

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

DAVID A. PUCKETT

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 491 WDA 2012

Appeal from the PCRA Order March 5, 2012  
In the Court of Common Pleas of Indiana County  
Criminal Division at No(s): CP-32-CR-0001045-2007

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

MEMORANDUM BY OTT, J.

**FILED MAY 21, 2013**

David A. Puckett appeals from the order dated March 5, 2012 of the Court of Common Pleas of Indiana County denying his timely filed petition pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. He argues the PCRA court erred in determining trial counsel was not ineffective for: 1) requesting continuances rather than filing a timely Rule 600 motion; 2) failing to examine witnesses at trial as to the true ownership of the shed from which stolen items were seized; 3) failing to cross examine Commonwealth's witness James Day as to personal bias against Puckett; 4) failing to question Puckett's wife as an alibi witness; 5) failing to question defense witness Raymond Erwin about his role as the perpetrator of the

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\* Retired Senior Judge assigned to the Superior Court.

burglary; 6) coercing Puckett not to testify at trial; and 7) repeatedly disrespecting Puckett during the trial and in front of the jury. Based on the following, we affirm.

We adopt the PCRA court's recitation of the procedural and factual history for this appeal:

[O]n the morning of August 7, 2007, the Pennsylvania State Police investigated a burglary at the residence of Janis Barner. The investigation included interviewing James Day (hereinafter referred to as "Day") who stated that he observed a small skinny man with a ruddy complexion in a silver car at Barner's residence. Day also stated that he observed various items in the silver vehicle. Later that day, Day identified [Puckett] in a photographic lineup. At approximately 6:30 p.m. the police arrived at [Puckett's] residence at which time [Puckett's] wife consented to a search of the residence, which resulted in the arrest of [Puckett], who was found hiding in a closet.

The next day the Troopers returned to the home of [Puckett] and again spoke to [Puckett's] wife who stated that she and her husband owned a nearby shed and again consented to a search of the shed. The Trooper found various items in the shed but returned to the police barracks to confer with the victim as to exactly what items were taken from her home. The officer later returned to the home and found [Puckett], who had posted bail, standing outside the shed and, without reading him his Miranda Rights, inquired as to certain items that were located in the shed, which [Puckett] gave to the officer. After a preliminary hearing on October 3, 2007, [Puckett's] charges were bound over to this Court.

On January 18, 2008, Defense Counsel filed a Pretrial Motion for Discovery and on January 22, 2008, the Court entered an Order requiring that discovery be provided to [Puckett] by February 1, 2008, and for defense counsel to file Pretrial Motions on or before February 29, 2008. On January 28, 2008, [Puckett] sought his first continuance apparently because mandatory discovery was not finalized. On February 29, 2008, [Puckett] again filed a Motion for Continuance rather than go to trial. A

month later on March 27, 2008, [Puckett] filed his first suppression motion. Afterwards, [Puckett] sought three consecutive continuances on March 28, April 23 and May 23 of 2008. Defense did not file a motion to compel discovery pursuant to Pa.R.Crim.P. 573(E) but instead filed a Motion For a Bill of Particulars on May 30, 2008.

On July 11, 2008 the Commonwealth requested its first continuance, seeking to delay a scheduled suppression hearing. Three days later, [Puckett] filed a Motion for Continuance to push back the trial date. [Puckett] had four more continuance[s] granted before November 21, 2008, on which date the Court entered a continuance because the Commonwealth had not filed an adequate bill of particulars. The Commonwealth filed and received its second continuance on November 26, 2008, and submitted a bill of particulars on December 10, 2008, which was again inadequate prompting the Court to enter a continuance order on December 19, 2008. On January 8, 2009 an appropriate bill of particulars was submitted. [Puckett] again continued the matter on January 22, 2009. On March 12, 2009, [Puckett] asked the Court to dismiss the case due to the Commonwealth's delay in preparing an appropriate bill of particulars, but again sought a continuance just eight days later. On May 15, 2009 [Puckett] filed a second suppression motion based on the information turned over to him by the Commonwealth, the Motion was decided on July 9, 2009. [Puckett] sought two more continuances before filing a Rule 600 motion on October 14, 2009. In total [Puckett] filed sixteen continuances.

On October 22, 2009, arguments were made by the Commonwealth and defense counsel relative to [Puckett's] Motion Pursuant to Pa.R.Crim.P. 600, the Court denied [Puckett's] Motion. [Puckett] then proceeded to jury trial on October 26 [sic], 2009. During the trial the Commonwealth called four witnesses, including Janis Barner, Day, and Troopers Bono and Snyder. Defense counsel called two witnesses, [Puckett's] wife and a Raymond Erwin, [Puckett] did not testify at trial. At the close of the trial [Puckett] was found guilty on charges of Burglary, Theft by Unlawful Taking and Receiving Stolen Property. Following trial [Puckett] appealed to the Superior Court arguing the Commonwealth failed to sustain its burden of proof, that the trial court erred by denying [Puckett's] Pretrial Motion to Dismiss Pursuant to Rule 600, that the trial

court abused its discretion by not suppressing any and all items found in the shed on August 8, 2007, and that the trial court should have suppressed any and all items seized from [Puckett's] shed after Trooper Bono failed to read [Puckett] his Miranda rights on August 8, 2007. The Superior Court affirmed [Puckett's] conviction.<sup>[1]</sup>

Trial Court Opinion, 3/5/2012 at 1-4.

"This Court's standard of review regarding an order dismissing a petition under the PCRA is whether the determination of the PCRA court is supported by evidence of record and is free of legal error." **Commonwealth v. Burkett**, 5 A.3d 1260, 1267 (Pa. Super. 2010). The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record. **Commonwealth v. Carter**, 21 A.3d 680, 682 (Pa. Super. 2011). In all of his claims, Puckett argues that his trial counsel was ineffective. To succeed on an ineffectiveness claim, Puckett must demonstrate by the preponderance of the evidence that

(1) [the] 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 proceedings would have been different.

**Commonwealth v. Ali**, 10 A.3d 282, 291 (Pa. 2010). A failure to satisfy any prong of the test for ineffectiveness will require rejection of the claim.

**Commonwealth v. Martin**, 5 A.3d 177, 183 (Pa. 2010). Counsel is

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<sup>[1]</sup> **Commonwealth v. Puckett**, 165 WDA 2010.

presumed to be effective and the burden is on the appellant to prove otherwise. **Commonwealth v. Hanible**, 30 A.3d 426, 439 (Pa. 2011).

In his first issue, Puckett argues by requesting multiple continuances because the **Commonwealth** was not obeying discovery orders, his defense counsel precluded a successful Rule 600 challenge.<sup>1</sup>

On October 12, 2007 Puckett executed his waiver of arraignment. Pennsylvania Rule of Criminal Procedure 572 directs that a request for a bill of particulars be made within seven days of the arraignment. Puckett did not timely request a bill of particulars pursuant to Rule 572. Instead, between August 7, 2007 and August 8, 2008 the defense filed seven continuances.<sup>2</sup> Following his March 7, 2008 Omnibus Pretrial Motion, Puckett filed on May 30, 2008 a petition for leave to file a request for a bill of

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<sup>1</sup> The period for calculating Rule 600 began on August 7, 2007 when the complaint was filed.

<sup>2</sup> Of those, the first two requested continuances of the call of the trial list to permit defense counsel to file pretrial motions. **See** Motions for Continuance, 1/28/2008 and 2/29/2008. Thereafter, on March 3, 2008, counsel filed a petition requesting an extension of time to file the pretrial motion due to health issues. This was granted and the pretrial motion was filed in a timely manner on March 27, 2008. The next two requests, again, were made to continue the call of the trial list, this time because the pretrial motion hearing was pending. **See** Motions for Continuance, 4/3/2008 and 4/23/2008. On May 23, 2008, the defense requested a continuance of the pretrial hearing to permit Puckett to file an amended pretrial motion. Simultaneously, a continuance was filed requesting a continuance of the June 5, 2008 call of the trial list because of the pending amended motion. The seventh continuance, filed on July 14, 2008, was moot as the trial court, on July 11, 2008, had granted the Commonwealth's motion to continue the August 7, 2008 call of the list as well as the July 17, 2008 pretrial hearing.

particulars. In the petition, Puckett stated the bill of particulars was necessary "to provide more specific notice to the defendant of the charged criminal conduct that is provided in the criminal complaint or criminal information." Petition for Leave to File Request For Bill of Particulars, 5/30/2008 at 2. The petition was granted on June 4, 2008. Thereafter, multiple requests for continuances were made by Puckett.

On appeal, Puckett has failed to show that trial counsel was not acting reasonably in requesting the information to ensure the pretrial motions were adequately prepared. Furthermore, we note the trial court found Puckett did not object to any of the continuance requests. Because Puckett cannot show prejudice, the ineffectiveness claim fails.

In his second issue, Puckett claims trial counsel was ineffective for failing to file a motion to suppress evidence relative to the ownership of the sheds due to lack of consent to search by the owner, wife's father.

The Fourth Amendment's prohibition against warrantless entry of a person's home does not apply to situations in which voluntary consent has been obtained, either from an individual whose property is searched, or from a third party who possesses common authority over premises. **See Illinois v. Rodriguez**, 497 U.S. 177, 181 (1990). Common authority rests on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the inhabitants has the right to permit the inspection in his own right and

that the others have assumed the risk that one of their number might permit the common area to be searched. **Commonwealth v. Jordan**, 456 A.2d 1055, 1058 (Pa. Super. 1983). The primary justification of third party consent is that there is a reduced expectation of privacy in premises or things shared with another, and when one leaves something with another person; one assumes the risk that it may find its way to the police. **See id.**

Here, the trial court has thoroughly addressed Puckett's claims and found them to be without merit. The trial court correctly concluded because Puckett's wife had apparent authority to consent to the searches of the home and the sheds, the searches were constitutional. Trial Court Opinion, 3/5/212 at 5. Accordingly, we adopt its reasoning for the purposes of this appeal. **See id.** at 5.

In his next three issues, Puckett claims trial counsel was ineffective for failing to: cross-examine Commonwealth's witness James Day relative to a personal grudge he had against Puckett; use Puckett's wife as an alibi witness; and cross-examine defense witness Raymond Erwin to prove he was the perpetrator.

"The threshold inquiry in ineffectiveness claims is whether the issue/argument/tactic which counsel has foregone and which forms the basis for the assertion of ineffectiveness is of arguable merit..." **Commonwealth v. Pierce**, 537 Pa. 514, 524, 645 A.2d 189, 194 (1994).

Again, we conclude the trial court has thoroughly addressed each of these claims and correctly concluded that trial counsel was not ineffective. Trial Court Opinion, 3/5/2012, at 6-7. Accordingly, we adopt its reasoning for the purposes of this appeal. **See id.** at 6-7.

In his sixth issue, Puckett claims trial counsel coerced him not to testify at trial on his own behalf.

The decision to testify on one's own behalf:

is ultimately to be made by the accused after full consultation with counsel. In order to support a claim that counsel was ineffective for "failing to call the appellant to the stand," [the appellant] must demonstrate either that (1) counsel interfered with his client's freedom to testify, or (2) counsel gave specific advice so unreasonable as to vitiate a knowing and intelligent decision by the client not to testify in his own behalf.

"Counsel is not ineffective where counsel's decision to not call the defendant was reasonable."

***Commonwealth v. O'Bidos***, 849 A.2d 243, 250 (Pa. Super. 2004)(internal citations omitted).

Prior to the colloquy, trial counsel stated, "I advised [Puckett] that he could or could not testify. I told him in my opinion that he should not testify." N.T., 10/28/2009 at 62. Thereafter, Puckett was colloquied by the court as follows:

THE COURT: Mr. Puckett, Mr. McKee [trial counsel] has advised this Court on your behalf that you have elected not to testify. My questions to you are straightforward. Have you had what you believe is an adequate opportunity to speak with Mr. McKee about this matter?

THE DEFENDANT: Yes.

THE COURT: Has Mr. McKee talked with you about your right to testify if you choose to do so?

THE DEFENDANT: Yes.

THE COURT: Has Mr. McKee told you that you do have an absolute right to testify if you choose?

THE DEFENDANT: Yes.

THE COURT: Has Mr. McKee also told you that you have the right not to testify if you elect not to, that the jury is being instructed that they cannot hold this against you?

THE DEFENDANT: Yes, sir.

THE COURT: You have elected not to testify. Is this a decision that you have made of your own free choice?

THE DEFENDANT: Yes.

THE COURT: Do you believe that you have had an adequate opportunity to discuss this matter with counsel?

THE DEFENDANT: Yes, sir.

THE COURT: Has counsel answered any questions you may have had about your right to testify, your right not to testify and the consequences of the exercise of your right either to or to not testify?

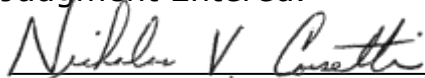
THE DEFENDANT: Yes.

N.T., 10/28/2009 at 63-64. We are convinced that Puckett's waiver was voluntary and informed and based upon a reasonable strategy. Therefore, trial counsel was not ineffective for failing to call Puckett as a witness in his own defense.

Finally, Puckett claims trial counsel repeatedly disrespected him during the trial and in front of the jury. Puckett testified counsel “wouldn’t recognize me. He kept turning his back on me or wadding up papers and throwing them at me. He wouldn’t have anything to do with me at the trial.” N.T., 1/30/2012 at 12. He later stated he felt disrespected by trial counsel because, “[h]e was just treating me like I was guilty right in front of the jury, and the jurors seen every bit of it. They were looking at me and they were giving me weird looks because of the way he was treating me.” *Id.* at 14. On cross-examination Puckett testified, “I’d write something on a piece of paper and [counsel would] push it back to me and turn his back to me.” *Id.* at 22. We agree with the PCRA court’s conclusion that Puckett’s “imagined slights falls far short of entitling [Puckett] to relief.” PCRA Court Opinion, 3/5/2013 at 7. This issue fails.

Order affirmed. The parties shall attach a copy of the PCRA court’s opinion in the event of further proceedings.

Judgment Entered.

  
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Deputy Prothonotary

Date: 5/21/2013

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COMMONWEALTH OF PENNSYLVANIA

: IN THE COURT OF COMMON PLEAS  
: INDIANA COUNTY, PENNSYLVANIA

vs

: NO. 1045 CRIM 2007

DAVID A. PUCKETT,

Defendant.

INDIANA COUNTY  
PROBATIONARY AND  
RECORDS COURTS  
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FILED

OPINION AND ORDER OF COURT

MARTIN, P.J.

This matter came before the Court on Defendant David Puckett's Motion for Post Conviction Collateral Relief. A hearing on Defendant's Motion was held January 30, 2012. The Defendant claims that his attorney was ineffective in failing to examine witnesses regarding ownership of a mobile home and shed in which evidence was found and used against Defendant, that counsel was ineffective in failing to file a motion for the exclusion of undisclosed discovery and for failing to request that the Commonwealth continue the case due to outstanding discovery issues for Rule 600 purposes, that counsel failed to properly cross examine witnesses, that counsel coerced and threatened the Defendant to not take the witness stand, that counsel failed to consult with Defendant regarding strategy and that counsel disrespected the Defendant in front of the jury during the trial. For the reasons set forth below Defendant's Motion is denied.

The operative facts are as follows; on the morning of August 7, 2007, the Pennsylvania State Police investigated a burglary at the residence of Janis Barner. The investigation included interviewing James Day (hereinafter referred to as "Day") who stated that he observed a small skinny man with a ruddy complexion in a silver car at Barner's residence. Day also stated that he observed various items in the silver vehicle. Later that day, Day

identified the Defendant in a photographic lineup. At approximately 6:30 p.m. the police arrived at Defendant's residence at which time Defendant's wife consented to a search of the residence, which resulted in the arrest of Defendant, who was found hiding in a closet.

The next day the Troopers returned to the home of Defendant and again spoke to Defendant's wife who stated that she and her husband owned a nearby shed and again consented to a search of the shed. The Trooper found various items in the shed but returned to the police barracks to confer with the victim as to exactly what items were taken from her home. The officer later returned to the home and found Defendant, who had posted bail, standing outside the shed and, without reading him his Miranda Rights, inquired as to certain items that were located in the shed, which Defendant gave to the officer. After a preliminary hearing on October 3, 2007, Defendant's charges were bound over to this Court.

On January 18, 2008, Defense Counsel filed a Pretrial Motion for Discovery and on January 22, 2008, the Court entered an Order requiring that discovery be provided to Defendant by February 1, 2008, and for defense counsel to file Pretrial Motions on or before February 29, 2008. On January 28, 2008, the Defendant sought his first continuance apparently because mandatory discovery was not finalized. On February 29, 2008, Defendant again filed a Motion for Continuance rather than go to trial. A month later on March 27, 2008, Defendant filed his first suppression motion. Afterwards, Defendant sought three consecutive continuances on March 28, April 23 and May 23 of 2008. Defense did not file a motion to compel discovery pursuant to Pa.R.Crim.P. 573(E) but instead filed a Motion For a Bill of Particulars on May 30, 2008.

On July 11, 2008 the Commonwealth requested its first continuance, seeking to delay a scheduled suppression hearing. Three days later, Defendant filed a Motion for Continuance to push back the trial date. Defendant had four more continuance granted before November 21, 2008, on which date the Court entered a continuance because the Commonwealth had not filed an adequate bill of particulars. The Commonwealth filed and received its second continuance on November 26, 2008, and submitted a bill of particulars on December 10, 2008, which was again inadequate prompting the Court to enter a continuance order on December 19, 2008. On January 8, 2009 an appropriate bill of particulars was submitted. Defendant again continued the matter on January 22, 2009. On March 12, 2009, Defendant asked the Court to dismiss the case due to the Commonwealth's delay in preparing an appropriate bill of particulars, but again sought a continuance just eight days later. On May 15, 2009 Defendant filed a second suppression motion based on the information turned over to him by the Commonwealth, the Motion was decided on July 9, 2009. Defendant sought two more continuances before filing a Rule 600 motion on October 14, 2009. In total Defendant filed sixteen continuances.

On October 22, 2009, arguments were made by the Commonwealth and defense counsel relative to the Defendant's Motion Pursuant to Pa.R.Crim.P. 600, the Court denied Defendant's Motion. Defendant then proceeded to jury trial on October 26, 2009. During the trial the Commonwealth called four witnesses, including Janis Barner, Day, and Troopers Bono and Snyder. Defense counsel called two witnesses, the Defendant's wife and a Raymond Erwin, Defendant did not testify at trial. At the close of the trial Defendant was found guilty on charges of Burglary, Theft by Unlawful Taking and Receiving Stolen Property. Following trial Defendant appealed to the Superior Court arguing the Commonwealth failed to sustain its burden

of proof, that the trial court erred by denying Defendant's Pretrial Motion to Dismiss Pursuant to Rule 600, that the trial court abused its discretion by not suppressing any and all items found in the shed on August 8, 2007, and that the trial court should have suppressed any and all items seized from Defendant's shed after Trooper Bono failed to read Defendant his Miranda rights on August 8, 2007. The Superior Court affirmed the Defendant's conviction.

Defendant first argues that defense counsel was ineffective for failing to examine witnesses regarding the exact ownership of the mobile home and sheds. Defendant contends that his father-in-law, Ira Heilman, was the owner of the mobile home and sheds, and even though he informed defense counsel of this, Mr. Heilman's lack of consent was never a focus of whether or not the police could search the sheds and retrieve various items from the alleged burglary. Defendant claims that because Heilman never gave consent to search these areas, the searches were unconstitutional as Defendant's wife did not have authority to consent.

For claims asserting ineffective assistance of counsel in post conviction proceedings, counsel's performance is presumed to be constitutionally adequate, counsel will only be deemed ineffective upon a sufficient showing by the petitioner. Commonwealth v. Smith, 17 A.3d 873 (Pa. 2011). In a PCRA proceeding, the burden of properly pleading and proving claims of error falls on the defendant. Commonwealth v. Pettus, 424 A.2d 1332 (Pa.1980). To be eligible for post-conviction relief based on a claim ineffective assistance of counsel, a Post Conviction Relief Act (PCRA) petitioner must demonstrate, by a preponderance of the evidence, that: (1) the underlying claim is of arguable merit; (2) no reasonable basis existed for counsel's action or omission; and (3) there is a reasonable probability that the result of

the proceeding would have been different absent such error. U.S.C.A. Const.Amend. 6; 42 Pa.C.S.A. § 9543(a)(2)(ii), Com. v. Gibson, 19 A.3d 512 (Pa. 2011).

Third-party consent to search is an exception to the exclusionary rule. U.S.C.A. Const.Amend. 4. Com. v. Reese, 31 A.3d 708 (Pa.Super. 2011). The “Apparent authority doctrine” allows a third-party to consent to a search, even if he does not have common authority over premises, where an officer reasonably believes, based upon the facts then available, that the consenting third-party had the authority to consent. U.S.C.A. Const.Amend. 4; Com. v. Basking, 970 A.2d 1181 (Pa.Super. 2009). Defendant contends that counsel was ineffective for failing to file a suppression motion that his wife did not have authority to consent to the search of the house and sheds because she did not own them. However, both Defendant and his wife lived at the residence with the owner, Ira Heilman, the father of Defendant’s wife. Defendant’s wife had apparent authority to consent to the search making this argument unpersuasive.

Defendant’s next contention is that counsel was ineffective for continuing the case numerous times due to the Commonwealth’s failure to provide adequate discovery and nullifying a Rule 600 argument. At hearing on the Motion Defendant’s previous counsel testified that Defendant never voiced concern over the continuance requests and that he would have explained those requests to Defendant. Defendant has not shown that no reasonable basis existed for counsel’s action or omission. Counsel testified that there was delay in discovery, which prompted several of the continuances, but that Defendant never objected to them. The reasonable basis prong of an ineffective assistance claim does not question whether there were other more logical courses of action which counsel could have pursued, but, rather, examines whether counsel's decisions had any reasonable basis. U.S.C.A. Const.Amend. 6; Com. v.

Chmiel, 30 A.3d 1111 (Pa. 2011). Counsel's decisions to continue the case had a reasonable basis, as his client was not objecting to the continuances and counsel moved to dismiss the case when the Commonwealth failed to file a satisfactory bill of particulars which had prompted several continuances.

Defendant contends that counsel was ineffective for failing to give notice of an alibi witness and not questioning Defendant's wife, Roberta Puckett, about the Defendant's whereabouts at the time of the burglary. Where matters of strategy and tactics are concerned, counsel's assistance is deemed constitutionally effective if he chose a course that had some reasonable basis designed to effectuate his client's interests. Commonwealth v. Howard, 719 A.2d 233, 237 (Pa. 1998). At the hearing on the Motion Roberta Puckett testified that she was with Defendant around 8 A.M. then took a nap until around 10 A.M. Further, defense counsel testified that when he and the Defendant met to talk about strategy the Defendant did not tell him that Roberta Puckett could act as an alibi witness.

Defendant argues that counsel was ineffective for failing to effectively cross examine James Day relative to the underlying conflict between the two individuals from an incident in which Defendant was growing marijuana plants on Day's land. Again with matters of strategy and tactics, counsel's assistance is deemed constitutionally effective as long as he chose a course that had some reasonable basis designed to effectuate his client's interests. Id. Counsel testified that discussions regarding the marijuana had been excluded from the trial so questioning Day on the issue would have been inappropriate. Further, it is clear that the basis of the underlying dispute had a strong probability to prejudice the jury against Defendant thus counsel's decision to not question Day was reasonable.

Defendant's next contention is that counsel was ineffective for not questioning Raymond Erwin regarding his role in the Barner burglary. The same standard regarding trial strategy and tactics as noted above applies here as well. At trial defense counsel questioned Erwin about whether he knew anything about the burglary in question to which he responded he did not. Aside from that question Erwin was a cooperative witness to the Defendant and testified to a previous incident between Defendant and Trooper Bono. Defendant has failed to demonstrate that no reasonable basis existed for counsel's examination of Erwin at trial.

Defendant contends that counsel coerced him to not take the witness stand in his defense. At the hearing counsel testified that he never coerced the Defendant to not take the stand. When Defendant was asked by the Court at trial whether he desired to take the stand the Defendant informed the Court that he did not. Further, during the colloquy with Judge Olson Defendant indicated that he had two or three meetings before the trial and met the day of the trial with counsel to discuss this, undermining his claims that he met with counsel one time prior to trial. The Court does not find Defendant's assertion that he was coerced into not testifying to have merit and the argument unpersuasive.

Finally, Defendant contends that counsel consistently disrespected him in front of the jury and did not speak to him regarding strategy. At hearing for this Motion Defendant first testified that counsel was throwing wadded up pieces of paper at him, as the hearing continued this imagined slight was in reality counsel pushing a piece of paper that Defendant had written on back at Defendant. The Court finds Defendant's imagined slights falls far short of entitling him to relief.

Wherefore, the Court makes the following Order.

COMMONWEALTH OF  
PENNSYLVANIA

vs

DAVID A. PUCKETT,

Defendant.

: IN THE COURT OF COMMON PLEAS  
: INDIANA COUNTY, PENNSYLVANIA

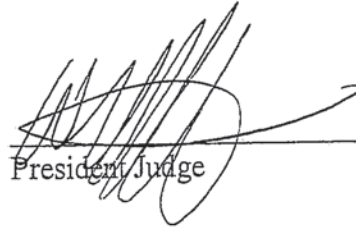
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: NO. 1045 CRIM 2007  
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ORDER OF COURT

MARTIN, P.J.

AND NOW, this 5<sup>th</sup> day of March 2012, this matter having come before the Court on Defendant David Puckett's Motion for Post Conviction Collateral Relief, it is hereby ORDERED and DIRECTED that Defendant's Motion is denied.

BY THE COURT,

  
\_\_\_\_\_  
President Judge

FILED  
2012 MAR -5 P 3:13  
INDIANA COUNTY  
PROTHONOTARY AND  
CLERK OF COURTS