acquired by the police, failed to investigate two defense

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<sup>2</sup> Appellant was also charged with two counts of aggravated assault, possession of a firearm prohibited, terroristic threats, unlawful restraint, and simple assault. These charges were *nolle prossed*.

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witnesses (appellant's father and brother), and failed to spend appreciable time with appellant during his proceedings. Appellant also alleged that because of his mental health problems and medications, he was susceptible to the coercion of his attorney who informed him that he must take the guilty plea or spend the rest of his life in prison. (Docket #23.)

A PCRA hearing was held on January 27, 2012 wherein appellant's father, Merle Motter, testified with regard to what he witnessed on the night of the alleged incident and his contact with Attorney Antkowiak. Appellant testified to his innocence, averred that he asked Attorney Antkowiak to withdraw his guilty plea and Attorney Antkowiak failed to do so. Attorney Antkowiak testified regarding the plea negotiations and his contact with appellant.

Thereafter, on March 22, 2012, the PCRA court denied the petition finding that appellant's guilty plea was knowing and voluntary and not induced by counsel's alleged ineffective assistance. Appellant filed a timely appeal on April 9, 2012. Instantly, the following issue has been presented for our review:

IS [APPELLANT'S] GUILTY PLEA KNOWING AND VOLUNTARY WHEN IT IS INDUCED BY HIS ATTORNEY[']S FAILURE TO FULLY INVESTIGATE HIS DEFENSES[?]

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 decision is free of legal error. ***Commonwealth v. Hall***, 867 A.2d 619, 628 (Pa.Super. 2005), ***appeal denied***, 86 Pa. 756, 895 A.2d 549 (2006). The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record. ***Commonwealth v. Carr***, 768 A.2d 1164, 1166 (Pa.Super. 2001). Our scope of review is limited by the parameters of the PCRA. ***Commonwealth v. Heilman***, 867 A.2d 542, 544 (Pa.Super. 2005), ***appeal denied***, 583 Pa. 669, 876 A.2d 393 (2005).

"A criminal defendant has the right to effective counsel during a plea process as well as during trial." ***Commonwealth v. Rathfon***, 899 A.2d 365, 369 (Pa.Super. 2006) (citation and internal quotation marks omitted). Furthermore, "[c]laims challenging the effectiveness of trial counsel's stewardship during a guilty plea are cognizable under 42 Pa.C.S.A. § 9543(a)(2)(ii)." ***Commonwealth v. Lee***, 820 A.2d 1285, 1287 (Pa.Super. 2003) (citation omitted).

Our supreme court recently reiterated the applicable legal principles relating to the right to constitutionally effective counsel as follows:

Appellant may only obtain relief if she pleads and proves by a preponderance of the evidence that her conviction resulted from ineffective assistance of counsel that, under the circumstances, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place. ***See*** 42 Pa.C.S. § 9543(a)(2)(ii). The Pennsylvania test for ineffectiveness is, in substance, the same as the two-part performance-and-prejudice standard set forth by the United States Supreme

Court, *see Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984), although this Court has divided the performance element into two sub-parts dealing with arguable merit and reasonable strategy. Thus, to succeed on an ineffectiveness claim, a petitioner must establish that: the underlying legal claim has arguable merit; counsel had no reasonable basis for her action or inaction; and the petitioner suffered prejudice as a result. *See Commonwealth v. Pierce*, 515 Pa. 153, 158–60, 527 A.2d 973, 975–76 (1987). To demonstrate prejudice, the petitioner must show that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694, 104 S.Ct. at 2068; accord *Commonwealth v. Cox*, 603 Pa. 223, 243, 983 A.2d 666, 678 (2009). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the proceeding. *See Commonwealth v. Ali*, 608 Pa. 71, 86–87, 10 A.3d 282, 291 (2010). No relief is due, however, on any claim that has been waived or previously litigated, as those terms have been construed in the decisions of this Court.

*Commonwealth v. King*, \_\_\_ Pa. \_\_\_, \_\_\_, 57 A.3d 607, 613 (2012).

As it relates to the entry of a guilty plea, allegations of plea counsel’s ineffectiveness will not form a basis for relief unless the alleged ineffectiveness caused the defendant to enter the plea involuntarily or unknowingly. *Commonwealth v. Anderson*, 995 A.2d 1184, 1192 (Pa.Super. 2010), *appeal denied*, 608 Pa. 634, 9 A.3d 626 (2010). Voluntariness is gauged in terms of “whether counsel’s advice was within the range of competence demanded of attorneys in criminal cases.” *Id.*, quoting *Commonwealth v. Moser*, 921 A.2d 526, 531 (Pa.Super. 2007). In

assessing the sufficiency of a guilty plea colloquy, we review the totality of the circumstances and the entire record, including plea counsel's testimony during the PCRA hearing. ***Commonwealth v. Morrison***, 878 A.2d 102, 107 (Pa.Super. 2005) (***en banc***), ***appeal denied***, 585 Pa. 688, 887 A.2d 1241 (2005).

Appellant first avers that the PCRA court erred in evaluating the testimony of appellant's father, Mr. Motter. Mr. Motter testified that Attorney Antkowiak never spoke with him about what he saw on the night in question. (Notes of testimony, 1/27/12 at 13-14.) Mr. Motter essentially testified that he did not see appellant argue with the victim and the victim did not appear to be upset. He testified that he drove the victim to work the following morning and she was not emotionally upset. (***Id.*** at 11-12.) While the victim was running late, Mr. Motter stated that such was not uncommon for her. Mr. Motter repeatedly stated he knew what he read in the newspaper about the incident and that he is hard of hearing. (***Id.*** at 7, 14.)

Attorney Antkowiak testified regarding the pre-trial investigation he conducted. He explained that Mr. Motter frequently stopped by his office. (***Id.*** at 42.) Attorney Antkowiak averred that he discussed Mr. Motter's whereabouts at length and Mr. Motter indicated he was "in the house but he was sleeping and he really didn't know anything about what went on. He didn't see them leave and that he did relate to me that he took [the victim] to work the next morning. But he expressed to me absolutely no knowledge

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of what had occurred the night before because both he and the brother were sleeping.” (*Id.* at 42-43.)

The PCRA court ultimately found Attorney Antkowiak’s testimony to be more credible. His testimony indicated that he conducted appropriate pretrial investigation into Mr. Motter being a viable defense witness on multiple occasions, which ultimately proved to be futile. Since the court’s conclusion necessarily required a credibility determination, we will not disturb its decision as we find the record supports it. ***Commonwealth v. Paddy***, 15 A.3d 431, 442 (2011) (“The PCRA court’s credibility determinations are binding on this Court when they are supported by the record.”) Accordingly, this issue regarding the ineffective assistance of counsel does not merit relief.

Next, appellant avers that he was unaware of the sentencing range for his offenses and his attorney failed to inform him of the proper range to frighten him into a plea. Attorney Antkowiak testified that he discussed with his client the multiple plea offers he received. (Notes of testimony, 1/27/12 at 45.) He discussed the maximum penalties appellant could receive as well as the fact that the trial court could give up to the maximum and run the sentences concurrently or consecutively. Attorney Antkowiak denied that he ever promised appellant a specific sentence.

The PCRA court reviewed the testimony at the guilty plea hearing. Appellant testified that he understood the nature of the offenses that

underlie his plea and accepted the Commonwealth's recitation of the factual basis for the plea. (Notes of testimony, 10/25/10 at 22-28.) Appellant understood his right to a jury trial and knew the Commonwealth had to satisfy a beyond a reasonable doubt standard of proof to convict him. (*Id.* at 28-30, 33.) Appellant stated he was aware of the potential sentencing exposure for each of the two crimes and understood that no agreement existed. (*Id.* at 29-31.)

In addition, appellant stated he was taking medications but they did not affect his ability to understand the proceedings. (*Id.* at 21-22.) Appellant stated he was satisfied with plea counsel's representation, that the plea was not the result of any threats or promises and that counsel did not force him to plead guilty. (*Id.* at 32-33.) In fact, appellant testified that he believed the guilty plea was in his best interest and he had spent enough time discussing the matter with his attorney. (*Id.* at 33.) Appellant also confirmed that he read the written guilty plea colloquy, reviewed it with plea counsel, initialed each page and signed the final page certifying that he answered the questions truthfully. (*Id.* at 31-32.)

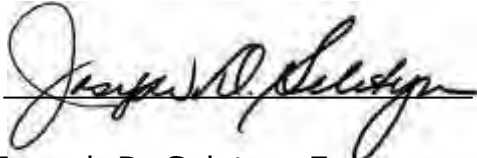
As the certified record belies both appellant's general assertion that plea counsel devoted insufficient attention to his defense prior to the plea and his contention that he entered the plea involuntarily or unknowingly, appellant's attempt to invoke allegations of plea counsel's ineffectiveness in order to withdraw his guilty plea is unavailing.



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Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 3/4/2014