

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
LEON WOODARD,	:	
	:	
Appellant	:	No. 1549 EDA 2012

Appeal from the Order Entered April 12, 2012
 In the Court of Common Pleas of Philadelphia County
 Criminal Division No(s): CP-51-CR-0107301-2004

BEFORE: STEVENS, P.J., BOWES, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.:

FILED MAY 23, 2013

Appellant, Leon Woodard, appeals from the order of the Philadelphia County Court of Common Pleas that denied his timely, first petition under the Pennsylvania Post Conviction Relief Act (PCRA)¹ without an evidentiary hearing. On appeal, Appellant claims he set forth meritorious claims that prior counsel were ineffective for failing to challenge the trial court’s ruling that precluded him from cross-examining a witness about a violation of probation. We affirm.

* Former Justice specially assigned to the Superior Court.

¹ 42 Pa.C.S. §§ 9541-9546.

The PCRA court concisely summarized the relevant procedural history of this appeal as follows:

On December 28, 2004, following a jury trial, Appellant . . . was convicted of robbery and violations of the Uniform Firearms Act. On February 22, 2005, Appellant was sentenced to six (6) to twelve (12) years' incarceration. On February 20, 2008, th[e Superior Court] affirmed the judgment of sentence following direct appeal.^[2] On August 22, 2008, the Supreme Court of Pennsylvania denied Appellant's petition for allowance of appeal. Appellant filed a timely *pro-se* [PCRA] petition on June 16, 2009. Appointed counsel for Appellant filed an amended petition on February 22, 2011. [On March 22, 2012, the PCRA court issued a Pa.R.Crim.P. 907 notice of intent to dismiss the petition]. On April 12, 2012, the [PCRA court] granted the Commonwealth's motion to dismiss [and dismissed the petition].

PCRA Ct. Op., 7/19/12, at 1 (footnotes omitted).

Appellant, through counsel, filed a timely notice of appeal, but filed a late Pa.R.A.P. 1925(b) statement. Nevertheless, on Appellant's counsel's request, the PCRA court accepted his untimely Rule 1925(b) statement.³

The court filed a responsive Rule 1925(a) opinion.

² ***Commonwealth v. Woodard***, 1027 EDA 2005 (unpublished memorandum) (Pa. Super. Feb. 20, 2008). In his direct appeal, Appellant presented a single claim that the evidence was against the weight of the evidence because the complainant was "not credible due to his own prior convictions for burglary and theft." ***Id.*** at 2.

³ The filing of a late Pa.R.A.P. 1925(b) statement was considered a basis for automatic waiver of all issues on appeal. ***See e.g. Commonwealth v. Castillo***, 888 A.2d 775 (Pa. 2005). However, Rule 1925 currently provides:

If an appellant in a criminal case was ordered to file a Statement and failed to do so, such that the appellate

Appellant presents a single question for review:

Did the Honorable PCRA Court err when it dismissed [Appellant's] Amended PCRA Petition without a Hearing where [Appellant] properly pled and would have been able to prove that he was entitled to relief on said Petition?

Appellant's Brief at 3. Appellant asserts that that the PCRA court erred in declining to convene an evidentiary hearing on the following claim of ineffective assistance of counsel:

[Appellant] is eligible for PCRA relief because of ineffective assistance of trial counsel . . . where counsel . . . [f]ailed to object to the [trial court's] ruling where the [court] prohibited defense counsel from cross-examining, or otherwise presenting evidence demonstrating that [the complainant] was then in prison for other crimes and that appellate counsel was ineffective for having failed to raise and brief said issue.

See Appellant's Am. Petition under Post-Conviction Relief Act, 2/22/11, at 3.

His argument on appeal proceeds as follows: (1) a violation of probation constitutes a *crimen falsi*; (2) Appellant was entitled to cross-examine the

court is convinced that counsel has been per se ineffective, the appellate court shall remand for the filing of a Statement nunc pro tunc and for the preparation and filing of an opinion by the judge.

Pa.R.A.P. 1925(c)(3). In ***Commonwealth v. Burton***, 973 A.2d 428 (Pa. Super. 2009), this Court has held that the untimely filing of a Rule 1925(b) statement "is the equivalent of a complete failure to file[,]" and constitutes *per se* ineffectiveness warranting "prompt relief." ***Id.*** at 433. The procedure undertaken by counsel and the PCRA court in this instance affords Appellant prompt relief from counsel's untimely filing of a Rule 1925(b) statement and foregoes further delay attendant a remand. Accordingly, we decline to find waiver and will consider the merits of this appeal.

complaining witness at trial about *crimen falsi*; and (3) the trial court erred in sustaining the Commonwealth's objection to the admission of evidence establishing the complainant's violation of probation. **See** Appellant's Brief at 9-12. No relief is due.

"A PCRA court's decision denying a claim without a hearing may only be reversed upon a finding of an abuse of discretion." **Commonwealth v. McLaurin**, 45 A.3d 1131, 1136 (Pa. Super. 2012) (citation omitted). Our review is limited to a determination of whether the PCRA court's findings are supported by the evidence of record and its conclusions are free of legal error. **Id.** at 1135. Furthermore, it is well-settled that a "PCRA petitioner is not entitled to an evidentiary hearing as a matter of right." **Id.** Rather, a petitioner must raise genuine issues of material fact before a hearing is warranted. **Id.**

To prevail on a claim of ineffective assistance of counsel, a PCRA petitioner "must demonstrate that: (1) the underlying legal issue has arguable merit; (2) counsel's actions lacked an objective reasonable basis; and (3) [he] was prejudiced by counsel's act or omission." **Commonwealth v. Koehler**, 36 A.3d 121, 132 (Pa. 2012) (citation omitted). Counsel is presumed to be effective. **Commonwealth v. Lesko**, 15 A.3d 345, 347 (Pa. 2011).

Our review of Appellant's assertion that he raised viable claims of ineffectiveness based on prior counsels' failures to challenge the preclusion

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of purported *crimen falsi* is governed by the following principles. First, “admissibility of evidence is solely within the discretion of the trial court and will be reversed only if the trial court has abused its discretion.” ***Commonwealth v. Cascardo***, 981 A.2d 245, 249 (Pa. Super. 2009) (citation and internal quotation marks omitted). Second, Pa.R.E. 609 provides: “For the purpose of attacking the credibility of any witness, evidence that the witness has been **convicted of a crime**, whether by verdict or by plea of guilty or nolo contendere, **shall be admitted if it involved dishonesty or false statement.**” Pa.R.E. 609(a) (emphases supplied). Third, a PCRA petitioner must demonstrate prejudice by proving, by a preponderance of the evidence, “that there is a reasonable probability that, but for counsel’s error or omission, the result of the proceeding would have been different.” ***Koehler***, 36 A.3d at 132 (citation and quotation marks omitted).

Following our review of Appellant’s argument and the record, we find no basis to disturb the ruling of the PCRA court that denied Appellant’s claim without an evidentiary hearing. The principal issue at trial was whether the complainant testified credibly that Appellant approached him, displayed a firearm, went through his pockets, and then threatened to shoot him. **See** N.T., 1/28/04, 16-18. While trial counsel offered evidence of the complainant’s probation violation as *crimen falsi* affecting the complainant’s credibility, the Commonwealth objected, and the trial court sustained the

objection. **Id.** at 4. Specifically, the court found that Appellant's proffer was cumulative of two *crimen falsi* convictions that it already ruled admissible. **Id.** at 4-5.

Appellant, in this appeal, revisits his argument that a violation of probation is a *crimen falsi* and provides this Court with several policy reasons why the breaking of a probation agreement should be deemed probative of credibility. However, Appellant provides no case law in support of his contention. Moreover, we note that probation conditions are not accepted under oath and can be violated for technical or other reasons that do not involve dishonesty or deception. Therefore, we find no arguable to Appellant's general assertion that a breach of a probation agreement alone constitutes a *crimen falsi*. **See generally Cascardo**, 981 A.2d at 253 (reiterating that *crimen falsi* "involves the element of falsehood, and includes everything which has a tendency to injuriously affect the administration of justice by the introduction of falsehood and fraud").⁴

Furthermore, we find no abuse of discretion in the decision of the PCRA court that Appellant failed to demonstrate prejudice. The trial record supports the PCRA court's findings that Appellant did impeach the complainant with two *crimen falsi*, namely, the complainant's prior

⁴ Appellant also contends that evidence of the complainant's probation violation was admissible under Pa.R.E. 404(b) as a prior bad act. However, that contention is so wholly unsupported by legal argument or reference to the record that we decline to address it. **See Commonwealth v. McLaurin**, 45 A.3d 1131, 1139 (Pa. Super. 2012).

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convictions for robbery and theft. Thus, we agree with the PCRA court that the omission of the evidence of the probation violation was harmless at trial, and that Appellant could not establish prejudice necessary to prevail on his claim of trial counsel's ineffectiveness.

Lastly, because the trial court acted within the scope of its discretion when ruling that Appellant's proffer was merely cumulative of properly admitted evidence of complainant's *crimen falsi*, we conclude that a direct appeal claim raising this issue would be fruitless. Consequently, Appellant cannot demonstrate counsel's decision to forgo this issue on direct appeal resulted in prejudice.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Kevin Sambeth", written over a horizontal line.

Prothonotary

Date: 5/23/2013