

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
ZAID EL,	:	
	:	
Appellant	:	No. 736 EDA 2012

Appeal from the PCRA Order January 27, 2012,
Court of Common Pleas, Philadelphia County,
Criminal Division at No. CP-51-CR-1202241-2005

BEFORE: DONOHUE, MUNDY and OLSON, JJ.

MEMORANDUM BY DONOHUE, J.:

FILED JUNE 03, 2013

Appellant, Zaid El ("El"), appeals the order of court dismissing without an evidentiary hearing his request for relief pursuant to the Post Conviction Relief Act, 42 Pa. C.S.A. §§ 9541-46 ("PCRA"). For the reasons that follow, we affirm the order of the PCRA court.

In its written opinion pursuant to Pa. R.A.P. 1925(a), the PCRA court summarized the factual background of this case as follows:

On September 1, 2005, [at] approximately 2:00 AM, Philadelphia Police Detective Louis Gregg along with other members of the Narcotics Enforcement Team, traveling in unmarked vehicles, arrived at the intersection of 22nd and Catherine Streets, Philadelphia, PA, where Gregg observed an unidentified male approach [El], who was seated behind the wheel of a parked silver Dodge Charger. Gregg then observed the male give [El] an undetermined amount of United States Currency. N.T., 4/26/2007 @ 6-8, 42-43. The team of officers used their vehicles to surround [El's] car whereupon

[EI] initiated his engine, backed the car into Gregg and then directed it to Officer Stevens. Id. @ 8-9, 42, 25, 73, 89. Stevens yelled for [EI] to stop and ordered him to turn off the car's engine. Id. @ 10, 46-47. Stevens testified that he observed [EI] reach towards the center of the console of his vehicle and produce a gun. Id. Stevens yelled 'gun, gun' and he started to run out of the path of the car. Id. @ 47, 10. [EI] continued to chase Officer Stevens who was eventually thrown onto the hood of [EI's] car, slid underneath, and was dragged approximately fifteen feet until [EI's] vehicle came to a stop when it collided with two parked cars. Id. @ 47-48, 10-14. Stevens managed to get up and approached [EI], who was slumped over from the impact of the crash with his arms underneath him. When [EI] sat up, he appeared confused and disoriented, and he held the gun which was pointed directed at Stevens. Id. @ 48-49. In response Stevens fired his weapon through the front windshield. Thereafter, his leg collapsed underneath him. Id. @ 49. As a result of the incident Stevens was transported to Jefferson Hospital where he underwent extensive treatment for back, arm and leg wounds. Id. @ 51-52. He suffers permanent damage to his sciatic nerve and his leg. Id.

Officers Wells and Keenan had also proceeded to the scene and observed [EI] in the driver's seat with his hand near a gun which was stuck between the console of the car and the front seat. Id. at 93-94. Wells identified the gun as a nine millimeter and later discovered that it was loaded with seven live rounds of ammunition in the magazine and one round in the gun's chamber. Id. at 94. When the officers reached [EI's] car after it collided, they heard the other occupants calling them by their individual names, stating that they did not intent [*sic*] to hit Stevens. Id. @ 12, 87, 118-119. The officers testified that [EI] and his accomplices knew and recognized them from prior contact. Id. @ 13, 87, 97, 118-119.

Trial Court Opinion, 6/29/12, at 2-4.

On April 27, 2007, a jury found EI guilty of aggravated assault, 18 Pa. C.S.A. § 2702(a), and a violation of Pennsylvania's Uniform Firearms Act, 18 Pa. C.S.A. § 6105. The trial court sentenced EI to a term of incarceration of 8 to 16 years on the aggravated assault conviction and a consecutive term of 4 to 8 years of incarceration on the firearms conviction, for an aggregate term of 12 to 24 years of incarceration. This Court affirmed the judgment of sentence on direct appeal by memorandum decision on February 2, 2009. The Supreme Court denied his petition for allocatur on August 18, 2009.

EI filed a *pro se* PCRA petition on July 8, 2010, and a *pro se* amended petition on April 8, 2011. The PCRA court appointed counsel, but counsel subsequently filed a "no merit" letter pursuant to ***Commonwealth v. Turner***, 518 Pa. 491, 544 A.2d 927 (1988) and ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1988) (*en banc*). After providing EI with appropriate notice, on January 27, 2012, the PCRA court dismissed EI's PCRA petition and granted counsel's petition to withdraw.

This timely appeal followed, in which EI raises a single question for our consideration and review:

Whether: trial counsel-same direct counsel was ineffective for failure to object to the prosecution introduction of inadmissible evidence concerning medical treatment performed by the doctors whom [*sic*] treated P/O Stevens for his injuries: which denied [EI] his Sixth Amendment Right under the

Confrontation Clause to confront and cross-examine the medical doctors.

El's Brief at 6.

"On appeal from the denial of PCRA relief, our standard of review calls for us to determine whether the ruling of the PCRA court is supported by the record and free of legal error." **Commonwealth v. Nero**, 58 A.3d 802, 805 (Pa. Super. 2012) (quoting **Commonwealth v. Calhoun**, 52 A.3d 281, 284 (Pa. Super. 2012)). To establish a claim of ineffectiveness assistance of counsel, a petitioner must plead and prove the underlying claim has arguable merit, counsel's actions lacked any reasonable basis, and counsel's actions prejudiced the petitioner. **Commonwealth v. Brown**, 48 A.3d 1275, 1277 (Pa. Super. 2012).

In this case, El argues that his trial counsel should have objected to inadmissible testimony regarding the injuries suffered by Officer Stevens during the above-described events, and that the failure to do so constituted a violation of his Sixth Amendment right to confront adverse witnesses. El's Brief at 9 (citing **Crawford v. Washington**, 541 U.S. 36 (2004)). This claim lacks any merit. Officer Stevens testified about the medical treatment he received and the injuries he suffered as a result of El's actions. N.T., 4/26/2007, at 51-52. El offers us no satisfactory reason why this testimony was inadmissible or why trial counsel should have objected to it. While it is true that neither party called as witnesses the doctors who treated Officer

Stevens (apparently to support or contradict Officer Stevens' own description of his injuries), the strategic decisions not to do so did not violate El's Sixth Amendment right to confront witnesses. Because these doctors did not testify, El had no constitutional right to cross-examine them.

El also argues that the District Attorney himself "testified" at trial, contending that at pages 49-50 of the transcript of April 26, 2007, the District Attorney improperly provided the trial court with a lengthy description of Officer Stevens' injuries. El's Brief at 10. No such statement appears at pages 49-50 of the transcript on that day, however, or anywhere else in the trial record. Instead, the statement at issue appears *verbatim* in the fact section of the Commonwealth's letter brief filed in opposition to El's direct appeal. Commonwealth Brief, 7/7/2008, at 3. The District Attorney did not "testify" at trial about Officer Stevens' injuries. Officer Stevens testified regarding his own injuries, including how they occurred, their severity, and the extent of his recovery from them. N.T., 4/26/2007, at 51-52. No basis exists for a finding that El's trial counsel was ineffective in any respect.

Order affirmed.

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Kevin Gambetti", written over a horizontal line.

Prothonotary

Date: 6/3/2013

J-S29007-13