

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

ERIC LAMONT,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1397 WDA 2013

Appeal from the PCRA Order August 1, 2013  
in the Court of Common Pleas of Potter County  
Criminal Division at No.: CP-53-CR-0000199-2011

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

MEMORANDUM BY PLATT, J.

FILED: April 14, 2014

Appellant, Eric Lamont, appeals from the order dismissing his first petition filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546. Counsel has filed an **Anders** brief.<sup>1</sup> We affirm.

The relevant factual and procedural history of this matter is as follows. On October 5, 2012, Appellant pleaded guilty to one count of possession

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\* Retired Senior Judge assigned to the Superior Court.

<sup>1</sup> Although Appellant appeals from the denial of PCRA relief, counsel filed a brief pursuant to **Anders v. California**, 386 U.S. 738 (1967), instead of a **Turner/Finley** no-merit letter. **See Commonwealth v. Turner**, 544 A.2d 927 (Pa. 1988); **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988) (*en banc*). Because an **Anders** brief provides greater protection to a defendant, this Court may accept an **Anders** brief in lieu of a **Turner/Finley** no-merit letter. **See Commonwealth v. Widgins**, 29 A.3d 816, 817 n.2 (Pa. Super. 2011). Counsel has not sought to withdraw from representation.

with intent to deliver a controlled substance (twenty-six marijuana plants).<sup>2</sup> On November 21, 2012, the trial court sentenced him to a term of not less than thirty-six nor more than seventy-two months' imprisonment. Appellant's thirty-six-month sentence was the mandatory minimum for his offense. (**See** Guideline Sentence Form, 11/30/12, at 1; Appellant's Brief, at 9; Commonwealth's Brief, at 2). On January 18, 2013, the trial court entered an order amending its November 21, 2012 sentencing order to decrease the maximum term of imprisonment to sixty months.

On May 23, 2013, Appellant filed the instant *pro se* PCRA petition, alleging that plea counsel was ineffective for failing to ensure that he received a Recidivism Risk Reduction Incentive (RRRI) minimum sentence.<sup>3</sup> (**See** PCRA Petition, 5/23/13, at 2-3). The Commonwealth filed an answer on May 28, 2013. The PCRA court appointed counsel to represent Appellant on June 5, 2013. On July 12, 2013, the PCRA court issued notice of its intent to dismiss the PCRA petition without a hearing,<sup>4</sup> indicating that Appellant's ineffective assistance of counsel claim lacked merit because, due

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<sup>2</sup> 35 P.S. § 780-113(a)(30).

<sup>3</sup> **See** 61 Pa.C.S.A. §§ 4501-4512. The RRRI Act makes certain offenders eligible for release on parole before the expiration of their minimum terms of imprisonment. **See Commonwealth v. Hansley**, 47 A.3d 1180, 1181 (Pa. 2012). When a court imposes a sentence of imprisonment in a state correctional facility, the court must also determine if the defendant is eligible for an RRRI Act minimum sentence. **See id.** at 1187.

<sup>4</sup> **See** Pa.R.Crim.P. 907(1).

to his prior aggravated assault and simple assault convictions, he did not meet RRRI eligibility requirements. (**See** Rule 907 Notice, 7/12/13, at 1).<sup>5</sup> Counsel filed an amended PCRA petition on August 1, 2013, and the PCRA court entered its order dismissing the petition on that same day. This timely appeal followed.<sup>6</sup>

The **Anders** brief raises one issue for our review:

Should [this] Court reverse and remand the Potter County Court of Common Pleas decision and grant the Appellant's PCRA petition without a hearing where the Appellant's right to qualify for a sentence reduction under the Recidivism Risk Reduction Act under 61 Pa. C.S.A. Section 4501 *et. [sic] seq.* even where the conviction was on a drug trafficking offense and a minimum mandatory sentence applied?

(**Anders** Brief, at 7).

Our standard of review of a trial court order granting or denying relief under the PCRA calls upon us to determine whether the determination of the PCRA court is supported by the evidence of record and is free of legal error. The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record.

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<sup>5</sup> The record before us does not shed light on the factual scenarios underlying Appellant's assault convictions. It does reflect that a pre-sentence investigation (PSI) report was prepared showing that Appellant had prior convictions for aggravated assault, graded as a felony of the first degree, and simple assault, graded as a misdemeanor of the second degree. (**See** PSI Report, 11/15/12, at 1-2).

<sup>6</sup> Pursuant to the PCRA court's order, Appellant filed a timely Rule 1925(b) statement of errors on September 12, 2013. The court entered a Rule 1925(a) opinion on September 16, 2013, in which it referred this Court to its Rule 907 notice for its reasons for the dismissal. **See** Pa.R.A.P. 1925.

**Commonwealth v. Barndt**, 74 A.3d 185, 191-92 (Pa. Super. 2013) (citations and quotation marks omitted).

Appellant argues plea counsel was ineffective in neglecting to challenge the trial court's failure to impose an RRRI sentence. (**See** PCRA Petition, 5/23/13, at 2-3). To prevail on a petition for PCRA relief on grounds of ineffective assistance of counsel, "a petitioner must plead and prove, by a preponderance of the evidence, that his or her conviction or sentence resulted from . . . ineffectiveness of counsel . . . which so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place." **Commonwealth v. Spatz**, 47 A.3d 63, 75-76 (Pa. 2012) (citing 42 Pa.C.S.A § 9543(a)(2)(i) and (ii)) (quotation marks omitted).

It 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. . . . [O]ur Supreme Court [has] articulated a three-part test to determine whether 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.

**Commonwealth v. Johnson**, 51 A.3d 237, 243 (Pa. Super. 2012) (*en banc*), *appeal denied*, 63 A.3d 1245 (Pa. 2013) (citations and quotation marks omitted). In addition, "[an appellant's] failure to satisfy any prong of the ineffectiveness test requires rejection of the claim of ineffectiveness."

**Commonwealth v. Daniels**, 963 A.2d 409, 419 (Pa. 2009).

Here, Appellant contends that counsel was ineffective in failing to ensure that the trial court apply the RRRRI Act in imposing its sentence. (**See Anders** Brief, at 8-12; PCRA Petition, 5/23/13, at 2-3). Relying on **Hansley, supra**, he argues that, although his drug trafficking conviction carried a mandatory minimum sentence, the conviction did not disqualify him from RRRRI Act application. (**See Anders** Brief, at 8-12). This issue does not merit relief.

In **Hansley, supra**, our Supreme Court considered whether the RRRRI Act applied to a defendant's drug trafficking crimes, which carried mandatory minimum sentences. **See Hansley, supra** at 1181. The Court held that the RRRRI Act was applicable, and recognized that the "effect of the RRRRI Act may be to reduce the total time in prison that an offender subject to a mandatory minimum sentence must serve." **Id.** at 1190. However, the **Hansley** Court also explained, "[t]he RRRRI Act does not apply to all defendants, but only to certain 'eligible offenders,' a term that does not include those with a history of violent crime, convicted of certain sex offenses, or subject to a deadly weapon enhancement." **Id.** at 1186 (citing 61 Pa.C.S.A. § 4503).

Relevant to the instant case is section 4503 of the RRRRI Act, which sets forth RRRRI sentence eligibility requirements and reads, in pertinent part, as follows:

**"Eligible offender."** A defendant or inmate convicted of a criminal offense who will be committed to the custody of the

department and who meets all of the following eligibility requirements:

(1) Does not demonstrate a history of present or past violent behavior.

\* \* \*

(3) Has not been found guilty of or previously convicted of or adjudicated delinquent for or an attempt or conspiracy to commit a personal injury crime as defined under [the Crimes Victims Act, 18 P.S. § 11.103 . . . ].

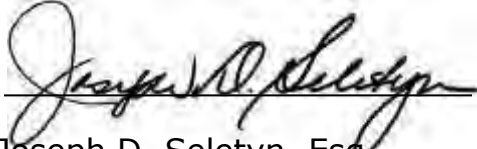
61 Pa.C.S.A. § 4503. Section 11.103 of the Crimes Victims Act specifically includes offenses under Chapter 27 of the Crimes Code (relating to assault) in its definition of “personal injury crime,” encompassing aggravated and simple assault. **See** 18 P.S. § 11.103; **see also** 18 Pa.C.S.A. §§ 2701, 2702.

Here, a review of the record reflects that, contrary to Appellant’s assertion, the trial court did not deny him RRRRI Act application because his drug offense carried a mandatory minimum sentence. (**See Anders** Brief, at 12). Rather, the court determined that Appellant is not RRRRI Act-eligible because he has a history of committing violent crimes, specifically, aggravated and simple assault. (**See** Rule 907 Notice 7/12/13, at 1); **see also** 61 Pa.C.S.A. § 4503. Because Appellant’s underlying claim lacks merit, counsel cannot be ineffective for failing to raise the same. **See Commonwealth v. Calhoun**, 52 A.3d 281, 289 (Pa. Super. 2012), *appeal denied*, 67 A.3d 793 (Pa. 2013) (“Counsel cannot be ineffective for failing to raise a meritless claim.”) (citation omitted). On independent review, we find no other non-frivolous issues which would merit relief.

J-S08036-14

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: 4/14/2014