

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

ANTHONY E. PROCTOR

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1524 WDA 2012

Appeal from the PCRA Order August 27, 2012
In the Court of Common Pleas of Erie County
Criminal Division at No(s): CP-25-CR-0000862-2010

BEFORE: GANTMAN, J., OTT, J., and FITZGERALD, J.*

MEMORANDUM BY OTT, J.:

FILED: May 22, 2013

Anthony E. Proctor appeals *pro se*¹ from the order entered on August 27, 2012,² in the Court of Common Pleas of Erie County, denying, without a

* Former Justice specially assigned to the Superior Court.

¹ Appointed counsel filed a no-merit letter, pursuant to ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988) and ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1988) (*en banc*), and a petition for leave to withdraw as counsel. On July 24, 2012, the PCRA court issued notice of its intent to dismiss Proctor's PCRA petition without a hearing, pursuant to Pa.R.Crim.P. 907(1), and, as well, granted counsel's request for leave to withdraw from representation. **See** Notice of Intent to Dismiss, 7/24/2012.

² Proctor's notice of appeal, mailed from prison on September 17, 2012, erroneously stated the appeal was taken from "the Order entered in this matter on the 13[th] day of September, 2012." Notice of Appeal, 9/19/2012. After receiving correspondence from the Clerk of Courts, advising that the notice of appeal was missing information and that no order had been entered on September 13, 2012, Proctor, on September 26, 2012, mailed a second notice of appeal, stating that the appeal was taken from the
(Footnote Continued Next Page)

hearing, his first petition filed pursuant to the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541–9546, without an evidentiary hearing. Based upon the following, we affirm.

The parties are well acquainted with the facts and procedural history of this case, which the PCRA Court has aptly summarized in its Pa.R.A.P. 1925(a) opinion. **See** PCRA Opinion, 7/24/2012, at 1–4. Therefore, we simply state that Proctor was convicted by a jury of simple assault and recklessly endangering another person,³ and was sentenced to serve a term of imprisonment of 12 to 24 months, consecutive to the sentence he was currently serving. In this appeal, Proctor contends the court erred in denying him relief on the first and fourth issues raised in his PCRA petition, namely: whether trial counsel was ineffective for (1) failing to secure a court stenographer for the preliminary hearing, and (2) abandoning Proctor after Proctor refused to sign a Pa.R.Crim.P. 600 waiver. **See** Proctor’s Brief at 2.

The PCRA Court rejected these two claims as follows:

[Proctor] claims that counsel was ineffective for failing to have the preliminary hearing transcribed. According to [Proctor], he was deprived from using the victim’s preliminary hearing testimony in a suppression motion and at trial. He further alleges

(Footnote Continued) _____

order entered “August 27, 2010[sic], den[y]ing PCRA relief,” Notice of Appeal, 10/1/2012. We are satisfied that Proctor timely appealed the PCRA court’s order of August 27, 2012.

³ 18 Pa.C.S. §§ 2701(a)(1) and 2705, respectively.

that counsel goaded him into a guilty plea by making [Proctor] feel helpless.

At the time of the preliminary hearing, counsel secured a favorable plea agreement for a misdemeanor charge (which [Proctor] agreed to) and, therefore, had a reasonable basis for not securing a court stenographer for the hearing. Motion to Withdraw, 07/12/10, at ¶5. However, due to [Proctor's] outburst, the plea agreement was terminated by the Commonwealth. *Id.* Therefore, counsel had a reasonable basis for not securing a court stenographer for the preliminary hearing. Moreover, [Proctor] has failed to show prejudice, i.e., a reasonable probability of the outcome of trial would have been different had the preliminary hearing been transcribed. Accordingly, this Court finds that [Proctor] has failed to satisfy the second and third prongs of the *Strickland [v. Washington]*, 466 U.S. 668 (1984) test [for ineffectiveness of counsel claims].

[Proctor] claims that defense counsel abandoned him after he refused to sign a Rule 600 waiver. [Proctor] also claims the Court and Commonwealth covered up counsel's "abandonment" and forced him to proceed *pro se*.

On July 12, 2010, defense counsel visited [Proctor] in the Erie County Prison and asked him to sign a Rule 600 waiver. [Proctor] refused and expressed that he no longer wanted counsel to represent him. Motion to Withdraw, 07/12/10, at ¶4. Moreover, [Proctor's] outburst during the meeting required defense counsel to be immediately escorted by correction officers from the prison interview room. *Id.* In response, defense counsel appropriately filed a withdrawal motion, which was granted on July [13], 2010.

On July 15, 2010, Judge Dunlavey strenuously encouraged [Proctor] to apply for a public defender or obtain counsel. N.T. Pro Se Colloquy, 07/15/10, at 4-9, 14.³

³ In fact, Judge Dunlavey subsequently contacted the Erie County Public Defender's Office and directed that they

contact [Proctor] to discuss representation. N.T. Pro Se Colloquy, 08/19/10, at 3.

After explaining the nature/elements of the charges, the possible ranges of sentence, the implication of his conviction, and the downside of proceeding pro se, [Proctor] was permitted to proceed pro se.

Based [on] the above, this Court finds this claim meritless. It was [Proctor's] voluntary choice to proceed *pro se* after he expressed his unwillingness to cooperate with defense counsel or any other attorney.

PCRA Court Opinion, *supra*, at 6, 8–9.

Having carefully reviewed the record, and mindful of our standard of review,⁴ we conclude that the PCRA court has properly disposed of the issues

⁴ Our standard of review is well-settled:

Our standard of review of a PCRA court's dismissal of a PCRA petition is limited to examining whether the PCRA court's determination is supported by the evidence of record and 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.

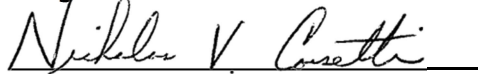
In order to prevail on a claim of ineffective assistance of counsel, an appellant must show three things: that the underlying claim has arguable merit, that counsel's performance was not reasonably designed to effectuate the defendant's interests, and that counsel's unreasonable performance prejudiced the defendant. A defendant is required to show actual prejudice; that is, that counsel's ineffectiveness was of such magnitude that it could have reasonably had an adverse effect on the outcome of the proceedings.

Commonwealth v. Sampson, 900 A.2d 887, 890 (Pa. Super. 2006), *appeal denied*, 907 A.2d 1102 (Pa. 2006) (quotations and citations omitted).

raised in this appeal. Therefore, we affirm on the basis of the court's sound rationale set forth above.

Order affirmed.

Judgment Entered.

A handwritten signature in cursive script, reading "Nicholas V. Casatti", is written over a horizontal line.

Deputy Prothonotary

Date: 5/22/2013