

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

PHILIP SWEENEY

Appellant

No. 73 EDA 2013

Appeal from the PCRA Order November 27, 2012
In the Court of Common Pleas of Lehigh County
Criminal Division at No(s): CP-39-CR-0004398-2009

BEFORE: ALLEN, J., MUNDY, J., and FITZGERALD, J.*

MEMORANDUM BY MUNDY, J.:

FILED DECEMBER 20, 2013

Appellant, Philip Sweeney, appeals from the November 27, 2012 order dismissing his first petition for relief filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546. After careful review, we affirm.

The relevant facts and procedural history, as set forth by the trial court, follow.

On December 15, 2009, [Appellant] entered a plea of guilty to Voluntary Manslaughter. There was no agreement on sentence, and [Appellant] was made aware of the fact that he could be sentenced to anything up to and including ten (10) years on his

* Former Justice specially assigned to the Superior Court.

minimum.^[1] Thereafter, on January 22, 2010, [the trial c]ourt sentenced [Appellant] to a term of imprisonment of not less than nine (9) years nor more than (20) years in a state correctional institution. Then, on or about February 1, 2010, [Appellant] filed a Motion for Reconsideration of Sentence. On February 4, 2010, [the trial c]ourt denied said motion. [Appellant]’s appeal followed on February 9, 2010, which was denied by the Superior Court of Pennsylvania on July 7, 2011. [**Commonwealth v. Sweeney**, 32 A.3d 259 (Pa. Super. 2011) (unpublished memorandum)²]. Subsequently, on July 31, 2012, [Appellant] filed a Motion for Post Conviction Collateral Relief, as amended on August 31, 2012. An evidentiary hearing relative to [Appellant]’s motion was conducted before [the trial court] on November 7, 2012. Thereafter, on November 27, 2012, [the PCRA court] denied [Appellant]’s Motion for Post Conviction Collateral Relief[.]

¹ We note the trial court’s actual statement made to Appellant at his plea hearing advised Appellant as follows. “And you understand that is a felony of the first degree and could carry with it up to ten years in prison?” N.T., 10/15/09, at 7.

² On direct appeal, Appellant’s sole challenge was that the trial court abused its discretion in sentencing Appellant in the aggravated range. Appellant did not preserve a challenge to the voluntariness of his guilty plea in a post-sentence motion, nor did he raise said issue on direct appeal. Accordingly, Appellant has waived all challenges to the voluntariness of his guilty plea. **See Commonwealth v. Tareila**, 895 A.2d 1266, 1270 n.3 (Pa. Super. 2006) (holding that in order to preserve an issue related to a guilty plea, an appellant must either object at the colloquy or otherwise raise the issue at the hearing or through a post-sentence motion); 42 Pa.C.S.A. 9544(b) (stating “an issue is waived if the petitioner could have raised it but failed to do so before trial, at trial, during unitary review, [or] on appeal[.]”).

PCRA Court Opinion, 1/23/13, at 1-2 (footnote omitted). On December 21, 2013, this timely appeal followed.³

On appeal, Appellant raises the following issue for our review.

- A. Whether [Appellant] is entitled to post conviction relief granting him the withdraw [sic] of his guilty plea based upon the involuntariness of his guilty plea and counsel's ineffectiveness in leading [Appellant] to believe he would receive a lesser sentence in return for his guilty plea?

Appellant's Brief at 7.

We begin by noting our well-settled standard of review. "On appeal from the denial of PCRA relief, our standard and scope of review is limited to determining whether the PCRA court's findings are supported by the record and without legal error." **Commonwealth v. Edmiston**, 65 A.3d 339, 345 (Pa. 2013) (citation omitted). "[Our] scope of review is limited to the findings of the PCRA court and the evidence of record, viewed in the light most favorable to the prevailing party at the PCRA court level." **Commonwealth v. Koehler**, 36 A.3d 121, 131 (Pa. 2012) (citation omitted). "The PCRA court's credibility determinations, when supported by the record, are binding on this Court." **Commonwealth v. Spatz**, 18 A.3d 244, 259 (Pa. 2011) (citation omitted). "However, this Court applies a *de novo* standard of review to the PCRA court's legal conclusions." **Id.**

³ Appellant and the PCRA court have complied with Pa.R.A.P. 1925.

Likewise, “[i]t is well-established that counsel is presumed effective, and to rebut that presumption, the PCRA petitioner must demonstrate that counsel’s performance was deficient and that such deficiency prejudiced him.” **Commonwealth v. Koehler**, 36 A.3d 121, 131 (Pa. 2012), *citing Strickland v. Washington*, 466 U.S. 668, 687-691 (1984). Our Supreme Court has articulated a three-prong test to determine when an appellant has received ineffective assistance of counsel. “Appellant must demonstrate that: (1) the underlying legal issue has arguable merit; (2) counsel’s actions lacked an objective reasonable basis; and (3) Appellant was prejudiced by counsel’s act or omission.” **Id.**, *citing Commonwealth v. Pierce*, 527 A.2d 973, 975 (Pa. 1987). Appellant must show that his claim meets all three prongs of the **Pierce** framework in order to be entitled to relief. **Commonwealth v. Thomas**, 44 A.3d 12, 17 (Pa. 2012) (citation omitted).

Appellant avers that “his attorney rendered him ineffective assistance in advising him to pled [sic] [g]uilty, inducing him to pled [sic] based upon a sentence that was not guaranteed[.]” Appellant’s Brief at 16. Appellant asserts that the testimony he gave at his plea hearing “was based, nearly solely, on the assurances that he would receive[] no more than the five (5) to ten (10) year sentence.” **Id.** at 13.

In the instant matter, in response to Appellant’s PCRA petition, the PCRA court authored a comprehensive 7-page opinion that properly disposes of Appellant’s claim. The PCRA court found that Appellant’s counsel was not

ineffective, and that Appellant's plea was knowingly, willingly, and voluntarily entered. PCRA Court Opinion, 11/27/12, at 6-7. The trial court sets forth a thorough discussion of the circumstances surrounding Appellant's open plea and notes that Appellant was made aware of the possible sentence that could be imposed. ***Id.*** at 5.

In support of its conclusion, the trial court noted that Appellant was represented by Leighton Cohen, Esquire (Attorney Cohen), and that Attorney Cohen met with Appellant on several occasions. ***Id.*** at 2. Appellant opted to accept an offer of an open plea to voluntary manslaughter. ***Id.***

On December 15, 2009, [Appellant] appeared before [the trial court] and entered his guilty plea. Prior to the entry of his plea, [Appellant] completed a written colloquy form. Further, at the time of his plea, the [trial court] conducted an extensive colloquy and apprised [Appellant] of the plea agreement and the sentence that [Appellant] could receive. [Appellant] stated that no threats or promises were made in order to induce him to enter his plea. [Appellant] indicated that the entry of his plea was of his own free will and his own choosing. Further, [Appellant] verbalized that he was satisfied with Attorney Cohen. During the guilty plea, [Appellant] admitted to having committed the crime charged. At no time prior to or during the guilty plea hearing was [Appellant] offered or promised a sentence of five (5) to ten (10) years, by either the Commonwealth or Attorney Cohen.

Id. at 3.

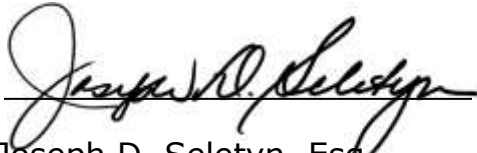
We have reviewed the record in its entirety and have considered the merits of Appellant's claim. Following our careful scrutiny of the certified record, including the notes of testimony, the parties' briefs, and the

applicable law, we conclude that the PCRA court's conclusions were proper and that Appellant's claim is meritless. The well-reasoned opinion of the PCRA court provides a detailed analysis of the law of this Commonwealth and finds that Attorney Cohen did not render ineffective assistance of counsel. Accordingly, we conclude that the November 27, 2012 opinion of the Honorable Maria L. Dantos, comprehensively discusses and properly disposes of Appellant's claims. Therefore, we adopt the PCRA court's opinion as our own for purposes of this appellate review.

Order affirmed.

Justice Fitzgerald files a Dissenting Statement.

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: 12/20/2013