

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

CHRISTOPHER NICHOLAS BAILEY

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 583 WDA 2014

Appeal from the PCRA Order March 14, 2014
In the Court of Common Pleas of Beaver County
Criminal Division at No(s): CP-04-CR-0002114-2010

BEFORE: GANTMAN, P.J., BENDER, P.J.E., and LAZARUS, J.

MEMORANDUM BY GANTMAN, P.J.:

FILED OCTOBER 24, 2014

Appellant, Christopher Nicholas Bailey, appeals from the order entered in the Beaver County Court of Common Pleas, which denied his first petition brought pursuant to the Post Conviction Relief Act ("PCRA") at 42 Pa.C.S.A. §§ 9541-9546. We affirm.

In its opinion, the PCRA court fully and correctly set forth the relevant facts and procedural history of this case. Therefore, we have no reason to restate them. We add only that Appellant timely filed a notice of appeal on April 8, 2014, from the court's denial of PCRA relief. The court did not order Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b), and Appellant filed none.

Appellant raises two issues for our review:

WHETHER PRIOR PLEA COUNSEL WAS INEFFECTIVE WHEN PRIOR PLEA COUNSEL ADVISED [APPELLANT] INCORRECTLY REGARDING THE POSSIBLE SENTENCE THAT WOULD BE IMPOSED FOLLOWING AN OPEN PLEA.

WHETHER THERE WAS ACTUAL PREJUDICE TO [APPELLANT] WHEN PRIOR PLEA COUNSEL INACCURATELY ADVISED [APPELLANT] REGARDING THE POSSIBLE [SENTENCE TO BE] IMPOSED.

(Appellant's Brief at 7).

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 (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 record contains any support for those findings. ***Commonwealth v. Boyd***, 923 A.2d 513 (Pa.Super. 2007), *appeal denied*, 593 Pa. 754, 932 A.2d 74 (2007). If the record supports a post-conviction court's credibility determination, it is binding on the appellate court. ***Commonwealth v. Dennis***, 609 Pa. 442, 17 A.3d 297 (2011).

After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable Harry E. Knafelc, we conclude Appellant's issues merit no relief. The PCRA court opinion comprehensively discusses and properly disposes of the questions presented. (**See** PCRA Court Opinion, filed March 17, 2014, at 2-11) (finding: plea counsel presented to Appellant Commonwealth's offer of

twenty to forty years' imprisonment in exchange for Appellant's guilty plea to third-degree murder and aggravated assault; Appellant rejected negotiated plea, believing judge liked him and court would impose only ten to twenty year sentence if Appellant entered open guilty plea; plea counsel testified he explained to Appellant ramifications of pleading guilty and consequences of entering open plea; Appellant understood counsel's explanations; counsel testified he urged Appellant to accept Commonwealth's negotiated plea offer instead of entering open plea, as counsel believed Commonwealth would seek maximum sentence of thirty to sixty years' imprisonment if Appellant entered open plea; plea counsel did not promise Appellant ten to twenty year sentence in exchange for pleading guilty; counsel's testimony is credible; court conducted thorough plea colloquy, and Appellant signed written plea colloquy confirming his plea was knowing and voluntary; Appellant's claim that counsel unlawfully induced his guilty plea is baseless).¹ Accordingly, we affirm on the basis of the PCRA court's opinion.

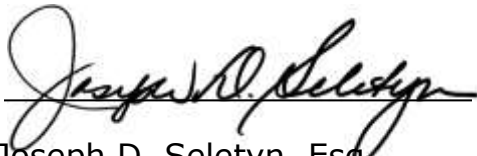
¹ We are mindful of the United States Supreme Court's decision in ***Alleyne v. United States***, ___ U.S. ___, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013), in which the Court expressly held that any fact increasing the mandatory minimum sentence for a crime is considered an element of the crime to be submitted to the fact-finder and found beyond a reasonable doubt. ***Id.*** Recently, in ***Commonwealth v. Newman***, ___ A.3d ___, 2014 PA Super 178 (filed Aug. 20, 2014), an *en banc* panel of this Court made clear, *inter alia*, that ***Alleyne*** has only limited retroactivity; in other words, ***Alleyne*** applies to criminal cases still pending on direct review. ***Id.*** at *2. Here, (*Footnote Continued Next Page*)

Order affirmed.

Judge Lazarus joins this memorandum.

President Judge Emeritus Bender concurs in the result.

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn". The signature is written in a cursive style and is positioned above a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 10/24/2014

(Footnote Continued) _____

Appellant's appeal arises from the denial of a PCRA petition. Under these circumstances, **Alleyn** is unavailable.