

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

PEDRO JONES

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1443 MDA 2012

Appeal from the PCRA Order July 25, 2012  
In the Court of Common Pleas of Dauphin County  
Criminal Division at No(s): CP-22-CR-0003127-2008

BEFORE: SHOGAN, J., MUNDY, J., and COLVILLE, J.\*

MEMORANDUM BY MUNDY, J.:

**FILED MAY 24, 2013**

Appellant, Pedro Jones, appeals *pro se* from the July 25, 2012 order dismissing his petition filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546. After careful review, we affirm.

The PCRA court set forth the relevant factual history as follows.

On September 23, 2009, a jury found [Appellant] guilty of robbery and not guilty of criminal conspiracy for his role in the robbery at gunpoint of the victim, Cody Myers, [in] March 2008. The victim testified that he passed [Appellant] as they both walked on the sidewalk in a Harrisburg neighborhood, causing the victim to feel uneasy. Soon after, a minivan slowed very close to where the victim walked. The evidence at trial showed that [Appellant] was a passenger in a van driven by a Javon Persad. As Persad slowed the vehicle next to

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\* Retired Senior Judge assigned to the Superior Court.

the victim, [Appellant] rolled down the passenger side window, asked the victim for a cigarette. Persad then stopped, exited the vehicle, and walked around to the victim. Persad pointed a gun to the victim's face, and demanded that he hand over everything. The victim handed over his cell phone and wallet. Persad returned to the vehicle and gave the wallet to [Appellant], who then asked a third person in the vehicle if he wanted a cell phone. Based upon the victim's call, Harrisburg Police identified and located the vehicle. Police found the vehicle abandoned, with the gun under the seat. Police later apprehended [Appellant]. The victim readily identified [Appellant] from a photographic array as the person he passed on the sidewalk, and the person in the passenger seat of the minivan who asked him for a cigarette.

On October 13, 2009, the [trial] court sentenced [Appellant] to a term of incarceration of 5 ½ to 11 years. [Appellant]'s trial counsel filed a post-sentence motion on October 22, 2009. [Appellant] appealed on March 16, 2010, from the denial of post sentence motion by operation of law.<sup>1</sup>

On appeal, although [Appellant] styled his challenge to the verdict as against the weight of the evidence the Superior Court found the challenge to actually implicate a challenge to the sufficiency of the evidence. [**Commonwealth v. Jones**, 23 A.3d 571 (Pa. Super. 2010) (unpublished memorandum).] The Superior Court found the sufficiency challenge inadequately presented and developed, and therefore waived. **Id.** Further, while the Superior Court also found that [Appellant] technically waived the challenge to the weight of the evidence for failure to cite to the record, it nevertheless reviewed the claim, and held that the trial court properly exercised its discretion in denial of the post trial motion in that the verdict was not shocking. [**Id.** at 3-4].

<sup>1</sup> During the pendency of direct appeal, [Appellant] filed a *pro se* PCRA petition which [the trial court] dismissed as premature.

PCRA Court Opinion, 6/29/12, 1-2.<sup>1</sup>

On June 20, 2011, Appellant filed a timely *pro se* PCRA petition asserting trial counsel was ineffective, and again asserting that he was entitled to relief based upon his claim that the evidence was insufficient to prove he robbed the victim. On January 10, 2012, Jennifer Tobias, Esquire (Attorney Tobias) was appointed to represent Appellant. Thereafter, on March 26, 2012, Attorney Tobias filed a motion to withdraw along with a no-merit letter in accordance with ***Turner/Finley***.<sup>2</sup> On June 29, 2012, the PCRA court granted Attorney Tobias' petition to withdraw. Additionally, on the same date, the PCRA court issued its notice of its intent to dismiss Appellant's petition within 20 days pursuant to Pa.R.Crim.P. 907(1). Appellant filed several *pro se* responses on July 3, July 11, and July 23, 2012. Nevertheless, after a review of each of Appellant's *pro se* responses, the PCRA court determined that the "filings fail to raise any issues which require [the PCRA court] to reconsider the intent to dismiss PCRA." PCRA

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<sup>1</sup> The PCRA court opinion does not contain pagination. As such, for the purposes of our discussion, we have elected to assign each of these pages a corresponding page number.

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

Court Order, 7/25/12. Accordingly, on July 25, 2012, the PCRA court dismissed Appellant's PCRA petition. This timely *pro se* appeal followed.<sup>3</sup>

On appeal, Appellant raises the following issues for our review.

1. Was the evidence submitted at trial sufficient[?]
2. [T]he evidence was not sufficient to the verdict of robbery in any element of robbery.
3. Judge Todd A. Hoover instruction to the jury if you the jury found the defendant not guilty of conspiracy of robbery you the jury can't find the defendant guilty of robbery because I sentence someone for the robbery and you the jury can only charge the defendant with conspiracy of robbery because someone was charge with the robbery and that was the accomplice Javon Persad.
4. Once the jury verdict came back not guilty of conspiracy of robbery[] the defendant was acquitted of robbery.

Appellant's Brief at 5.<sup>4, 5</sup>

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<sup>3</sup> The PCRA court did not order Appellant to file a concise statement of errors complained of on appeal in accordance with Pa.R.A.P. 1925(b). Also, in its Rule 1925(a) opinion, the trial court adopted its July 25, 2012 order and opinion dismissing Appellant's PCRA petition.

<sup>4</sup> Appellant's Brief also fails to contain pagination. As such we have assigned corresponding page numbers for ease of review.

<sup>5</sup> Additionally, we note that Appellant has filed a reply brief styled as an amended brief entitled "Amand Brief pro-se[.]" However, absent leave of this Court, which Appellant did not seek, an appellant cannot amend an appellate brief. **See** Pa.R.A.P. 2113(c). Accordingly, Appellant's *pro-se* brief is a reply brief, and therefore as the official note to Rule 2113 explains, "[t]he scope of the reply brief is limited, however, in that such brief may only address matters raised by appellee and not previously addressed in (Footnote Continued Next Page)

"Our review of a PCRA court's decision is limited to examining whether the PCRA court's findings of fact are supported by the record, and whether its conclusions of law are free from legal error." **Commonwealth v. Koehler**, 36 A.3d 121, 131 (Pa. 2012) (citation omitted). "[Our] scope of review is limited to the findings of the PCRA court and the evidence of record, viewed in the light most favorable to the prevailing party at the PCRA court level." **Id.** "The PCRA court's credibility determinations, when supported by the record, are binding on this Court." **Commonwealth v. Spatz**, 18 A.3d 244, 259 (Pa. 2011) (citation omitted). "However, this Court applies a *de novo* standard of review to the PCRA court's legal conclusions." **Id.** In order to be eligible for PCRA relief, a petitioner must plead and prove by a preponderance of the evidence that his conviction or sentence arose from one or more of the errors listed at 42 Pa.C.S.A. § 9543(a)(2). These issues must be neither previously litigated nor waived. 42 Pa.C.S.A. § 9543(a)(3). Specifically, section 9543 sets forth the following issues cognizable under the PCRA.

### **§ 9543. Eligibility for relief**

**(a) General rule.**--To be eligible for relief under this subchapter, the petitioner must plead and prove

(Footnote Continued) \_\_\_\_\_

appellant's brief." Therefore, despite Appellant's attempt to cure the defects of his first brief by adding an ineffective assistance of counsel claim, we cannot address said issue as it raises a new issue and is outside the scope of the Commonwealth's brief.

by a preponderance of the evidence all of the following:

...

(2) That the conviction or sentence resulted from one or more of the following:

(i) A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

(ii) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

(iii) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.

(iv) The improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.

(v) Deleted.

(vi) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.

(vii) The imposition of a sentence greater than the lawful maximum.

(viii) A proceeding in a tribunal without jurisdiction.

(3) That the allegation of error has not been previously litigated or waived.

42 Pa.C.S.A. § 9543.

Instantly, Appellant challenges the sufficiency of the evidence and the trial court's instructions to the jury, neither of which are cognizable claims under the PCRA. **See id.** Further, Appellant already raised a challenge to the sufficiency of the evidence on direct appeal. It is well established that an appellant cannot raise a claim that has "been previously litigated in his prior direct appeal to this court." **Commonwealth v. Hutchins**, 760 A.2d 50, 55 (Pa. Super. 2000).

A claim previously litigated in a direct appeal is not cognizable under the PCRA. 42 Pa.C.S.A. § 9544(a)(2); **Commonwealth v. Chester**, 557 Pa. 358, 379–380, 733 A.2d 1242, 1253 (1999). **Commonwealth v. Miller**, 560 Pa. 500, 512, 746 A.2d 592, 598 (2000). The mere fact that [an a]ppellant is now advancing new arguments in support of these previously litigated issues is of no avail. A PCRA Petitioner cannot obtain PCRA review of previously litigated claims decided adversely to him in his direct appeal simply by presenting those claims again in a PCRA Petition and setting forth new theories of relief in support thereof. **Commonwealth v. Morales**, 549 Pa. 400, 410, 701 A.2d 516, 521 (1997). "The purpose of the PCRA is not to provide a defendant with a means of relitigating the merits of issues long since decided on direct appeal." **Commonwealth v. Henry**, 550 Pa. 346, 365, 706 A.2d 313, 322 (1997), quoting **Commonwealth v. Buehl**, 540 Pa. 493, 500, 658 A.2d 771, 775 (1995).

**Id.** Additionally, to the extent Appellant's issues differ from those he raised on direct appeal, specifically his challenge to a trial court's jury instructions, the issue is waived for failure to raise it on direct appeal. **See Commonwealth v. Bond**, 819 A.2d 33, 39 (Pa. 2002) (issues are waived under PCRA if appellant could have presented them on direct appeal but failed to do so); 42 Pa.C.S. § 9544(b) (stating, "an issue is waived if the petitioner could have raised it but failed to do so before trial, at trial, during unitary review, on appeal or in a prior state post-conviction proceeding[]").

Finally, we note that Appellant's brief contains no citations to the record or law in support of any of his assertions. On this basis alone we could have found waiver. Generally, parties to an appeal are required to submit briefs in conformity, in all material respects, with the requirements of the Pennsylvania Rules of Appellate Procedure, as nearly as the circumstances of the particular case will allow. **See** Pa.R.A.P. 2101, **Conformance with Requirements**. Rules 2114 through 2119 specify the material to be included in briefs on appeal. **See** Pa.R.A.P. 2114-2119.

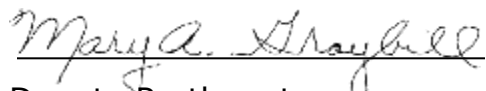
In the instant matter, Appellant's brief is substantially noncompliant with the aforementioned rules, in particular Rule 2119. **See** Pa.R.A.P. 2119, **Argument**. Appellant's argument section consists of a single paragraph wherein Appellant cites neither the record nor any legal authority in support of his averments. **See** Appellant's Brief at 8. Although we are willing to liberally construe materials filed by a *pro se* litigant, *pro se* status confers no

special benefit upon an appellant. ***In re Ullman***, 995 A.2d 1207, 1212 (Pa. Super. 2010), *appeal denied*, 20 A.3d 489 (Pa. 2011). “To the contrary, any person choosing to represent himself in a legal proceeding must, to a reasonable extent, assume that his lack of expertise and legal training will be his undoing.” ***Id.*** (citation omitted). “This Court will not act as counsel and will not develop arguments on behalf of an appellant.” ***Commonwealth v. Kane***, 10 A.3d 327, 331 (Pa. Super. 2010) (citation omitted), *appeal denied*, 29 A.3d 796 (Pa. 2011).

Based on the foregoing, we conclude the PCRA court properly dismissed Appellant’s PCRA petition. Accordingly, we affirm the PCRA court’s July 25, 2012 order.

Order affirmed.

Judgment Entered.

  
Deputy Prothonotary

Date: 5/24/2013