NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
RICHARD N. MCNEIL	:	
Appellant	:	No. 3625 EDA 2016

Appeal from the PCRA Order October 28, 2016
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0002553-2014,
CP-51-CR-0003943-2014

BEFORE: OLSON, J., OTT, J., and MUSMANNO, J.

MEMORANDUM BY OTT, J.: **FILED MARCH 15, 2018**

Richard N. McNeil appeals from the order entered October 28, 2016, in the Philadelphia County Court of Common Pleas dismissing his first petition for collateral relief filed pursuant to the Post Conviction Relief Act ("PCRA").[1] McNeil seeks relief from the judgment of sentence of an aggregate term of five and one-half to 12 years' imprisonment, followed by five years' probation, after he entered a guilty plea in two separate cases to charges of, *inter alia*, aggravated assault, robbery, and persons not to possess firearms.[2] Contemporaneous with this appeal, counsel for McNeil has filed a petition to

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[1] ***See*** 42 Pa.C.S. §§ 9541-9546.

[2] ***See*** 18 Pa.C.S. §§ 2702(a)(1), 3701(a)(1)(ii), and 6105(a)(1), respectively.

withdraw, and accompanying ***Turner***/***Finley***[3] "no-merit" letter. The "no merit" letter sets forth four issues for review, asserting the PCRA court's error in failing to conduct an evidentiary hearing, the ineffectiveness of plea counsel for coercing McNeil into entering a guilty plea and refusing to provide him with discovery, and the ineffectiveness of prior PCRA counsel in neglecting to interview purported alibi witnesses. McNeil also filed a *pro se* response to counsel's "no merit" letter asserting the following two additional claims: (1) his guilty plea was entered unknowingly because the trial court erroneously advised him he was facing a sentence of 25 years to life imprisonment under the three strikes law,[4] and (2) plea counsel was ineffective for failing to advise him of his right to appeal the denial of his motion to withdraw his guilty plea. For the reasons below, we grant counsel's petition to withdraw and affirm the order denying PCRA relief.

The facts underlying McNeil's guilty pleas are recounted by the PCRA court as follows:

> [W]ith regard to [Docket] No. [2553-2014], on December 15, 2013, at approximately 1:30 p.m., the complaining witness, Tanisha Burch, was walking on Girard Avenue between Broad and Carlisle Streets, when [McNeil] drove up in a van, exited the vehicle, and ordered her to get in the van. [McNeil] lifted his shirt to display the handle of a firearm. When Ms. Burch attempted to flee, [McNeil] pursued her. [McNeil] caught up to her, and struck

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[3] ***See Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988), and ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1988) (*en banc*).

[4] ***See*** 42 Pa.C.S. § 9714.

> her in the face with the gun. Ms. Burch shouted to attract attention, and at that point, [McNeil] left the area.
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> With regard to [Docket] No. [3943-2014], on January 24, 2014, at approximately 8:50 p.m., the complaining witness, Tywanda Auld, was walking in the area of 8th and Arch Streets, when she encountered [McNeil]. She and [McNeil] were old acquaintances, and they engaged in a brief conversation. When Ms. Auld started to leave, [McNeil] produced a firearm and pressed it against her side. He then stated, "I'm sorry, it's hard times." [McNeil] removed Ms. Auld's handbag from her shoulder and fled the scene. The bag and its contents had an approximate value of $600.[3]
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> [3] Based on a prior felony burglary conviction, [McNeil] was ineligible to possess a firearm at the time of the above assaults.

PCRA Court Opinion, 5/22/2017, at 2-3 (record citations omitted).

At Docket No. 2553-2014, McNeil was charged with aggravated assault (two counts), criminal conspiracy, attempted kidnapping, violations of the Uniform Firearms Act (three counts), unlawful restraint, possessing an instrument of crime, simple assault, false imprisonment and recklessly endangering another person ("REAP").[5] He was charged at Docket No. 3943-2014, with robbery, violations of the Uniform Firearms Act (three counts), theft, receiving stolen property, possessing and instrument of crime, and REAP.[6] On August 22, 2014, McNeil filed a notice of alibi defense at Docket

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[5] ***See*** 18 Pa.C.S. §§ 2702(a)(1) and (a)(4), 903, 901(a), 6105(a)(1), 6106(a)(1), 6108, 2902(a)(1), 907, 2701, 2903(a), and 2705, respectively.

[6] ***See*** 18 Pa.C.S. §§ 3701(a)(1)(ii), 6105(a)(1), 6106(a)(1), 6108, 3921, 3925(a), 907(a), and 2705, respectively.

No. 2253-2014, and listed six potential alibi witnesses for the December 2013 incident.

Nevertheless, on February 9, 2015, McNeil entered a negotiated guilty plea at both dockets. At Docket No. 2253-2014, he pled guilty to one count each of aggravated assault, unlawful restraint, and persons not to possess firearms. At Docket No. 3943-2014, he entered a guilty plea to charges of robbery and persons not to possess firearms. In exchange for the plea, the Commonwealth withdrew the remaining charges, and agreed to an aggregate sentence of five and one-half to 12 years' imprisonment, followed by five years' probation.[7] On February 18, 2015, McNeil filed a motion to withdraw his plea, which the court denied by order entered March 20, 2015. No direct appeal was filed.

On August 12, 2015, McNeil filed a timely, *pro se* PCRA petition. He filed a second, virtually identical petition on February 5, 2016. Thereafter, PCRA counsel was appointed, who filed a ***Turner***/***Finley*** "no merit" letter and

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[7] Specifically, the court imposed two concurrent terms of five and one-half to 12 years' imprisonment on the convictions of aggravated assault and robbery, and two concurrent periods of five years' probation on the charges of persons not to possess a firearm. No further punishment was imposed on the unlawful restraint claim.

It merits emphasis that the sentences imposed all fell below the standard range of the sentencing guidelines. ***See*** N.T., 2/9/2015, at 24-25. Further, although both the assault and robbery convictions constituted second crimes of violence pursuant to the three strikes law, ***see*** 42 Pa.C.S. § 9714(a)(1), pursuant to the plea agreement, the Commonwealth did not seek the imposition of 10-to-20 year mandatory minimum sentences for those convictions.

petition to withdraw on August 17, 2016. McNeil submitted a *pro se* letter in response. Nonetheless, the PCRA court entered an order on September 26, 2016, dismissing McNeil's petition without first conducting an evidentiary hearing. Although the order indicated the court had previously sent McNeil Pa.R.Crim.P. 907 notice of its intent to dismiss the petition, no such notice appears on the docket or is included in the certified record. ***See*** Order, 9/26/2016.

Subsequently, on September 27, 2016, McNeil filed a *pro se* objection to counsel's "no merit" letter and the court's purported Rule 907 notice, asserting PCRA counsel was ineffective for failing to interview his alleged alibi witnesses. On October 28, 2016, after a brief hearing with counsel,[8] the PCRA court entered an order formally dismissing the petition, and granting counsel permission to withdraw.[9] This timely appeal followed.[10]

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[8] During the hearing, the court discussed McNeil's *pro se* response to the "no merit" letter, and request for new counsel. ***See*** N.T., 10/28/2015, at 1-10.

[9] As noted above, the record does not reflect the PCRA court provided McNeil with the requisite 20-day notice of its intent to dismiss the petition without first conducting an evidentiary hearing pursuant to Rule 907(1). Although this notice is mandatory, McNeil has not raised this claim on appeal, and therefore, he has "waived any defect in notice." ***Commonwealth v. Zeigler***, 148 A.3d 849, 852 n.2 (Pa. Super. 2016). Moreover, the PCRA court did provide McNeil with the opportunity to respond to the dismissal of his petition, and did not enter a final order until October 28, 2016. Accordingly, McNeil was not prejudiced by the procedural misstep.

[10] Present counsel was appointed on November 28, 2016, to represent McNeil on appeal. On February, 22, 2017, counsel filed a concise statement of errors complained of on appeal, pursuant to Pa.R.A.P. 1925(b), in which he indicated

Prior to addressing the merits of this appeal, we must first consider whether counsel has fulfilled the procedural requirements for withdrawal. "Where counsel seeks to withdraw on appeal from the denial of PCRA relief, a ***Turner***/***Finley*** 'no-merit letter' is the appropriate filing." ***Commonwealth v. Reed***, 107 A.3d 137, 139 n.5 (Pa. Super. 2014). Pursuant to ***Turner***/***Finley*** and their progeny:

> Counsel petitioning to withdraw from PCRA representation must … review the case zealously. ***Turner***/***Finley*** counsel must then submit a "no-merit" letter to the trial court, or brief on appeal to this Court, detailing the nature and extent of counsel's diligent review of the case, listing the issues which petitioner wants to have reviewed, explaining why and how those issues lack merit, and requesting permission to withdraw. Counsel must also send to the petitioner: (1) a copy of the "no merit" letter/brief; (2) a copy of counsel's petition to withdraw; and (3) a statement advising petitioner of the right to proceed *pro se* or by new counsel.
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> [W]here counsel submits a petition and no-merit letter that … satisfy the technical demands of ***Turner***/***Finley***, the court — trial court or this Court — must then conduct its own review of the merits of the case. If the court agrees with counsel that the claims are without merit, the court will permit counsel to withdraw and deny relief.

Commonwealth v. Doty, 48 A.3d 451, 454 (Pa. Super. 2012) (citation omitted).

Here, counsel has complied with the procedural aspects of ***Turner***/***Finley***. Furthermore, counsel provided McNeil with a copy of the "no

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he intended to file a "no merit" letter, but also listed the issues he planned to address in the "no merit" letter. ***See*** Pa.R.A.P. 1925(b) Statement, 2/22/2017.

merit" letter and the petition to withdraw, and advised McNeil of his right to proceed *pro se* or with private counsel. ***See*** Motion Seeking Permission to Withdraw, 6/7/2017, Exhibit 1. Moreover, McNeil filed a *pro s*e response to the request to withdraw, in which he raised two additional claims. ***See*** Appellant's Response to Counsel's Motion to Withdraw, 6/28/2017, at 2. Therefore, we proceed to a consideration of whether the PCRA court erred in dismissing the petition. ***See Doty***, ***supra***.

"In reviewing the denial of PCRA relief, we examine whether the PCRA court's determination is supported by the record and free of legal error." ***Commonwealth v. Mitchell***, 141 A.3d 1277, 1283–1284 (Pa. 2016) (internal punctuation and citation omitted). Further, a PCRA court may dismiss a petition "without an evidentiary hearing if there are no genuine issues of material fact and the petitioner is not entitled to relief." ***Id.*** (citations omitted).

With regard to a claim alleging prior counsel's ineffectiveness, we are guided by the following:

> The law presumes counsel has rendered effective assistance. ***Commonwealth v. Rivera,*** 10 A.3d 1276, 1279 (Pa. Super. 2010). The burden of demonstrating ineffectiveness rests on Appellant. ***Id.*** To satisfy this burden, Appellant must plead and prove by a preponderance of the evidence that: "(1) his underlying claim is of arguable merit; (2) the particular course of conduct pursued by counsel did not have some reasonable basis designed to effectuate his interests; and, (3) but for counsel's ineffectiveness, there is a reasonable probability that the outcome of the challenged proceeding would have been different." ***Commonwealth v. Fulton***, 574 Pa. 282, 830 A.2d 567, 572 (2003). Failure to satisfy any prong of the test will result in

> rejection of the appellant's ineffective assistance of counsel claim. ***Commonwealth v. Jones***, 571 Pa. 112, 811 A.2d 994, 1002 (2002).

Commonwealth v. Smith, 167 A.3d 782, 787–788 (Pa. Super. 2017).

Counsel's "no merit" letter addresses four potential issues for appeal. First, it asserts the PCRA court abused its discretion when it failed to provide McNeil with an evidentiary hearing on his claim that plea counsel was ineffective for failing to present alibi witnesses. ***See*** "No Merit" Letter, at 4-9. Second, it contends plea counsel coerced McNeil into entering an involuntary guilty plea. ***See*** id. at 9-11. Third, the "no merit" letter sets forth a claim that plea counsel was ineffective for failing to provide McNeil with discovery materials. ***See id.*** at 11-14. Lastly, it addresses the assertion that prior PCRA counsel was ineffective for failing to speak with McNeil's purported alibi witnesses. ***See id.*** at 14-16.

Upon our review of the record, the "no merit" letter, and the pertinent statutory and case law, we find the PCRA court thoroughly addressed and properly disposed of the issues addressed in the "no merit" letter in its May 22, 2017, opinion. ***See*** PCRA Court Opinion, 5/22/2017, at 3-11 (finding (1) plea counsel was aware of McNeil's potential alibi witnesses, and had, in fact, filed a notice of alibi defense and subpoenaed witnesses for McNeil's trial;[11] (2) nevertheless, McNeil decided to enter a guilty plea and acknowledged in

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[11] PCRA Court Opinion, 5/22/2017, at 10-11.

both his written and oral plea colloquies that by pleading guilty, he "*specifically* gave up the right to present a defense and/or call witnesses[;]"[12] (3) the record "unequivocally demonstrates [McNeil's] decision to plead guilty was knowingly, intelligently and voluntarily made[;]"[13] and McNeil waived his claim that counsel did not provide him with "discovery material" when he opted to enter a guilty plea).[14] Accordingly, we rest on the PCRA court's well-reasoned bases.[15]

As noted *supra*, McNeil filed a *pro se* response to counsel's request to withdraw, raising two additional claims: (1) whether his guilty plea was rendered unknowing when the trial court erroneously advised him that he faced a possible sentence of 25 years to life imprisonment under the three strikes law; and (2) whether both the trial court and plea counsel failed to advise him of his right to appeal the trial court's denial of his motion to

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[12] ***Id.*** at 10, *citing* N.T. 2/9/2015, at 17; Written Guilty Pleas Colloquies, 2/9/2015, at 2.

[13] ***Id.*** at 6.

[14] ***Id.*** at 10.

[15] With regard to the assertion that PCRA counsel was ineffective for failing to contact potential alibi witnesses, we add only that counsel explained during the October 28, 2016, hearing, that he did not believe he was required to do so when the record demonstrated McNeil entered a voluntary plea and specifically gave up his right to present a defense and/or call witnesses. ***See*** N.T., 10/28/2016, at 6-7. Indeed, unless PCRA counsel could demonstrate McNeil's plea was unknowing or involuntary, the availability and/or credibility of the purported alibi witnesses was a moot point.

withdraw his guilty plea. ***See*** Appellant's Response to Counsel's Motion to Withdraw, 6/28/2017, at 2. We conclude he is entitled to no relief.

First, with respect to McNeil's claim regarding the trial court's statement concerning the possible sentence he faced if he had proceeded to trial, we agree the court initially misspoke when it indicated McNeil could be sentenced to a term of 25 years to life imprisonment. ***See*** N.T., 2/9/2015, at 9. McNeil does not dispute that he had been convicted of a crime of violence prior to the cases *sub judice*. Therefore, his convictions of aggravated assault at Docket No. 2553-2014, and robbery at Docket No. 3943-2014, both constituted a "second strike" pursuant to 42 Pa.C.S. § 9714(a)(1), and each subjected him to a mandatory minimum sentence of 10 to 20 years' imprisonment. ***See Commonwealth v. Fields***, 107 A.3d 738, 744 (Pa. 2014) (holding that Section 9714(a)(1) … requires that a second-strike offender be sentenced to the prescribed minimum term of incarceration for each conviction of a crime of violence that is part of the second strike."). Neither conviction, however, could constitute a third strike because McNeil was convicted of and sentenced for both dockets the same day. As the Supreme Court explained in ***Commonwealth v. McClintic***, 909 A.2d 1241, 1252 (Pa. 2006), "each strike that serves as a predicate offense must be followed by sentencing and, by necessary implication, an opportunity for reform, before the offender commits the next strike."

Nonetheless, despite this brief misstatement, McNeil's written colloquies both correctly stated the maximum permissible sentences he faced for the

crimes to which he pled guilty. ***See*** Colloquy for Plea of Guilty, Docket No. 2553-2014, 2/9/2015 (noting maximum permissible sentence of 35 years); Colloquy for Plea of Guilty, docket No. 3943-2014, 2/9/2015 (noting maximum permissible sentence of 30 years). Moreover, during the oral colloquy, the attorney for the Commonwealth also correctly stated the maximum penalties that could be imposed for all the crimes charged if McNeil chose to proceed to trial,[16] and, prior to accepting the plea, the trial court informed McNeil "[t]he maximum penalty for both cases could be 65 years of incarceration[.]" N.T., 2/9/2015, at 18. Furthermore, during the sentencing portion of the hearing, the Commonwealth's attorney again repeated that McNeil was subject to a mandatory, "second strike," 10 to 20-year sentence on each docket. **Id.** at 24. At no time did McNeil state that he was unclear as to the maximum sentence he faced, or that he wanted to withdraw his plea. Therefore, we find he is entitled to no relief.

Next, McNeil claims neither the trial court, nor plea counsel, informed him that he had the right to appeal the trial court's denial of his motion to withdraw his plea. Again, we find his claim meritless.

Pennsylvania Rule of Criminal Procedure 704 sets forth the procedures a trial court must follow at sentencing, including*, inter alia*:

> (3) The judge shall determine on the record that the defendant has been advised of the following:

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[16] ***See*** N.T., 2/9/2015, at 7-8, 11-12.

> (a) of the right to file a post-sentence motion and to appeal, of the time within which the defendant must exercise those rights, and of the right to assistance of counsel in the preparation of the motion and appeal[.]

Pa.R.Crim.P. 704(C)(3)(a).

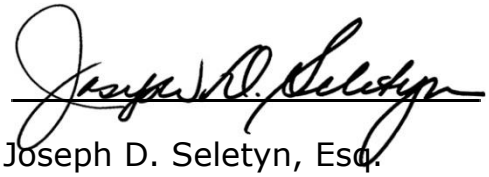
Our review of the guilty plea/sentencing transcript reveals that, at the conclusion of the hearing, McNeil's counsel properly informed him that he had 10 days to file a motion to withdraw his plea or seek reconsideration of his sentence, and 30 days to file an appeal. ***See*** N.T., 2/9/2015, at 30. Counsel also explained McNeil had to inform her in writing if he wanted to "exercise those rights," and that she would continue to represent him if he did so. ***Id.*** We find this notice sufficient to satisfy the requirements of Rule 704(C).

Moreover, we note counsel did, in fact, file a timely post-sentence motion, which was denied by the trial court. "However, before a court will find ineffectiveness of trial counsel for failing to file a direct appeal, [the defendant] must prove that he requested an appeal and that counsel disregarded this request." ***Commonwealth v. Harmon***, 738 A.2d 1023, 1024 (Pa. Super. 1999), *appeal denied*, 753 A.2d 815 (Pa. 2000). McNeil has made no such allegation here. Accordingly, no relief is warranted.

Therefore, we affirm the order on appeal dismissing McNeil's first PCRA petition. Further, because we agree with counsel's assessment that there are no meritorious issues for appeal, we grant counsel's motion to withdraw.

Order affirmed. Motion for leave to withdraw as counsel granted.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 3/15/18

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	CP-51-CR-0002553-2014
	:	CP-51-CR-0003943-2014
VS.	:	
	:	
	:	
RICHARD McNEIL	:	3625 EDA 2016

PCRA OPINION

SCHULMAN, S.I., J.

Richard McNeil ("Appellant") has appealed this Court's Order dismissing his petition under the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S. § 9541 et seq. This Court submits the following Opinion in accordance with the requirements of Pa.R.A.P. 1925, and for the reasons set forth herein, recommends that its Order be affirmed.

PROCEDURAL HISTORY

On February 9, 2015, Appellant appeared before this Court and entered negotiated guilty pleas to robbery, aggravated assault, unlawful restraint, and two (2) counts of persons not to possess firearms.[1] Following a thorough colloquy, this Court accepted Appellant's guilty pleas as knowingly, intelligently and voluntarily tendered. On the same date, this Court imposed the negotiated aggregate sentence of 5½ to 12 years' incarceration, with 5 years' probation.

On February 18, 2015, Appellant filed a post-sentence motion to withdraw his guilty pleas, which this Court denied following a hearing on March 20, 2015. Appellant did not pursue a direct appeal. On February 5, 2016, he timely filed the instant PCRA petition, pro se. PCRA

[1] See CP-51-CR-0002553-2014; CP-51-CR-0003943-2014.

counsel was appointed, and on August 17, 2016, he filed a Turner/Finley[2] letter, identifying Appellant's issues and setting forth his professional opinion that the issues raised by Appellant were without merit and there were no other meritorious issues to raise.

Upon independent review of the record, on September 26, 2016, this Court issued a Notice of Intent to Dismiss pursuant to Pa.R.Crim.P. 907. On October 28, 2016, this Court formally dismissed Appellant's PCRA petition, and granted counsel's request to withdraw -- with the proviso that counsel apprise Appellant of his appellate rights.

Appellant subsequently filed a timely notice of appeal. Appellate (current) counsel was appointed, and this Court ordered him to file a Concise Statement of Matters Complained of on Appeal in accord with Pa.R.A.P. 1925(b). Counsel for Appellant timely complied.

FACTUAL HISTORY

At Appellant's plea hearing, the Commonwealth presented the facts as though they would have been presented at trial. Specifically, with regard to No. 0002552, on December 15, 2013, at approximately 1:30 p.m., the complaining witness, Tanisha Burch, was walking on Girard Avenue between Broad and Carlisle Streets, when Appellant drove up in a van, exited the vehicle, and ordered her to get in the van. Appellant lifted his shirt to display the handle of a firearm. When Ms. Burch attempted to flee, Appellant pursued her. Appellant caught up to her, and struck her in the face with the gun. Ms. Burch shouted to attract attention, and at that point, Appellant left the area. (See N.T. 02/09/15, pp. 20-21).

With regard to No. 0003943, on January 24, 2014, at approximately 8:50 p.m., the complaining witness, Tywanda Auld, was walking in the area of 8th and Arch Streets, when she encountered Appellant. She and Appellant were old acquaintances, and they engaged in a brief

[2] Commonwealth v. Turner, 544 A.2d 927 (Pa. 1988); Commonwealth v. Finley, 550 A.2d 213 (Pa. Super. 1988) (en banc).

conversation. When Ms. Auld started to leave, Appellant produced a firearm and pressed it against her side. He then stated, "I'm sorry, it's hard times". Appellant removed Ms. Auld's handbag from her shoulder and fled the scene. The bag and its contents had an approximate value of $600. (See N.T. 02/09/15, pp. 21-22).[3]

After a thorough colloquy and recitation of the above facts, this Court accepted Appellant's negotiated guilty plea as knowingly, intelligently and voluntarily tendered. Prior to imposition of the negotiated sentence, Appellant thanked the Court for "explaining everything" to him and letting him serve a lenient sentence. (See N.T. 02/09/15, pp. 25-26).

ISSUES ON APPEAL

Appellant raises the following issues on appeal:

> 1. Whether "[t]he PCRA Court committed an abuse of discretion by denying appellant an evidentiary hearing and relief on his claim asserting that trial counsel was ineffective for not presenting alibi evidence[?]"
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> 2. Whether "Appellant entered his guilty pleas because trial counsel coerced him to do so[?]"
>
> 3. Whether "[t]rial counsel was ineffective for failing to provide appellant with discovery materials[?]"
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> 4. Whether "PCRA counsel's no-merit letter was defective because he did not speak to appellant's alibi witnesses[?]"

[3] Based on a prior felony burglary conviction, Appellant was ineligible to possess a firearm at the time of the above assaults. (See N.T. 02/09/15, p. 23).

DISCUSSION

1 & 2. Dismissal of Appellant's PCRA Petition

Appellant claims that the Court abused its discretion by not granting an evidentiary hearing on his claim of counsel ineffectiveness for failing to present alibi evidence. This claim is without merit.[4]

It is well settled that the right to an evidentiary hearing is not absolute. Commonwealth v. Jordan, 772 A.2d 1011, 1014 (Pa. Super. 2001) (citing Commonwealth v. Granberry, 644 A.2d 204, 208 (Pa. Super. 1994)). A PCRA court may decline to hold a hearing where the defendant's claims are patently frivolous, or where there are no disputed issues of material fact. Commonwealth v. Carpenter, 555 Pa. 434, 725 A.2d 154, 170 (1999) (citing Commonwealth v. Morris, 546 Pa. 296, 684 A.2d 1037, 1042 (1996)). See Pa.R.Crim.P. 907 (court may dismiss PCRA petition without a hearing "if the judge is satisfied from this review that there are no genuine issues concerning any material fact and that the defendant is not entitled to post-conviction collateral relief, and no purpose would be served by any further proceedings"). See also Commonwealth v. Pircla, 556 Pa. 32, 726 A.2d 1026 (1999) (where record before PCRA

[4] Preliminarily, it bears noting that PCRA counsel duly complied with the requirements of Turner and Finley, supra:

> The holdings of those cases mandate an independent review of the record by competent counsel before a PCRA court or appellate court can authorize an attorney's withdrawal. The necessary independent review requires counsel to file a "no-merit" letter detailing the nature and extent of his review and list each issue the petitioner wishes to have examined, explaining why those issues are meritless. The PCRA court, or an appellate court if the no-merit letter is filed before it, see Turner, supra, then must conduct its own independent evaluation of the record and agree with counsel that the petition is without merit.

Commonwealth v. Freeland, 106 A.3d 768, 774 (Pa. Super. 2014). Here, the record reflects that PCRA counsel met each of the above requirements. Further, having conducted its own review (as discussed infra), this Court has confirmed that counsel's assessment is correct.

court reflects that underlying claim is of no arguable merit or no prejudice resulted, no evidentiary hearing on ineffectiveness claim is required).

Additionally, counsel is presumed to have acted effectively, and defendant bears the burden of proving otherwise. Commonwealth v. Rivers, 786 A.2d 923, 927 (Pa. 2000). In order to overcome this presumption, a defendant must demonstrate that: (1) the underlying claim is of arguable merit; (2) counsel had no reasonable basis for his course of conduct; and (3) but for the act or omission in question, the outcome of the proceedings would have been different. Commonwealth v. Porter, 728 A.2d 890, 896 (Pa. 1999) (citing Commonwealth v. Travaglia, 661 A.2d 352, 356-357 (Pa. 1995)). "The threshold inquiry in ineffectiveness claims is whether the issue/argument/tactic which counsel has forgone and which forms the basis of the assertion of ineffectiveness is of arguable merit; for counsel cannot be considered ineffective for failing to assert a meritless claim." Commonwealth v. Pierce, 645 A.2d 189, 194 (Pa. 1994) (citations omitted). See also Commonwealth v. Baldwin, 760 A.2d 883, 885 (Pa. Super. 2000) (where the underlying claim is meritless, the inquiry into counsel's actions need go no further, "for counsel cannot be ineffective for failing to assert a meritless claim"). Where a defendant has not demonstrated actual prejudice, "the claim may be dismissed on that basis alone and this Court need not determine whether the first and second prongs have been met." Commonwealth v. Fletcher, 750 A.2d 261, 274 (Pa. 2000).

> It is clear that a criminal defendant's right to effective counsel extends to the plea process, as well as during trial. However, [a]llegations of ineffectiveness in connection with the entry of a guilty plea will serve as a basis for relief only if the ineffectiveness caused the defendant to enter an involuntary or unknowing plea. Where the defendant enters his plea on the advice of counsel, the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases.

Commonwealth v. Wah, 42 A.3d 335, 338-339 (Pa. Super. 2012) (citations and internal quotations omitted).

> Central to the question of whether [a] defendant's plea was entered voluntarily and knowingly is the fact that the defendant know and understand the nature of the offenses charged in as plain a fashion as possible.... *[A] guilty plea is not a ceremony of innocence, it is an occasion where one offers a confession of guilt.* Thus, ... a trial judge [and, by extension, plea counsel] is not required to go to unnecessary lengths to discuss every nuance of the law regarding a defendant's waiver of his right to a jury trial in order to render a guilty plea voluntary and knowing.

Commonwealth v. Barndt, 74 A.3d 185, 192-193 (Pa. Super. 2013) (emphasis added) (citations omitted). "[T]he law does not require that [the defendant] be pleased with the outcome of his decision to enter a plea of guilty: All that is required is that [his] decision to plead guilty be knowingly, voluntarily and intelligently made." Commonwealth v. Anderson, 995 A.2d 1184, 1192 (Pa. Super. 2010).

Here, the record unequivocally demonstrates that Appellant's decision to plead guilty was knowingly, intelligently and voluntarily made. Indeed, the Court thoroughly colloquied Appellant to ensure that he fully understood what the plea connoted and its consequences. Specifically, the Court carefully reviewed the charges and range of penalties with Appellant, including his prior record score of R-FELL, which garnered a mandatory minimum sentence of 10 to 20 years' incarceration for both robbery and aggravated assault -- as well as the statutory maximum penalties he faced. (See N.T. 02/09/15, pp. 4-12).

Additionally, the Court confirmed Appellant's ability to read, write and understand the English language, his age[5], level of education, and the fact that he was not impaired by drugs, alcohol or medication. (See N.T. 02/09/15, pp. 15-16). Thereafter, Appellant indicated without

[5] Appellant was 54 years old at the time he entered his negotiated plea, and had been incarcerated for a little more than one year -- for which he received credit for time served.

equivocation that *he understood he was giving up*: the right to a jury trial, where he could not be convicted unless the charges were proven beyond a reasonable doubt; the right to testify on his own behalf; *the right to present witnesses and evidence in an effort to show that he was not guilty*; the right to have counsel argue pretrial motions such as a motion to suppress evidence; and most of his appellate rights (with three (3) exceptions). (See N.T. 02/09/15, pp. 17-18). Appellant also stated he understood that the decision as to what sentence he would receive was for the Court, and the Court alone, to determine. (See N.T. 02/09/15, p.18).

In addition to the foregoing, Appellant expressed that he was not coerced in any way to plead guilty, was doing so of his own free will, and was satisfied with representation by his counsel, who reviewed the written guilty plea colloquies with him and "explained everything":

> THE COURT: All right. Has anyone promised you anything, or forced you, or threatened you in order to plead guilty here today?
>
> [APPELLANT]: No.
>
> THE COURT: Are you doing so of your own free will?
>
> [APPELLANT]: Yes.
>
> THE COURT: And are you satisfied with representation by [your counsel] Ms. Zayaraman?
>
> [APPELLANT]: Yes.
>
> THE COURT: She handed to me these [written] guilty plea forms. Did she explain everything from these forms?
>
> [APPELLANT]: Yes.
>
> THE COURT: And did you sign each form?
>
> [APPELLANT]: Yes, I did.
>
> THE COURT: On the bottom of page three?

[APPELLANT]: Yes.

(N.T. 02/09/15, pp. 19-20).

The Commonwealth then recounted the factual bases for the pleas, which Appellant affirmatively acknowledged. (See N.T. 02/09/15, pp. 20-22). Moreover, as noted, Appellant reviewed written guilty plea colloquies with his counsel, and signed them. In reviewing and signing the written guilty plea colloquies, Appellant acknowledged that he understood his rights surrounding a jury trial, the maximum sentences and fines that could be imposed, that he entered negotiated guilty pleas, and that he voluntarily entered his guilty pleas. (The written guilty plea colloquies are attached to PCRA counsel's Turner/Finely letter as Exhibits "B" & "C").

The Commonwealth also stated its reasons on the record for the significant departure from the sentencing guidelines:

> THE COURT: All right. And would you like to place your reasons for the negotiations on the record, counsel?
>
> [ASSISTANT D.A.]: Your Honor, the reasons for negotiations involve [Appellant's] willingness to accept responsibility for his actions, the desire from the Commonwealth to spare the victims in [these] case[s] from having to be put through the ordeal of testifying, the fact that [Appellant] is accepting responsibility for both of his open matters at once, for the judicial and prosecutorial economy, and the fact that despite the great risk for it to possibly be otherwise, fortunately, neither of the complainants in [these] case[s] sustained life-threatening or permanent injury. And so for those reasons, the Commonwealth has made this offer.
>
> THE COURT: All right. Counsel, would you like to speak on behalf of your client?
>
> MS. ZAYARAMAN: Your Honor, my client certainly does take responsibility for his actions and is grateful for Your Honor giving him this opportunity to move on with his life. I

would ask Your Honor to respect the negotiations between counsel.

(N.T. 02/09/15, p. 25).

Finally, Appellant expressed his gratitude to the Court for explaining everything to him and allowing him to proceed with the favorable sentence:

> THE COURT: All right. Mr. McNeil, is there anything you would like to say on your own behalf before I impose sentence?
>
> [APPELLANT]: I appreciate the way you explained everything to me. I just want to do this time, you know. And I'm glad I'm not doing a life sentence. I'm being honest with you right now....

(N.T. 02/09/15, pp. 25-26).

Only after the Court was satisfied that Appellant knew all of his rights and was making a reasonable and voluntary decision, did it accept Appellant's negotiated guilty pleas. (See N.T. 02/09/15, pp. 22, 26).

Thus, the record plainly demonstrates that Appellant knowingly, intelligently and voluntarily entered his negotiated guilty pleas. See Commonwealth v. Fears, 836 A.2d 52, 64 (Pa. 2003) (in determining whether a guilty plea was entered knowingly and voluntarily, a reviewing court is free to consider the totality of the circumstances surrounding the plea, including, inter alia, written plea agreements) (citing Commonwealth v. Allen, 732 A.2d 582, 588-589 (Pa. 1999)); Commonwealth v. Smith, 450 A.2d 973, 974 (Pa. 1982) (written guilty plea colloquy alone is prima facie evidence that defendant was fully aware of his rights); Commonwealth v. Hayes, 596 A.2d 874, 876 (Pa. Super. 1991) (same).

Appellant's after-thought attempt to challenge the validity of his negotiated guilty pleas through a bald allegation of coercion -- which squarely contradicts the statements he made to the

Court -- is unavailing. See Commonwealth v. Muhammad, 794 A.2d at 384 (appellant is bound by statements made during plea colloquy and may not successfully assert claims that contradict such statements) (citation omitted); Commonwealth v. McCauley, 797 A.2d at 922 ("A defendant is bound by the statements that he makes during his plea colloquy, and may not assert grounds for withdrawing the plea that contradict statements made when he pled") (citation omitted).

Quite plainly, Appellant knowingly and voluntarily made a *wise* decision, as the negotiated sentence he received was nothing short of "sweetheart". That he now for some unfathomable reason is unsatisfied with the outcome, is of no import. See Commonwealth v. Anderson, 995 A.2d at 1192 ("[T]he law does not require that [the defendant] be pleased with the outcome of his decision to enter a plea of guilty: All that is required is that [his] decision to plead guilty be knowingly, voluntarily and intelligently made."). For all of the above reasons, Appellant's claim is patently frivolous.

3 & 4. Discovery Materials and Alibi Witnesses

Appellant also seeks post-conviction relief on the alleged bases that counsel did not provide him with discovery materials or speak with alibi witnesses. These claims are unavailing.

Preliminarily, Appellant waived these claims not only by virtue of pleading guilty, but also by his express statements both on the record and in writing. (See N.T. 02/09/15, pp. 17-22; Written Guilty Plea Colloquies, pp. 1-3). Indeed, Appellant *specifically* gave up the right to present a defense and/or call witnesses. (See N.T. 02/09/15, p. 17; Written Guilty Plea Colloquies, p. 2.).

Moreover, trial counsel filed a Notice of Alibi on Appellant's behalf, and subpoenaed the same witnesses Appellant identified as exculpatory. (The Notice and Subpoenas are attached to

PCRA counsel's Turner/Finely letter as Exhibits "D" & "E", respectively). Thus, Appellant discussed these witnesses with counsel, and counsel made the arrangements for them to testify on Appellant's behalf. Appellant, however, opted against calling these supposedly exculpatory witnesses, instead electing to "take responsibility for his actions" and enter a guilty plea. Indeed, the alleged alibi witnesses were long known by Appellant and his counsel, and thus, there was no "missing piece" at the time he decided to plead guilty.

Further, any claim with regard to discovery or alibi witnesses -- even if it were availing, and it is not -- would pertain *only* to the aggravated assault of Ms. Burch (No. 0002552). Both the Notice of Alibi and the Subpoenas are explicit in pertaining only to the aggravated assault case. This is hardly surprising considering Appellant's robbery victim, Ms. Auld, *had long known Appellant prior to the robbery* -- which, it must be noted, occurred several weeks *after* the aggravated assault. In other words, even if Ms. Auld did not know Appellant (and she did), Appellant did not have *another* alibi.[6] Given that Appellant was facing a *minimum* of ten (10) years for the armed robbery alone, the strategy of taking a 5 ½-year minimum (with more than one year already served) was eminently reasonable. In sum, for a variety of independent reasons, Appellant's claims fail.

In the end, we must not lose sight of the purpose of the PCRA, i.e., to provide relief to those who are "actually innocent" of their underlying convictions -- not those, as in the case of Appellant, who are *actually (and explicitly) guilty*.

[6] Appellant evidently did not think this through when devising his alleged alibi defense.

CONCLUSION

For the reasons set forth in the foregoing Opinion, this Court's Order denying PCRA relief should be affirmed.

BY THE COURT:

DATE: 5/22/17

SUSAN I. SCHULMAN, J.

PROOF OF SERVICE

I, Darece Williford, secretary to Honorable Susan I. Schulman, hereby certify that I served, on May 22, 2017 by first-class mail, postage prepaid, a true and correct copy of the foregoing Opinion on the following:

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