NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. ANGELO ECHEVARRIA, JR. Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1716 MDA 2013

Appeal from the PCRA Order September 13, 2013
In the Court of Common Pleas of Lancaster County
Criminal Division at No(s): CP-36-CR-0001389-2009;
CP-36-CR-0005418-2008

BEFORE: GANTMAN, P.J., ALLEN, J., and LAZARUS, J.

MEMORANDUM BY GANTMAN, P.J.: **FILED APRIL 14, 2014**

Appellant, Angelo Echevarria, Jr., appeals from the order entered in the Lancaster County Court of Common Pleas, dismissing his petition filed pursuant to the Post Conviction Relief Act ("PCRA").[1] We affirm.

The PCRA court opinion fully sets forth the relevant facts and procedural history of this case. Therefore, we have no reason to restate them.

Appellant raises one issue for our review:

> WHETHER [APPELLANT'S] GUILTY PLEA WAS INDUCED BY THE INEFFECTIVE ASSISTANCE OF COUNSEL?

(Appellant's Brief at 4).

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[1] 42 Pa.C.S.A. §§ 9541-9546.

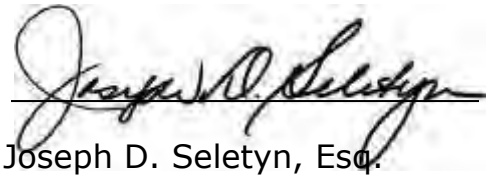
Our standard of review of the denial of a PCRA petition is limited to examining whether the record evidence supports the court's determination and whether the court's decision is free of legal error. ***Commonwealth v. Ford***, 947 A.2d 1251, 1252 (Pa.Super. 2008), *appeal denied*, 598 Pa. 779, 959 A.2d 319 (2008). This Court grants great deference to the findings of the PCRA court if the certified record contains any support for those findings. ***Commonwealth v. Boyd***, 923 A.2d 513, 515 (Pa.Super. 2007), *appeal denied*, 593 Pa. 754, 932 A.2d 74 (2007). If the record supports a PCRA court's credibility determination, it is binding on the appellate court. ***Commonwealth v. Knighten***, 742 A.2d 679, 682 (Pa.Super. 1999), *appeal denied*, 563 Pa. 659, 759 A.2d 383 (2000).

After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable David L. Ashworth, we conclude Appellant's issue merits no relief. The PCRA court opinion comprehensively discusses and properly disposes of the question presented. (***See*** PCRA Court Opinion, filed September 13, 2013, at 12-24) (finding: trial counsel discussed with Appellant option of going to trial, Commonwealth's evidence against him, possible trial strategies and possible defenses; counsel properly advised Appellant of potentially long sentence if convicted at trial; Appellant understood testifying to his version of facts at trial could backfire because of his *crimen falsi* convictions; after thoroughly reviewing discovery material with counsel and concluding trial on aggravated

assault charge would essentially be credibility dispute with police officer, Appellant told counsel he wanted to plead guilty; Appellant understood aggregate sentence would be 12 to 24 years' incarceration; Appellant, who cannot read or write English, confirmed at plea colloquy that trial counsel read each question on colloquy form to him and answered any questions he had; Appellant made statements during colloquy indicating he was guilty of charges and wished to plead guilty; Appellant understood questions posed by court during colloquy, understood his rights as explained to him, and signed colloquy form knowingly, voluntarily, and intelligently; trial counsel denied Appellant told him he did not want to plead guilty during or after colloquy; counsel's advice against going to trial on aggravated assault charge was reasonable because jury could have easily determined Appellant intended to hit officer with car as he fled scene; trial counsel did his best to get favorable plea deal for Appellant, who had nothing to gain by going to trial in light of overwhelming evidence against him; record demonstrates Appellant voluntarily, knowingly, and intelligently consented to imposition of sentence; Appellant's testimony at PCRA hearing lacked credibility; Appellant did not meet burden of proving reasonable probability that but for trial counsel's action or inaction, Appellant would not have pled guilty; trial counsel was not ineffective). Accordingly, we affirm on the basis of the PCRA court's opinion.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/14/2014

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CRIMINAL

COMMONWEALTH OF PENNSYLVANIA :
:
v. : Nos. 1389-2009, 5418-2008
:
ANGELO ECHEVARRIA, JR. :

OPINION

BY: ASHWORTH, J., SEPTEMBER 13, 2013

Angelo Echevarria, Jr., has filed an amended petition pursuant to the Post Conviction Relief Act (PCRA), 42 Pa. C.S.A. §§ 9541-9546. For the reasons set forth below, this petition will be denied following a hearing.

I. Background

The relevant facts, as admitted to by Petitioner at the Guilty Plea Hearing, and the procedural history of this case may be summarized as follows. On October 10, 2008, Petitioner was charged at Information No. 5418-2008 with burglary and aggravated assault.[1] Specifically, on September 26, 2008, the West Lampeter Township Police Department investigated a residential burglary at 2600 Willow Street Pike, which property is near the Kendig Square Shopping Center in Willow Street. Witnesses from the burglary stated that a green Mazda was seen in the parking lot of the apartment complex, bearing registration number PA GVA8922.

[1] 18 Pa. C.S.A. § 3502(A), and 18 Pa. C.S.A. § 2702(A)(2), respectively.

On October 9, 2008, at approximately 11:24 a.m., Detective Jeremy Schroeder, of the West Lampeter Township Police Department, observed the green Mazda parked to the rear of K-Mart's Garden Shop area in the Kendig Square Shopping Center. A short time later, Detective Schroeder observed Petitioner walking to the rear of K-Mart carrying a pillow case with what appeared to be items inside, as well as a large glass water bottle. Petitioner entered his vehicle and shortly afterward exited the vehicle. He then attempted to hide the glass water bottle behind some cinder blocks to the rear of the K-Mart Garden Shop area.

Detective Schroeder approached Petitioner and identified himself as a police officer. Petitioner saw him, returned to his vehicle and sped out of the parking lot. Detective Schroeder had to jump out of the way to avoid being struck as Petitioner accelerated towards him. Petitioner fled the area at a high rate of speed heading north on Route 272 toward Lancaster City. A short time later he was involved in a motor vehicle accident and fled the scene on foot.

A search of the area near the Kendig Square Shopping Center by the West Lampeter Police revealed that the residence of 17 West Kendig Road in Willow Street showed signs of forced entry. The owner of the residence, Sue Shumann, responded to her residence and confirmed that the residence had been entered. She also identified the large glass bottle hidden behind the cinder blocks to the rear of K-Mart's Garden Shop area as belonging to her.

A search warrant was authorized for the search of Petitioner's vehicle, which had been abandoned after the traffic accident. The search revealed almost 50 stolen items, including jewelry, social security cards, credit cards, and passports belonging to Ms.

Shumann and her husband. The charges of burglary and aggravated assault, docketed to No. 5418-2008, relate to these facts.

On October 23, 2008, Karen Meiskey of 1455 Fruitville Pike in Manheim Township reported a burglary at her apartment and the theft of a laptop computer, money and numerous items of jewelry worth approximately $7,200.00. The Manheim Township Police responded to process the scene for evidence. Four fingerprints were taken from the window sill of the rear window to the apartment that had been smashed to gain entry to the apartment. On October 24, 2008, Detective Steven Owens of the Lancaster City Police Department concluded that three of the four fingerprints were those of Petitioner. On October 29, 2008, the police recovered four pieces of jewelry belonging to Ms. Meiskey which had been pawned at a Lancaster City shop on October 23, 2008, by Petitioner. Based on these facts, Petitioner was charged on February 9, 2009, with burglary and theft by unlawful taking.[2] These charges were docketed to No. 1389-2009.

On May 10, 2010, Petitioner entered a negotiated guilty plea, at Docket No. 5418-2008, of three to six years' incarceration to the charge of burglary of a residence, no person present. He also entered an **Alford**[3] plea of six to twelve years to the charge of aggravated assault. These sentences were made consecutive to one another.

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[2]18 Pa. C.S.A. § 3502(A), and 18 Pa. C.S.A. § 3921(A), respectively.

[3]The **Alford** plea derives its name from the United States Supreme Court decision in **North Carolina v. Alford**, 400 U.S. 25 (1970). The **Alford** Plea is substantially similar to the practice in Pennsylvania on *nolo contendere* pleas. *See* **Commonwealth v. Shaffer**, 498 Pa. 342, 446 A.2d 591 (1982).

Restitution was ordered in the amount of $2,635.00, plus fines and costs. (Notes of Testimony ("N.T."), Guilty Plea at 16-17.)

At Docket No. 1389-2009, Petitioner entered a negotiated guilty plea of three to six years' incarceration to the burglary charge. The offense of theft by unlawful taking merged for sentencing purposes. Petitioner was also ordered to pay restitution in the amount of $2,585.89, plus fines and costs. The sentence imposed at Docket No. 1389-2009, was made consecutive to the sentence imposed at No. 5418-2008, for a net sentence of 12 to 24 years' incarceration in a state correctional institution. (N.T., Guilty Plea at 17-18.) No post-sentence motions were filed. Petitioner was represented at the guilty plea and sentencing by Michael V. Marinaro, Esquire.

A timely notice of appeal from the judgment of sentence was filed on June 9, 2010.[4] Pursuant to this Court's directive, a statement of matters complained of on appeal was filed on June 30, 2010, in which Petitioner raised only one issue: whether his plea of guilty to a negotiated term of incarceration was a knowing, intelligent and voluntary act on his part.

Defense counsel submitted an **Anders**[5] brief on direct appeal, having determined that any issue raised in the appeal would be frivolous as a matter of law. On January 28, 2011, a three-judge panel of the Superior Court found the sole issue raised on appeal waived and affirmed the judgment of sentence in an unpublished

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[4]On August 18, 2010, after his appeal was filed in the Superior Court, Petitioner filed a *pro se* petition for post conviction collateral relief which claimed ineffective assistance of counsel.

[5]**Anders v. California**, 386 U.S. 738 (1967).

memorandum opinion. Counsel's petition to withdraw was granted. No petition for allowance of appeal was filed with the Supreme Court of Pennsylvania.

On August 17, 2011, Petitioner filed a timely[6] *pro se* petition for post conviction collateral relief which claimed ineffective assistance of counsel, and a violation of his constitutional rights which so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place. Pursuant to Rule 904(A) of the Pennsylvania Rules of Criminal Procedure, Carolyn J. Flannery, Esquire, was appointed on August 23, 2011, to represent Petitioner on his collateral claims and was granted leave to file an amended petition, if appropriate, by October 24, 2011. Thereafter, counsel requested and received an extension of time for filing an amended petition.

The amended PCRA petition was filed on November 28, 2011. In this petition, counsel claimed ineffective assistance by Mr. Marinaro for inducing Petitioner to enter into the negotiated plea when Petitioner "is, in fact, not guilty of Aggravated Assault" against a police officer (*see* 2011 Petition at ¶ 14), and for failing to file "a post-sentence motion to withdraw [Petitioner's] guilty plea as not entered knowingly, intelligently and voluntarily." (Id. at ¶ 19.) The Commonwealth filed a timely response on December 30, 2011, arguing that the record demonstrated Petitioner was not entitled to post conviction collateral relief and asking the Court to deny the petition without a hearing.

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[6] I note that Petitioner's PCRA petition was filed within one year of the date his judgment became final. As such, his petition was filed in a timely manner. 42 Pa. C.S.A. § 9545(b).

After reviewing the *pro se* and amended PCRA petitions, I found that there were no disputed issues of fact, Petitioner was not entitled to post conviction collateral relief, and no purpose would be served by any further proceedings. Therefore, on January 4, 2012, pursuant to Pa. R.Crim.P. 907(1), I filed a notice of my intention to dismiss the PCRA petition without a hearing. Petitioner was given 20 days to file an amended petition or to otherwise respond to the Court's notice. No response was filed.

Upon further review of the Clerk of Courts' file at Docket No. 5418-2008 for purposes of writing the opinion disposing of the pending PCRA petitions, I discovered a *pro se* handwritten pleading addressed to the Clerk of Courts and dated May 19, 2010. It states: "To: Whom it may concern, Pertaining to Docket # CP-36-CR-0005418-2008 OTN: K8442991[,] I respectfully ask that my guilty plea be withdrawn on the above mentioned docket number. Thank you." This document, timely filed within ten days of Petitioner's negotiated guilty plea/sentencing on May 10, 2010, was neither forwarded to Petitioner's attorney of record nor to this Court for consideration. Rather, the Clerk of Courts responded to Petitioner by letter with the following legal advice: "You cannot withdraw your guilty plea as you have already been sentenced. You must now file an appeal to superior court [sic]. There is a fee to file this appeal." This letter was stapled on top of Petitioner's *pro se* pleading.

Petitioner's 2010 appeal to the Superior Court was unsuccessful because the appellate court ruled that Petitioner's claims regarding his guilty plea were waived due to his failure to preserve them through post-sentence motions. Since Petitioner, in fact, did file a timely *pro se* motion to withdraw his guilty plea, which because of improper obstruction by the Clerk of Courts was not presented to the Court for disposition, I

entered an order on February 2, 2012, granting Petitioner leave to file a counseled post-sentence motion *nunc pro tunc* at Docket No. 5418-2008, along with reinstatement of direct appeal rights. In that order I further stayed Petitioner's *pro se* and amended petitions for post conviction collateral relief pending final disposition of the post-sentence motion.

On March 5, 2012, Petitioner filed his post-sentence motion *nunc pro tunc* in which he claimed his trial counsel unlawfully induced him to enter into a plea and that he is innocent of the offenses to which he pled guilty. The Commonwealth filed a response on March 22, 2012, arguing that Petitioner's pleas were knowingly, intelligently and voluntarily entered, and requesting that relief be denied.

By order entered on March 23, 2012, this Court denied Petitioner's post-sentence motion *nunc pro tunc*. A timely appeal to the Superior Court of Pennsylvania was filed on April 20, 2012, on both docket numbers, 5418-2008 and 1389-2009. Pursuant to this Court's directive, Petitioner furnished a statement of errors complained of on appeal which raised two issues: (1) whether the Court erred by not permitting Petitioner to withdraw his guilty plea; and (2) whether the Court erred by not granting Petitioner's request for an evidentiary hearing on his post-sentence motion requesting to withdraw his guilty plea.

On December 5, 2012, a three-judge panel of the Superior Court affirmed the judgment of sentence on Docket No. 5418-2008 and quashed the appeal on No. 1389-2008 in an unpublished memorandum opinion. No petition for allowance of appeal was filed with the Supreme Court of Pennsylvania.

Upon receipt of the record from the appellate court, the 2011 PCRA petitions, which had been stayed, were reinstated and new counsel appointed.[7] An amended petition was filed on May 6, 2013, alleging that Petitioner's trial counsel unlawfully induced a plea from Petitioner. The Commonwealth conceded the necessity for an evidentiary hearing.

Following a hearing on June 26, 2013, and the preparation of the transcript, briefs were filed by the parties. This matter is now ripe for disposition.

II. Eligibility for PCRA Relief

A petitioner seeking relief pursuant to the PCRA is eligible only if he pleads and proves, by a preponderance of the evidence, that (1) he has been convicted of a crime under the laws of this Commonwealth and is currently serving a sentence of imprisonment, probation or parole for the crime, (2) his conviction has resulted from one or more of the enumerated errors or defects found in § 9543(a)(2) of the PCRA, (3) he has not waived or previously litigated the issues he raises, and (4) the failure to litigate the issue prior to and during trial, or on direct appeal could not have been the result of any rational, strategic, or tactical decision by counsel. 42 Pa. C.S.A. § 9543(a)(2), (3), (4).

A petitioner has previously litigated an issue if (1) the highest appellate court in which a petitioner could have had review as a matter of right has ruled on the merits of the issue, **Commonwealth v. Spotz**, 47 A.3d 63, 76 (Pa. 2012), or (2) the issue has

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[7]Court-appointed PCRA counsel, Carolyn Flannery, relocated out of the area.

been raised and decided in a proceeding collaterally attacking the conviction or sentence. 42 Pa. C.S.A. § 9544(a); **Commonwealth v. Phillips**, 31 A.3d 317, 320 (Pa. Super. 2011). A petitioner has waived an issue if the petitioner could have raised the issue but failed to do so before trial, on appeal, or in a prior state post conviction proceeding. 42 Pa. C.S.A. § 9544(b); **Spotz**, 47 A.3d at 76. However, waiver will be excused under the PCRA if petitioner can meet the conditions of 42 Pa. C.S.A. § 9543(a)(3)(ii) or (iii)[8] or by making a showing of ineffective assistance of counsel. **Commonwealth v. Morales**, 549 Pa. 400, 409, 701 A.2d 516, 520 (1997). Petitioner has raised claims of ineffective assistance of counsel.

In order to prevail on a claim of ineffective assistance of counsel made in the post conviction context, a petitioner must overcome the presumption that counsel is effective by establishing by a preponderance of the evidence that: (1) the underlying claim has arguable merit; (2) trial counsel had no reasonable basis for proceeding as he did; and (3) the petitioner suffered prejudice. *See* 42 Pa. C.S.A. § 9543(a)(2)(ii); **Spotz**, 47 A.3d at 76 (*citing* **Commonwealth v. Pierce**, 515 Pa. 153, 158-59, 527 A.2d 973, 975-76 (1987)). With respect to whether counsel's acts or omissions were reasonable, defense counsel is accorded broad discretion to determine tactics and

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[8]Section 9543(a)(3) provides:
[T]hat the allegation of error has not been previously litigated and one of the following applies:

. . .

(ii) If the allegation of error has been waived, the alleged error has resulted in the conviction or affirmance of sentence of an innocent individual.
(iii) If the allegation of error has been waived, the waiver of the allegation of error during pretrial, trial, post-trial or direct appeal proceedings does not constitute a State procedural default barring Federal habeas corpus relief.

42 Pa. C.S.A. § 9543(a)(3).

strategy. **Commonwealth v. Fowler**, 447 Pa. Super. 534, 670 A.2d 1153 (1996). The applicable test is not whether alternative strategies were more reasonable, employing a "hindsight" evaluation of the record, but whether counsel's decision had *any* reasonable basis to advance the interests of the defendant. **Commonwealth v. Chmiel**, 612 Pa. 333, 361, 30 A.3d 1111, 1127 (2011). The appellate courts will conclude that counsel's chosen strategy lacked a reasonable basis only if the petitioner proves that "an alternative not chosen offered a potential for success substantially greater than the course actually pursued." Id. at 361-62, 30 A.3d at 1127 (*quoting* **Commonwealth v. Williams**, 587 Pa. 304, 312, 899 A.2d 1060, 1064 (2006)).

To establish the prejudice prong, the petitioner must show that there is a reasonable probability that the outcome of the proceedings would have been different but for counsel's ineffectiveness. **Chmiel**, 612 Pa. at 362, 30 A.3d at 1127-28. "We stress that boilerplate allegations and bald assertions of no reasonable basis and/or ensuing prejudice cannot satisfy a petitioner's burden to prove that counsel was ineffective." Id. (*quoting* **Commonwealth v. Paddy**, 609 Pa. 272, 292, 15 A.3d 431, 443 (2011)).

Petitioner has raised issues regarding the ineffective assistance of counsel during the guilty plea process. A claim of ineffective assistance of counsel in relation to a guilty plea provides a basis for relief only if the petitioner can plead and prove by a preponderance of the evidence that the ineffective assistance of counsel *caused* an involuntary or unknowing plea. 42 Pa. C.S.A. § 9543(a)(2)(iii). *See* **Commonwealth v. Moser**, 921 A.2d 526, 531 (Pa. Super. 2007). A defendant who attempts to withdraw a

guilty plea after sentencing must demonstrate prejudice on the order of manifest injustice before withdrawal is justified. **Commonwealth v. Pantalion**, 957 A.2d 1267, 1271 (Pa. Super. 2008) (*citing* **Commonwealth v. Muhammad**, 794 A.2d 378, 383 (Pa. Super. 2002)). *See also* **Commonwealth v. Bedell**, 954 A.2d 1209, 1212 (Pa. Super. 2008) (standard for withdrawing a plea based on ineffective assistance in a PCRA is similar to the "manifest injustice" standard used when evaluating a motion to withdraw a plea after sentencing). "A plea rises to the level of manifest injustice when it was entered into involuntarily, unknowingly, or unintelligently." **Pantalion**, 957 A.2d at 1271.

In determining whether a defendant entered into a plea of guilty knowingly, voluntarily and intelligently, the PCRA court "is free to consider the totality of the circumstances surrounding the plea, . . . including, but not limited to, transcripts from other proceedings, 'off-the-record' communications with counsel, and written plea agreements." **Commonwealth v. Allen**, 557 Pa. 135, 146-47, 732 A.2d 582, 588-89 (1999). Moreover, "[a] defendant is bound by the statements made during the plea colloquy, and a defendant may not later offer reasons for withdrawing the plea that contradict statements made when he pled. . . ." **Commonwealth v. Brown**, 48 A.3d 1275, 1277-78 (Pa. Super. 2012) (citations omitted).

III. Discussion

In the instant case, Petitioner claims his guilty plea was entered into involuntarily, unknowingly and unintelligently for the following reasons: (1) trial counsel displayed no interest in Petitioner's case; (2) trial counsel coerced Petitioner into pleading guilty; and

(3) trial counsel erroneously advised Petitioner that his plea agreement called for such concurrent sentences that he would receive an aggregate sentence of 6 to 12 years' incarceration.

With his first issue, Petitioner argues that trial counsel was ineffective because of his neglect of and indifference towards Petitioner's case. Specifically, Petitioner testified at the PCRA hearing that trial counsel met with him in prison on only one occasion prior to the guilty plea (N.T., PCRA Hearing at 25), that trial counsel never explained the workings of a trial nor did he have any discussion with Petitioner concerning trial strategy (Id. at 26), and that counsel had no interest in his case. (Id.)

At the PCRA hearing, however, trial counsel testified to the contrary. He stated that he discussed, in person and through correspondence, with Petitioner the option of going to trial, their possible trial strategies, and potential defenses. (N.T., PCRA Hearing at 7, 16-19.) Specifically, defense counsel testified that he made a copy of the discovery material for both criminal informations, sent it to Petitioner, and then went to the prison to review it with him on at least one occasion.[9] (Id. at 6.)

Counsel remarked that, during one particular conversation at the prison, Petitioner told counsel that he did not commit the burglary on Kendig Road on October 9, 2008,[10] and that he did not try to run over Detective Schroeder. (N.T., PCRA Hearing

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[9]Trial counsel stated that he could not recall the exact number of times he went to the Lancaster County Prison to see his client, but he knew they met and went over the discovery material at least once. (N.T., PCRA Hearing at 6.)

[10]Petitioner's proclamation of innocence is incredible given the fact that a search of Petitioner's vehicle within hours of the burglary revealed almost 50 stolen items belonging to the Kendig Road homeowners. Moreover, Detective Schroeder observed Petitioner attempting to hide a stolen item behind some cinder blocks to the rear of the K-Mart Garden Shop area.

at 8.) At that point, Mr. Marinaro reviewed the discovery materials with Petitioner and explained to him the evidence that would be presented by the Commonwealth at a trial.[11] (Id. at 8.) They talked about Petitioner taking the stand and testifying to his version of the facts relative to the aggravated assault charge.[12] (Id. at 17.) Petitioner understood, however, that this trial strategy could have "backfired" because of his many *crimen falsi* convictions.[13] (Id. at 18.)

After thoroughly reviewing the discovery material and arriving at the conclusion that it would essentially be a credibility dispute between Petitioner and Detective Schroeder, Petitioner indicated to Mr. Marinaro that he wanted to plead guilty. (N.T., PCRA Hearing at 10.) At that point, "[Petitioner] was looking for the best possible deal" that Mr. Marinaro could negotiate. (Id. at 7.) As such, counsel set forth to engage in favorable plea negotiations, and, therefore, had a reasonable basis for not pursuing trial strategies and/or defenses further. *See* **Commonwealth v. Timchak**, 69 A.3d 765,

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[11]Mr. Marinaro testified that he told Petitioner the Commonwealth would introduce evidence at trial to establish that Petitioner illegally entered a home on Kendig Road, put some stolen items in a pillowcase, and walked out of the residence towards his green Mazda, which was parked in the K-Mart lot, and was confronted by Detective Schroeder. (N.T., PCRA Hearing at 8-9.) Detective Schroeder was in plain clothes but had his police badge visibly displayed. (Id.) Petitioner saw him, got into his vehicle and sped out of the parking lot. (Id. at 9.) Detective Schroeder had to jump out of the way to avoid being hit as Petitioner accelerated towards him. (Id.)

[12]Petitioner told Mr. Marinaro that the individual who approached him in the K-Mart parking lot pointed a gun at him and did not identify himself as a police officer. (N.T., PCRA Hearing at 9.) Petitioner did acknowledge accelerating and speeding away. (Id.) However, Petitioner told counsel that he did not try to run over Detective Schroeder, rather, he simply wanted to get away. (Id. at 10.)

[13]Evidence that a witness has been convicted of a crime involving dishonesty or a false statement, commonly referred to as *crimen falsi* crimes, may be admitted for the purpose of impeaching a witness's credibility. Pa. R.E. 609(a). *See also* **Commonwealth v. McLaurin**, 45 A.3d 1131, 1139 (Pa. Super. 2012).

774 (Pa. Super. 2013). Trial counsel testified that, based upon Petitioner's familiarity with the criminal justice system from his many convictions and incarcerations in New Jersey and Pennsylvania, he believed it was always Petitioner's intention to plead guilty. (Id. at 6-7, 20.) Nonetheless, trial counsel did advise Petitioner of possible trial strategies and defenses and, thus, provided effective assistance of counsel.

Petitioner's second issue argues that trial counsel coerced him into pleading guilty to the charges in a number of ways. Initially, Petitioner claims he was induced to plead guilty by trial counsel's representation that if he was convicted he would be subjected to a sentence of not less than 25 years nor more than life imprisonment. (N.T., PCRA Hearing at 26.) Because of Petitioner's extensive criminal record in New Jersey and Pennsylvania,[14] it was the Commonwealth's position that Petitioner was potentially a "third strike offender" who was looking at 25 years to life on the aggravated assault charge, pursuant to 42 Pa. C.S.A. § 9714.[15] (Id. at 30-31.) Thus, counsel

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[14]Petitioner had two convictions in Pennsylvania in 2005 for receiving stolen property and multiple convictions in New Jersey for receiving stolen property, burglaries and thefts. (N.T., PCRA Hearing at 30-31.)

[15]Section 9714 of the Sentencing Code provides, in relevant part:

> § 9714. Sentences for second and subsequent offenses.
> (a) Mandatory sentence.
> . . .
> (2) Where the person had at the time of the commission of the current offense previously been convicted of two or more such crimes of violence arising from separate criminal transactions, the person shall be sentenced to a minimum sentence of at least 25 years of total confinement, notwithstanding any other provision of this title or other statute to the contrary. Proof that the offender received notice of or otherwise knew or should have known of the penalties under this paragraph shall not be required. Upon conviction for a third or subsequent crime of violence the court may, if it determines that 25 years of total confinement is insufficient to protect the public safety, sentence the offender to life imprisonment without parole.

42 Pa. C.S.A. § 9714(a)(2).

cannot be deemed ineffective for having properly advised Petitioner of a potential sentence. Moreover, trial counsel testified that he talked to Petitioner about his extensive prior criminal record and the fact that his prior record score was in the repeat felony offender (RFEL) category.[16] (Id. at 17.)

Petitioner next contends that he never read the guilty plea colloquy or guilty plea slips and simply signed those documents when directed to do so by counsel. (Petitioner's Brief at 6; N.T., PCRA Hearing at 28-29.) Mr. Marinaro did not expect Petitioner to read anything as Petitioner cannot read and write the English language, as noted by counsel on the written guilty plea colloquy. (Id. at 13-14.) Petitioner, however, can speak and understand English.[17] (Id.) Accordingly, Mr. Marinaro testified that he read each question on the guilty plea colloquy form to Petitioner and wrote down Petitioner's answers.[18] (Id. at 13.)

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[16]At the guilty plea hearing, Petitioner confirmed for the court the fact that his prior record score maxed out as an RFEL, so Petitioner was looking at 72 to 84 months, plus or minus 12 months, for the aggravated assault charge. (N.T., Guilty Plea at 7.)

[17]Regarding Petitioner's proficiency with the English language, at the time of the entry of his guilty plea, Petitioner did indicate an inability to read and write the English language. (N.T., Guilty Plea at 3.) However, Petitioner went on to state that he was able to understand the English language. (Id.) Throughout the proceeding, Petitioner displayed a clear and thorough understanding of the English language. (Id. at 2-20.) At no time during his entry of the pleas did Petitioner indicate a lack of understanding of any question posed by the Court. Furthermore, at no time did Petitioner indicate a lack of understanding of the nature and subject matter of the proceedings. (Id.)

Mr. Marinaro testified at the PCRA Hearing that no interpreter was provided at the guilty plea hearing because Petitioner indicated that one was not necessary. (N.T., PCRA Hearing at 11.) Mr. Marinaro further stated that an interpreter was not needed during his conversations with Petitioner at the prison. (Id. at 12.)

[18]Petitioner acknowledged at the guilty plea hearing that the colloquy form was read to him by counsel, and that counsel answered any questions he had with regard to the form. (N.T., Guilty Plea at 8.)

Petitioner further claims that he told his attorney that he did not understand what the guilty plea paperwork meant and his concerns were dismissed by counsel. (N.T., PCRA Hearing at 30.) On cross examination, Petitioner acknowledged that when asked by the Court if he had any questions, he replied "no," but then explained he was too nervous to say anything. (Id.; *see also* N.T., Guilty Plea at 8.) This testimony is contradicted by the fact that just minutes later, when asked if he would like to make a statement before the guilty plea was accepted and sentencing imposed, Petitioner exercised his right of allocution and told the Court:

> I regret what I done. I came to Lancaster to make a new life, only it didn't work out the way I wanted to work out, Your Honor. . . . [T]his is my life I'm talking about. I'm trying to be a better parent for my kids, only it didn't work out the way I wanted to work out, Your Honor.
>
> My mother is trying to help me, push me, only I just lost my mother. And, well, I'm in front of you, Your Honor, to ask leniency. Only, like I said, Your Honor, I tried.
>
> I'm not too good talking but I'm kind of nervous a little bit, you know what I mean? And my life is in your hands and God's hands. So I regret what I done. . . .

(N.T., Guilty Plea at 14-15.) Despite feeling nervous, Petitioner was able to address the court, express remorse, and ask for leniency. Why then would he not have spoken up and challenged the guilty plea just minutes before?

Mr. Marinaro testified at the PCRA Hearing that Petitioner understood the guilty plea colloquy questions, understood his rights as explained to him, and signed the form knowingly, voluntarily and intelligently. (N.T., PCRA Hearing at 14.) Petitioner confirmed for the Court at the guilty plea hearing that he reviewed the colloquy form with his attorney, that any questions he had with regard to the form were answered by his attorney, and that he voluntarily signed the form. (N.T., Guilty Plea at 7-9.)

Petitioner made statements at the guilty plea colloquy indicating he was guilty of the charges and, thus, he wished to plead guilty. "A criminal defendant who elects to plead guilty has a duty to answer questions truthfully. We [cannot] permit a defendant to postpone the final disposition of his case by lying to the court and later alleging that his lies were induced by the prompting of counsel." **Commonwealth v. Turetsky**, 925 A.2d 876, 881 (Pa. Super. 2007) (*quoting* **Commonwealth v. Pollard**, 832 A.2d 517, 524 (Pa. Super. 2003)). Petitioner is bound by his statements at the guilty plea colloquy, and he may not now assert grounds for post conviction collateral relief which contradict those statements. *See* **Timchak**, 69 A.3d at 774 (*citing* **Turetsky**, *supra*).

Petitioner finally claims that he was unlawfully induced to plead guilty by trial counsel's erroneous advice that this case balanced on the fact that Petitioner's version of what happened concerning the aggravated assault differed from the police officer/victim, Detective Schroeder. (*See* Petitioner's Brief at 6.) As noted above, Detective Schroeder indicated that he identified himself as a police officer, while Petitioner told his attorney that Detective Schroeder was just an individual displaying a gun and that he did not realize he was a police officer at the time he pulled out of the parking lot. (N.T., PCRA Hearing at 9.) Petitioner argues that, contrary to counsel's opinion, this apparent conflict in testimony was insignificant. He contends that whether Detective Schroeder identified himself as a police officer is immaterial to the question of whether Petitioner intended to cause serious bodily injury to him and, thus, commit an aggravated assault.[19] (*See* Petitioner's Brief at 7; *see also* N.T., PCRA Hearing at 22.)

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[19]It is immaterial that Petitioner did not know that Detective Schroeder was a police officer. The Pennsylvania Supreme Court has made clear that Section 2702's requirement that

Petitioner claims the issue for the jury would have been whether Petitioner was "simply driving recklessly" or whether he was "driving in a way designed to run over the victim." (Id.)

A person may be convicted of aggravated assault graded as a first degree felony if he "attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life." 18 Pa. C.S.A. § 2702(a)(1). In the instant matter, there is no question that Petitioner's actions did not cause Detective Schroeder to sustain actual, serious bodily injury[20] (N.T., PCRA Hearing at 22-23); therefore, Petitioner's possible conviction for aggravated assault turned exclusively on whether he attempted to inflict serious bodily injury upon the victim. In this regard, our Superior Court has stated the following:

> Where the victim does not suffer serious bodily injury, the charge of aggravated assault can be supported only if the evidence supports a finding of an attempt to cause such injury. 'A person commits an attempt when, with intent to commit a specific crime, he does any act which constitutes a substantial step toward the commission of that crime.' 18 Pa.C.S.A. § 901(a). An attempt under Subsection 2702(a)(1) requires some act, albeit not one causing serious bodily injury, accompanied by an intent to inflict serious bodily injury. A person acts intentionally with respect to a material element of an offense when . . . it is his conscious object to engage in conduct of that nature or to cause such a result. As intent is a subjective frame of mind, it is of necessity

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the officer be "in the performance of duty" in no way implies that liability depends on whether the defendant is aware of his victim's official status. *See* **Commonwealth v. Flemings**, 539 Pa. 404, 410, 652 A.2d 1282, 1285 (1995).

[20]"Serious bodily injury" has been defined as "[b]odily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ." 18 Pa. C.S.A. § 2301.

difficult of direct proof. The intent to cause serious bodily injury may be proven by direct or circumstantial evidence.

Commonwealth v. Fortune, 68 A.3d 980, 985 (Pa. Super. 2013) (internal quotations and citations omitted).

Mr. Marinaro testified that Detective Schroeder "clearly said" in two conversations with defense counsel that "he had to dodge to get out of the way of [Petitioner's] vehicle as it was accelerating towards him, and if he [had] stayed put he would have been struck by the car." (N.T., PCRA Hearing at 9, 23.) Petitioner admitted to his trial counsel that, as a result of having a gun pointed at him (Id. at 17, 18-19), "he did accelerate to get out of the area" (Id. at 9-10), but he denied any intent to run over the individual. (Id. at 10; *see also* Id. at 18-19.)

As noted above, "intent is a subjective frame of mind, it is of necessity difficult of direct proof." **Fortune**, 68 A.3d at 984. Accordingly, intent ordinarily must be proven through circumstantial evidence and inferred from acts or conduct, or from the attendant circumstances. Id. Here, the Commonwealth could have sustained its burden of showing intent or frame of mind by means of wholly circumstantial evidence that Petitioner was bearing down on Detective Schroeder as Petitioner drove his vehicle at a high rate of speed toward the officer to get away from the scene. Detective Schroeder would have testified that Petitioner had no intention of stopping and that he (Detective Schroeder) had to jump out of the way to avoid sustaining injury.[21]

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[21]The affidavit of probable cause contained in the criminal complaint states: Det[.] Schroeder approached and identified himself as a Police Officer in an attempt to make contact with the subject. The subject returned to his green Mazda 6 and sped away, attempting to strike Det. Schroeder with the vehicle. There by [sic] placing Det. Schroeder while on duty in fear of imminent serious

While it would have been Petitioner's testimony that he was "simply driving recklessly" in an effort to escape, a jury could have easily determined, from Detective Schroeder's testimony at trial, that Petitioner intended to harm the individual standing between his vehicle and a safe escape. *See, e.g.*, **Commonwealth v. Burns**, 390 Pa. Super. 426, 431-32, 568 A.2d 974, 977 (1990). Our Superior Court has recognized that "although a properly used automobile may not be inherently dangerous it may become a deadly weapon depending on how it is used. 'Motor vehicles still outdistance firearms as the most dangerous instrumentality in the hands of irresponsible persons in our society today.'" **Commonwealth v. Packard**, 767 A.2d 1068, 1071 (Pa. Super. 2001) (*quoting* **Commonwealth v. Scales**, 437 Pa. Super. 14, 648 A.2d 1205, 1209 (1994)). Thus, contrary to Petitioner's argument, Petitioner's intent to strike Detective Schroeder could have been drawn from the attendant facts and circumstances of this case, *i.e.*, speeding toward Detective Schroeder and forcing him to jump out of the way. *See* **Commonwealth v. Lewis**, 911 A.2d 558, 564 (Pa. Super. 2006).

As noted above, Mr. Marinaro knew that the finder of fact at trial would be forced to make a credibility determination between Petitioner and Detective Schroeder. *See* **Commonwealth v. Hanible**, 612 Pa. 183, 212 n.11, 30 A.3d 426, 443 n.11 (2011) (credibility determinations are strictly within the province of the finder of fact; the jury is free to believe all, part or none of the evidence presented). Given the fact that Petitioner's credibility on this issue of intent could have been impeached with evidence

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> bodily injury. Det[.] Schroeder had to jump out of the way of the fleeing vehicle to avoid being struck.

(*See* Affidavit of Probable Cause attached to the Police Criminal Complaint.)

of Petitioner's *crimen falsi* convictions, Mr. Marinaro advised his client that going to trial on the aggravated assault charge was perilous. (N.T., PCRA Hearing at 18.) Petitioner agreed and consented to an **Alford** plea on this charge. (Id. at 10, 15-16.) I cannot find that Mr. Marinaro provided such erroneous advice on this issue that Petitioner was wrongly induced to plead guilty to the aggravated assault charge.

With his last issue, Petitioner is claiming trial counsel erroneously advised Petitioner that he would receive such concurrent sentences that he would receive an aggregate sentence of 6 to 12 years' incarceration, and not the consecutive 12 to 24 year sentence imposed by the Court. (N.T., PCRA Hearing at 27.) As noted above, Petitioner testified he never read the guilty plea colloquy or guilty plea slips, nor were they ever explained to him (Id. at 28-29); hence, he did not know he was receiving a sentence of 12 to 24 years until he went in front of the Court for sentencing. (Id. at 27.) At that time, Petitioner testified that he told his trial counsel he wanted to withdraw his plea and counsel told him to be quiet and that he would talk to him in the holding cell after the sentencing. (Id.) Petitioner testified that counsel never met with him in the holding cell and, in fact, he never spoke with counsel again. (Id. at 27-28.)

Mr. Marinaro testified that he reviewed with Petitioner the consecutive nature of the sentence, and that Petitioner understood the difference between concurrent and consecutive sentences. (N.T., PCRA Hearing at 15.) Petitioner "spent years in the state prison in New Jersey. He's well versed in the criminal justice system." (Id. at 17-18.) It was Mr. Marinaro's testimony that Petitioner understood that the aggregate sentence was going to be 12 to 24 years' incarceration. (Id.)

Obviously, Petitioner wanted his sentences to run concurrently but the Commonwealth did not make that offer. (N.T., PCRA Hearing at 10.) At the time the plea was negotiated, Petitioner was under investigation for numerous other uncharged burglaries in Lancaster County, and defense counsel was dealing with "one of the experienced prosecutors that dealt with these types of crimes. (Id. at 7.) Trial counsel tried to get the aggravated assault charge reduced to simple assault but the Commonwealth would not budge. (Id. at 23.)

Trial counsel was charged by Petitioner with "doing his best" to get a "good deal" for Petitioner under the circumstances (N.T., PCRA Hearing at 6), and counsel did that. In the instant case, Petitioner was facing a grim alternative when he elected to enter a negotiated plea, which included an **Alford** plea to the aggravated assault charge. The record clearly establishes that Petitioner was aware that he was charged with two counts of felony burglary, and one count of aggravated assault (N.T., Guilty Plea at 2-3), that each of these felony offenses carried a maximum jail term of 20 years (Id. at 6-7), and that he could potentially face a term of 67 years in prison if convicted of all charges. (Id. at 7.) Petitioner had absolutely nothing to gain by a trial and much to gain by pleading. Because of the overwhelming evidence against him, a trial was precisely what neither Petitioner nor his attorney wanted. The record demonstrates that Petitioner voluntarily, knowingly and understandingly consented to the imposition of a prison sentence because the Commonwealth had sufficient evidence to convince a jury beyond a reasonable doubt that Petitioner was guilty of these felonies.

While Mr. Marinaro testified that he has no specific recollection of meeting with Petitioner in the holding cell following the guilty plea, it is his "normal practice" to do so

and he was "sure [he] did." (N.T., PCRA Hearing at 22.) Moreover, this Court specifically instructed counsel to meet with his client and to "spend whatever time is necessary . . . not only to explain the sentence in this case but any appeal rights." (N.T., Guilty Plea at 20.) Trial counsel specifically denied being told by Petitioner during the guilty plea hearing that he did not want to plead guilty (Id. at 19-20), and after the hearing that he wanted to withdraw his plea. (Id. at 21.)

On all of these issues, this Court must consider Petitioner's and trial counsel's conflicting testimony and make the necessary credibility determinations. *See* **Commonwealth v. Philistin**, — Pa. —, 53 A.3d 1, 25 n.17 (2012) ("It is well settled that PCRA courts make credibility determinations."); **Commonwealth v. Johnson**, 600 Pa. 329, 356, 966 A.2d 523, 539 (2009) (a PCRA court passes on witness credibility at PCRA hearings, and its credibility determinations should be provided great deference by reviewing courts.); **Commonwealth v. Basemore**, 560 Pa. 258, 293-94, 744 A.2d 717, 737 (2000) (offering that particularized assessment of the credibility of testimony is essential to resolution of ineffectiveness claims and that such assessment "is most appropriately accomplished, in the first instance, by the finder of fact").

I accept trial counsel's recollection of events, and find that Petitioner's testimony lacks credibility. Absent Petitioner's own self-serving testimony, Petitioner has presented no evidence that trial counsel interfered with his right to knowingly, intelligently and voluntarily plead guilty, or provided unreasonable advice in that regard. Petitioner simply has not met his burden of proving there is a reasonable probability

that, but for counsel's action or inaction, he would not have pled guilty and would have gone to trial.

IV. Conclusion

For the reasons set forth above, Angelo Echevarria's petition for post conviction collateral relief must be denied.

Accordingly, I enter the following: