

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

MORNING SUN UNIVERSE

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 958 MDA 2012

Appeal from the Order Entered April 20, 2012
In the Court of Common Pleas of Lackawanna County
Criminal Division at No(s): CP-35-CR-0001269-2010

BEFORE: MUNDY, J., OLSON, J., and STRASSBURGER, J.*

MEMORANDUM BY MUNDY, J.:

Filed: February 8, 2013

Appellant, Morning Sun Universe, appeals *pro se* from the order entered April 20, 2012 dismissing his first petition filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546. For the reasons that follow, we dismiss this appeal.

The relevant facts and procedural history of this case may be summarized as follows. This case arose out of two separate criminal complaints filed against Appellant on March 23, 2010. In the first of these complaints, Appellant was charged with one count each of criminal use of a communication facility, possession of a controlled substance, possession of a controlled substance with intent to deliver (PWID), and delivery of a

* Retired Senior Judge assigned to the Superior Court.

controlled substance.¹ These charges stem from an incident that occurred on December 17, 2009, wherein Appellant sold heroin to a confidential informant working in conjunction with Dunmore Police Department Detective Michael Lydon, who also served as the street supervisor for the Lackawanna County Drug Task Force Team. On December 14, 2010, Appellant pled guilty to one count of PWID in connection with this incident. The remaining charges were *nolle prosequi*. Thereafter, on March 15, 2011, the trial court sentenced Appellant to 33 to 84 months' imprisonment, plus two years' probation, consecutive to a sentence he was serving for an unrelated matter. Appellant filed a motion for reconsideration of sentence that was denied by the trial court on March 18, 2011.

In the second criminal complaint, also filed on March 23, 2010, Appellant was charged with two counts of possession of a controlled substance, delivery of a controlled substance, and criminal use of a communication facility.² These charges arose out of an incident occurring on March 22, 2010, wherein Appellant sold heroin to a different confidential informant working in conjunction with Detective Robert Mazzoni of the Lackawanna County Police Department. On May 6, 2010, Appellant pled

¹ 18 Pa.C.S.A. § 7512, 35 P.S. §§ 780-113(a)(16), (30), and (30), respectively.

² 35 P.S. §§ 780-113(a)(16), (30), and 18 Pa.C.S.A. § 7512, respectively.

guilty to two counts of possession of a controlled substance and was sentenced to an aggregate term of two months' imprisonment.

Appellant did not file a direct appeal in either case. On January 18, 2012, Appellant filed a *pro se* PCRA petition. Kurt T. Lynott, Esquire (Attorney Lynott) was appointed to represent Appellant on January 20, 2012. Thereafter, on March 30, 2012, Attorney Lynott filed a motion to withdraw as counsel together with a no-merit letter in accordance with ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988), and ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1988) (*en banc*). On April 16, 2012, the PCRA court granted Attorney Lynott's petition to withdraw. Thereafter, on April 20, 2012, the PCRA court dismissed Appellant's *pro se* PCRA petition without a hearing. Appellant, who is currently incarcerated in SCI Smithfield, filed a timely *pro se* notice of appeal dated May 14, 2012, and entered on the docket on May 21, 2012.³

On appeal, Appellant raises the following issues for our review.⁴

1. Did the PCRA court err in denying [A]ppellant's petition[?]

³ We note Appellant had 30 days to file a notice of appeal, or by May 20, 2012. However, May 20, 2012 was a Sunday. Therefore, Appellant's May 21, 2012 notice of appeal was timely filed. **See** 1 Pa.C.S.A. § 1908 (providing that when the last day of a calculated period of time falls on a Saturday or Sunday, such day shall be omitted from the computation).

⁴ The record reflects that the PCRA court did not order Appellant to file a concise statement of errors complained of on appeal, in accordance with Pa.R.A.P. 1925(b), and did not author a Rule 1925(a) opinion.

2. Did the [trial] court's judge impose a far greater sentence than (sic) the sentencing guide-lines (sic) states[?]
3. Did the prosecutor know that [] Appellant was being charged with the same offense twice[?]
4. Did [] Appellant's counsel of the [trial] court's (sic) know that [] Appellant was charged with the same offense twice[?]
5. Did the Honorable Judge of the [trial] court's (sic) grant [] Appellant's request for a new counsel during the pre-trial hearing because the counsel was insufficient[?]

Appellant's Brief at 8.

"Our review of a PCRA court's decision is limited to examining whether the PCRA court's findings of fact are supported by the record, and whether its conclusions of law are free from legal error." ***Commonwealth v. Koehler***, 36 A.3d 121, 131 (Pa. 2012) (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." ***Id.*** In order to be eligible for PCRA relief, a petitioner must plead and prove by a preponderance of the evidence that his conviction or sentence arose from one or more of the errors listed at 42 Pa.C.S.A. § 9543(a)(2). These issues must be neither previously litigated nor waived. 42 Pa.C.S.A. § 9543(a)(3). "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.*

Prior to addressing the merits of Appellant's claims, we must first determine whether his handwritten 14-page, *pro se* brief complies with the Pennsylvania Rules of Appellate Procedure. Parties to an appeal are required to submit briefs in conformity, in all material respects, with the requirements of the Rules of Appellate Procedure, as nearly as the circumstances of the particular case will admit. **See** Pa.R.A.P. 2101. Rule 2119 governs the argument section of an appellate brief and provides, in relevant part, as follows.

(a) General rule. The argument shall be divided into as many parts as there are questions to be argued; and shall have at the head of each part--in distinctive type or in type distinctively displayed--the particular point treated therein, followed by such discussion and citation of authorities as are deemed pertinent.

(b) Citations of authorities. Citations of authorities must set forth the principle for which they are cited. Citations of uncodified statutes shall make reference to the book and page of the Laws of Pennsylvania (Pamphlet Laws) or other official edition, and also to a standard digest, where the statutes may be found. Citations of provisions of the Pennsylvania Consolidated Statutes may be in the form: "1 Pa.C.S. § 1928 (rule of strict and liberal construction)" and the official codifications of other jurisdictions may be cited similarly. Quotations from authorities or statutes shall also set forth the pages from which they are taken. Opinions of an appellate court of this or another jurisdiction shall be cited from the National Reporter System, if published

therein, and to the official reports of Pennsylvania appellate courts, if published therein.

(c) Reference to record. If reference is made to the pleadings, evidence, charge, opinion or order, or any other matter appearing in the record, the argument must set forth, in immediate connection therewith, or in a footnote thereto, a reference to the place in the record where the matter referred to appears.

Pa.R.A.P. 2119(a)-(c) (citation omitted). "This Court may quash or dismiss an appeal if the appellant fails to conform to the requirements set forth in the Pennsylvania Rules of Appellate Procedure." *Commonwealth v. Lyons*, 833 A.2d 245, 252 (Pa. Super. 2003) (citations omitted), *appeal denied*, 879 A.2d 782 (Pa. 2005).

Instantly, our review of the record indicates that Appellant's brief does not comply with Rule 2119. The "Argument" section of Appellant's brief contains no citations to case law relevant to the five issues he raises on appeal, and makes no specific reference to the certified record. **See** Pa.R.A.P. 2119(b) and (c). Moreover, Appellant has failed to develop any of the aforementioned claims in his *pro se* appellate brief. Notably, Appellant's brief fails to present any argument whatsoever in support of the five issues he raises on appeal, and the "Argument" section addresses a claim that does

not even appear in his "Statement of Question(s) Presented," in violation of Rule 2119(a). **See** Appellant's Brief at 8, 11-12.⁵

This Court will not consider issues where Appellant fails to cite to any legal authority or otherwise develop the issue. **Commonwealth v. McLaurin**, 45 A.3d 1131, 1139 (Pa. Super. 2012).

In an appellate brief, parties must provide an argument as to each question, which should include a discussion and citation of pertinent authorities. Pa.R.A.P. 2119(a), 42 Pa.C.S.A. This Court is neither obliged, nor even particularly equipped, to develop an argument for a party. To do so places

⁵ To the extent Appellant argues that his prosecution for the offenses occurring on December 17, 2009 is barred by the compulsory joinder rule, 18 Pa.C.S.A. § 110, given his guilty plea to offenses occurring on March 22, 2010, we conclude Appellant waived this claim by failing to include it in his "Statement of Question(s) Presented." **See** Appellant's Brief at 8, 11-12. Pennsylvania Rule of Appellate Procedure 2116 governs statements of questions involved and provides, in relevant part, as follows.

The statement of the questions involved must state concisely the issues to be resolved, expressed in the terms and circumstances of the case but without unnecessary detail. ... No question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby....

Pa.R.A.P. 2116(a).

Furthermore, we note that the compulsory joinder rule is not applicable in this instance, as the prosecution as to Appellant's offenses on December 17, 2009 did not concern "the same criminal conduct" and did not arise "from the same criminal episode" as the charges for the offenses occurring on March 22, 2010. **See Commonwealth v. Reid**, 35 A.3d 773, 776 (Pa. Super. 2012) (citation omitted), *appeal granted*, 55 A.3d 1049 (Pa. 2012).

the Court in the conflicting roles of advocate and neutral arbiter. When an appellant fails to develop his issue in an argument and fails to cite any legal authority, the issue is waived.

Commonwealth v. B.D.G., 959 A.2d 362, 371-372 (Pa. Super. 2008) (*en banc*) (some citations omitted).

Moreover, we emphasize that, “[a]lthough this Court is willing to liberally construe materials filed by a *pro se* litigant, *pro se* status confers no special benefit upon the appellant.” ***Commonwealth v. Adams***, 882 A.2d 496, 498 (Pa. Super. 2005) (citation omitted). Nor does it entitle him to have this Court advocate on his behalf. ***Commonwealth v. Hakala***, 900 A.2d 404, 407 (Pa. Super. 2006) (stating “[i]t is not this Court’s function or duty to become an advocate for the Appellant[.]”), *appeal denied*, 900 A.2d 1288 (Pa. 2006). “To the contrary, any person choosing to represent himself in a legal proceeding must, to a reasonable extent, assume that his lack of expertise and legal training will be his undoing.” ***Adams, supra*** (citations omitted).

Under the aforementioned circumstances, we conclude that Appellant’s claims are not reviewable. ***See McLaurin, supra; Commonwealth v. Briggs***, 12 A.3d 291, 341 (Pa. 2011) (holding that arguments which are undeveloped and lack citation to relevant authority are waived), *cert. denied*, ***Briggs v. Pennsylvania***, 132 S.Ct. 267 (2011). Accordingly, as the

substantial defects in Appellant's brief preclude this Court from conducting any meaningful appellate review, we dismiss Appellant's appeal.⁶

Appeal dismissed.

⁶ In light of our disposition, we hereby deny Appellant's October 24, 2012 *pro se* "Motion for Pretrial Discovery and Inspection," and his January 11, 2013 *pro se* "Motion for Extension of Time to File Reply Brief."