

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
EDWIN BATISTA,	:	
	:	
Appellant	:	No. 940 WDA 2013

Appeal from the PCRA Order entered on May 14, 2013
in the Court of Common Pleas of Allegheny County,
Criminal Division, Nos. CP-02-CR-0003495-2010;
CP-02-CR-0003563-2010

BEFORE: BOWES, ALLEN and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED: April 22, 2014

Edwin Batista ("Batista") appeals, *pro se*, from the dismissal of his first Petition pursuant to the Post Conviction Relief Act ("PCRA"). **See** 42 Pa.C.S.A. § 9541-9546. We affirm.

On July 21, 2010, Batista entered an open guilty plea to two counts of terroristic threats based upon his threats against a police officer from the McKeesport Police Department. On September 22, 2010, the trial court sentenced Batista to two consecutive terms of one to five years in prison. This Court affirmed Batista's judgment of sentence, and the Supreme Court of Pennsylvania denied allowance of appeal. **See *Commonwealth v. Batista***, 47 A.3d 1259 (Pa. Super. 2012) (unpublished memorandum), *appeal denied*, 51 A.3d 837 (Pa. 2012).

On February 7, 2013, Batista filed a timely *pro se* PCRA Petition. The PCRA court appointed Robert Staley Carey, Jr., Esquire (“Carey”), as Batista’s counsel. Carey subsequently filed a Motion to Withdraw as Counsel and a **Turner/Finley**¹ “no-merit” letter. The PCRA court granted Carey’s Motion to Withdraw and issued a Notice of Intent to Dismiss the Petition without a hearing. Batista filed a *pro se* response. Subsequently, the PCRA court dismissed Batista’s PCRA Petition.

Batista filed a timely Notice of Appeal, along with a Pennsylvania Rule of Appellate Procedure 1925(b) Concise Statement.²

On appeal, Batista raises the following question for our review:

Whether the trial court erred as a matter of law and constitution [*sic*] because he substituted the charge of terroristic threats under Criminal Case Number CC-2010-03845 for another case and charge (domestic violence) case number CC-2010-03495, a charge that was not contained in the arresting information nor the criminal complaint and the sentence imposed under the uncharged case number CC-2010-03495 was/is illegal and can this issue be heard *sua sponte* by this honorable Court?

Brief for Appellant at 4 (capitalization omitted).

This Court’s standard of review regarding a PCRA court’s order is whether the determination of the PCRA court is supported by the evidence of record and is free of legal error. 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.

¹ **Commonwealth v. Turner**, 544 A.2d 927 (Pa. 1988); **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988) (*en banc*).

² We note that the PCRA court did not order Batista to file a Concise Statement.

Commonwealth v. Carter, 21 A.3d 680, 682 (Pa. Super. 2011) (citations and quotation marks omitted).

Batista contends that the PCRA court erred in dismissing his PCRA Petition as he unknowingly and involuntarily pled guilty. Brief for Appellant at 11, 12-13; ***see also id.*** at 16 (wherein Batista argues that the PCRA court judge was biased against him for finding that his claims were without merit). Batista argues that he believed that he had pled guilty to two counts of terroristic threats, but instead pled guilty to one count each of terroristic threats at CC-2010-03563 and domestic violence at CC-2010-03495. ***Id.*** at 11, 13, 15-16. Batista points to statements at the sentencing hearing in support of his argument that he was sentenced for an offense (domestic violence) that was not part of the indictment, criminal information, or criminal complaint. ***Id.*** at 13-14.

At the sentencing hearing, Batista's counsel set forth the underlying history leading to Batista's threats against the police officer. Batista's counsel stated that Batista and his ex-wife had agreed to a custody agreement wherein Batista would pick up their child at the police department. N.T., 7/21/10, at 2-3; ***see also*** N.T., 7/19/10, at 4-5. Batista's counsel indicated that after the child was not present at the police station on the appointed date, Batista made threats against the police officer, and also stated that he had threatened his ex-wife. N.T., 7/21/10, at 4. In response, the trial court stated that it took these situations seriously, and that officers

are often injured while responding to “domestic violence” issues. *Id.* at 4-5. However, the trial court did not state that Batista had been charged with any “domestic violence” crime or that the court was sentencing Batista on such crimes. Indeed, the record demonstrates that Batista was charged with terroristic threats at both CC-2010-03563 and CC-2010-03495. Further, Batista voluntarily pled guilty to two counts of terroristic threats. **See** N.T., 7/19/10, at 2 (wherein Batista stipulated to the contents of the affidavit of probable cause), 3-4 (wherein Batista pled guilty and stated that he was guilty of the charged crimes); **see also** Written Plea Colloquy, 7/21/10, at 1-9 (wherein Batista states that he was voluntarily entering the guilty plea as he understood what the plea connoted and its consequences).³ Finally, the trial court sentenced Batista on two counts of terroristic threats. N.T., 9/22/10, at 14-16.⁴ Thus, contrary to Batista’s arguments, the record reflects that he voluntarily and knowingly pled guilty to two counts of terroristic threats and the trial court sentenced him on these crimes.

Batista additionally claims that his counsel was ineffective for failing to challenge his sentence for domestic violence. Brief for Appellant at 16-19.

³ The Written Guilty Plea was signed on July 19, 2010, but not docketed until July 21, 2010.

⁴ We note that on direct appeal, Batista claimed that his sentence was excessive because it was disproportionate to the circumstances of the offenses, did not account for Batista’s condition and rehabilitative needs, and was based on duplicative and irrelevant factors. **See Batista**, 47 A.3d 1259 (unpublished memorandum at 2-6). This Court concluded that the trial court did not abuse its discretion in imposing the sentence. **See id.**

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However, based upon our above determination, we conclude that this claim is without merit. **See Commonwealth v. Ali**, 10 A.3d 282, 291 (Pa. 2010) (stating that to find counsel ineffective, the underlying claim must have arguable merit).

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn". The signature is written in a cursive style with a horizontal line underneath the name.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/22/2014