J-A21043-22
J-A21044-22

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
WALTER FRANK MEYERLE	:	
Appellant	:	No. 1765 EDA 2021

Appeal from the PCRA Order Entered July 23, 2021
In the Court of Common Pleas of Bucks County Criminal Division at
No(s): CP-09-CR-0002035-2012,
CP-09-CR-0004709-2011, CP-09-CR-0004719-2011,
CP-09-CR-0004747-2011, CP-09-CR-0004863-2011

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
WALTER FRANK MEYERLE	:	
Appellant	:	No. 2548 EDA 2021

Appeal from the PCRA Order Entered July 23, 2021
In the Court of Common Pleas of Bucks County Criminal Division at
No(s): CP-09-CR-0004709-2011

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
WALTER FRANK MEYERLE	:	
Appellant	:	No. 2549 EDA 2021

Appeal from the PCRA Order Entered July 23, 2021
In the Court of Common Pleas of Bucks County Criminal Division at
No(s): CP-09-CR-0004719-2011

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
WALTER FRANK MEYERLE	:	
Appellant	:	No. 2550 EDA 2021

Appeal from the PCRA Order Entered July 23, 2021
In the Court of Common Pleas of Bucks County Criminal Division at
No(s): CP-09-CR-0004747-2011

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
WALTER FRANK MEYERLE	:	
Appellant	:	No. 2551 EDA 2021

Appeal from the PCRA Order Entered July 23, 2021
In the Court of Common Pleas of Bucks County Criminal Division at
No(s): CP-09-CR-0004863-2011

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
WALTER FRANK MEYERLE	:	
Appellant	:	No. 2552 EDA 2021

Appeal from the PCRA Order Entered July 23, 2021

In the Court of Common Pleas of Bucks County Criminal Division at
No(s): CP-09-CR-0002035-2012

BEFORE: LAZARUS, J., MURRAY, J., and McCAFFERY, J.

MEMORANDUM BY McCAFFERY, J.: **FILED FEBRUARY 10, 2023**

In these consolidated appeals,[1] Walter Frank Meyerle (Appellant) appeals, *pro se*, from the order entered in the Bucks County Court of Common Pleas dismissing his first, timely petition for relief filed pursuant to the Post Conviction Relief Act (PCRA).[2] Appellant seeks relief from the judgment of sentence of an aggregate term of 479½ to 959 years' imprisonment following his non-jury convictions of 188 criminal offenses involving his sexual abuse of multiple male and female minor victims over a 14-year period, his possession of child pornography, and his attempt to escape from prison. On appeal, Appellant raises claims asserting: (1) the ineffective assistance of prior counsel; (2) the denial of his due process when the trial court refused a continuance request; (3) prosecutorial misconduct; and (4) the denial of his right to assist in his defense due to side effects from his medication. For the reasons below, we affirm the order at Docket 1765 EDA 2021, and quash the appeals at Dockets 2548-2552 EDA 2021.

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[1] On May 16, 2022, this Court consolidated the appeals at Dockets 2548-2552 EDA 2021, and directed that they be listed consecutively to the appeal at Docket 1765 EDA 2021. ***See*** Order, 5/16/22. We further ordered the parties to address the appeals in one consolidated brief. ***See id.***

[2] 42 Pa.C.S. §§ 9541-9546.

The relevant facts underlying Appellant's convictions are summarized in the PCRA court's 67-page opinion, and we need not recite them in detail herein. ***See*** PCRA Ct. Op., 10/25/21, at 4-17 (citation omitted). Suffice it to say that from 1997 through 2011, Appellant groomed and sexually abused 15 minor, male and female victims, ranging in age from 4 to 17 years old. The PCRA court detailed the relevant procedural history as follows:

> On March 16, 2011, [Appellant] was charged with 42 criminal offenses for crimes committed against K.M., a female minor (Docket No. 4719-2011). On May 13, 2011, [Appellant] was charged with 213 criminal offenses for crimes committed against 13 additional victims, male and female minors (Docket No. 4747-2011). On June 27, 2011, [Appellant] was charged with 40 counts of Child Pornography and Criminal Use of a Communications Facility (Docket No. 4709-2011). On June 27, 2011, [Appellant] was charged with two criminal offenses in connection with [his] plan to escape from Bucks County Correctional Facility (Docket No. 4863 -2011). Private counsel, Kevin Mark Wray, Esquire, . . . was retained to represent [Appellant] in May, 2011. In July of 2011, [Appellant] waived his preliminary hearings in all four cases. On October 24, 2011, [Attorney Wray] filed an omnibus pretrial motion.
>
> On February 21, 2012, [Appellant] was charged with eight criminal offenses for crimes committed against M.C., a female minor (Docket No. 2035-2012). The preliminary hearing was held on March 21, 2012. All charges were held for court.
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> On March 21, 2012, [Attorney] Wray filed four additional pretrial motions. A hearing on all of [Appellant's] motions began on April 16, 2012 and concluded on April 20, 2012. During the course of that hearing, [Appellant] advised [the trial c]ourt that he wanted to fire [Attorney] Wray and asked for time to find new counsel. [Appellant's] request for a continuance of the trial to obtain new counsel was granted. Trial was scheduled for July 16, 2012. The pretrial hearings continued as scheduled.
>
> [Appellant] thereafter applied and was approved for Public Defender representation. Due to a conflict of interest, on June 27, 2012, private conflict counsel, Michael S. Goodwin, Esquire and

> William Craig Penglase, Esquire, . . . were appointed to represent [Appellant]. Two attorneys were appointed due to the nature of the case and because trial was scheduled to begin at the end of July. On July 23, 2012, [Attorneys Goodwin and Penglase] filed eight supplemental pretrial motions.
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> On July 24, 2012, the trial was continued to August 13, 2012. A hearing on the supplemental pretrial motions was held on July 26, 2012. Prior to the hearing, the Commonwealth requested a continuance of the trial date due to the unavailability of one of the lead detectives. That request was denied. On the day of the hearing, [Attorneys Goodwin and Penglase] requested a continuance of the trial date. That motion was also denied.
>
> On August 13, 2012, [Appellant] waived his right to trial by jury and the cases proceeded by stipulated waiver trial. [Appellant] stipulated to the admission of the Commonwealth's evidence through police reports, the testimony of the investigators and other exhibits. On August 21, 2012, [Appellant] was found guilty of 188 criminal offenses [arising under all five trial court dockets, including rape, involuntary deviate sexual intercourse, aggravated indecent assault, sexual abuse of children-child pornography, and solicitation to commit escape.[3]]
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> * * *
>
> In October, 2012, Stuart Wilder, Esquire, . . . was appointed to represent [Appellant].
>
> On January 24, 2013, [Appellant] was sentenced to an aggregate term of incarceration of 494½ to 989 years. By order dated January 30, 2013, this Court vacated sentence on two counts in Docket No. 2035-2012, reducing the aggregate minimum sentence to 479½ to 959 years imprisonment. On February 4, 2013, [Appellant] filed post-sentence motions[, which were later withdrawn].
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> On April 22, 2013, [Appellant] filed a timely appeal. On December 24, 2014, the Superior Court affirmed the judgment of sentence[, and the Pennsylvania Supreme Court later denied Appellant's petition for allowance of appeal. ***See***

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[3] ***See*** 18 Pa.C.S. §§ 3121(a)(1), 3123(a)(1), (6), (7), and (b), 3125(a)(7), (8), and (b), 6312(d), 902(a) and 5121(a), respectively.

Commonwealth v. Meyerle, 1252 EDA 2013 (Pa. Super. Dec. 24, 2012), *appeal denied*, 54 MAL 2013 (Pa. Jun. 11, 2015).]

On April 21, 2016, [Appellant] filed a *pro se* request for PCRA relief. On February 7, 2016, Paul G. Lang, Esquire, was appointed to represent [Appellant]. On May 15, 2017, [Attorney] Lang filed a Motion to Appoint Substitute Counsel based on [Appellant's] multiple allegations of ineffective assistance, [Appellant's] allegation that [Attorney] Lang's law partner represented one of the victim[s] and [Attorney] Lang's belief that there was an irretrievable and irrevocable breakdown in the attorney/client relationship. On October 18, 2017, a hearing on PCRA counsel's motion was held. At that time, [Appellant] agreed that [Attorney] Lang did not have a conflict of interest and advised [the PCRA c]ourt that he wanted [Attorney] Lang to continue to represent him. The Motion to Appoint Substitute Counsel was therefore withdrawn.

On January 8, 2018, [Attorney] Lang filed a request for an extension of 90 days within which to file an amended PCRA petition. The request was based on [Appellant's] case being reassigned to new conflict counsel as a result of the hiring of additional attorneys to serve as conflict counsel and the restructuring of conflict counsel duties. By order dated January 12, 2018, the appointment of [Attorney] Lang was vacated and Patrick J. McMenamin, Jr., Esquire, was appointed to represent [Appellant] in the PCRA proceedings.

On May 29, 2018, [Attorney] McMenamin filed a Post Conviction Relief Act No Merit Letter & Memorandum of Law Pursuant to ***Commonwealth v. Finley***[4] (hereinafter "No Merit Letter") and a Petition to Withdraw as Counsel. On June 4, 2018, [Appellant] filed a *pro se* motion for appointment of new PCRA counsel. On October 4, 2018, [Attorney] McMenamin was directed to file a supplemental no merit letter and memorandum of law or an amended PCRA petition within 90 days of the order to address [Appellant's] search warrant claims in light of the Supreme Court decision in ***Commonwealth v. Hopkins***, 164 A.3d 1133 (Pa. 2017). On January 4, 2019, [Attorney] McMenamin filed a Post Conviction Relief Act Supplemental No Merit Letter &

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

Memorandum of Law Pursuant to ***Commonwealth v. Finley*** ("Supplemental No Merit Letter") and a motion to withdraw.

On July 12, 2019, a video hearing was held at which time [Appellant] was advised of [the PCRA c]ourt's intent to dismiss his PCRA Petition. He was advised that he would be given 20 days to respond, that he could proceed *pro se* or with privately retained counsel and that an extension of the time to file a response would be granted upon request. He was further advised that the exhibits/documents [he] sent to PCRA counsel would be returned to him for his use in preparing a response. Written Notice of intent to Dismiss was filed of record on July 15, 2019 and PCRA counsel was granted leave to withdraw.

On July 18, 2019, [Appellant] filed a petition requesting a 120-day extension within which to file his response[, which was granted by the PCRA court — thus, his response was due by November 18, 2019.] On August 28, 2019, [Attorney] McMenamin filed a Certification of Compliance verifying that all documents received from prior counsel and/or [Appellant] as well as copies of all of the notes of testimony had been sent to [Appellant]. [However, Appellant later advised the PCRA court] that several items were missing from the documents he had been provided[, and, thus, he requested another extension of time to file his response. The trial court scheduled a video hearing for December 12th, at which time Appellant] acknowledged that he received two boxes of documents from [Attorney] McMenamin but asserted that certain documents were missing. [The court directed Appellant, within two weeks of the hearing,] to file of record a list of the documents that had previously been provided in discovery but which had not been included in the materials forwarded to him[.] The Commonwealth was directed to file a response within two weeks of receipt of [Appellant's] request[, and Appellant] was granted 60 days from the date of the hearing to file his response to the Notice of Intent to Dismiss.

On January 2, 2020, [Appellant] filed a list of the documents he was requesting. The Commonwealth did not file a response. On March 3, 2020, the Commonwealth was directed to file a response on or before May 4, 2020. On March 12, 2020, the Commonwealth filed its Answer identifying those items of original discovery that would be reproduced and provided to [Appellant] and those items that were not part of original discovery and/or were not in possession of the Commonwealth.

> On May 14, 2020, [Appellant] file[d] a petition seeking to obtain documents he alleged the [Commonwealth] agreed to produce but which had not been provided to him. He also advised [the c]ourt that the notes of testimony from the December 12, 2019 hearing had not been transcribed. On June 10, 2020, an order directing the notes of testimony be transcribed was entered. On July 1, 2020, the [Commonwealth] filed a Certification of Compliance . . . verifying that the materials [it] agreed to reproduce had been reproduced and sent to [Appellant]. [Appellant responded on July 6th, which] confirmed that he received a box of material from the [Commonwealth] but alleged that the information provided was incomplete. On July 20, 2020, [he requested another] extension to respond to the Notice of Intent to Dismiss[, which the PCRA court denied on October 8, 2020. Appellant] was given until October 22, 2020 to file a response.
>
> On October 30, 2020, [Appellant requested] a further extension based upon his alleged failure to receive the discovery items he requested and upon his limited access to the resources required to prepare a response as a result of the restrictions imposed by the Department of Corrections during the COVID-19 pandemic. Based upon [Appellant's] limited access to resources during the pandemic, [he] was granted until March 31, 2021 to file his response. On March 23, 2021, [Appellant] filed a written request for additional time[,] again relying on his limited access to the resources . . . as a result of the restrictions imposed . . . during the pandemic. By order dated March 26, 2021, [Appellant] was granted until June 30, 2021 to file his response. [Appellant's] subsequent requests for an extension beyond June 30, 2021 . . . were . . . denied.

PCRA Ct. Op. at 1-3, 17-22 (record citations & footnotes omitted; some paragraph breaks added).

Appellant filed an objection to the PCRA court's Rule 907 notice on July 1, 2021.[5] Thereafter, on July 23rd, the court entered an order denying

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[5] Although the document is date-stamped July 6, 2021, the postmarked envelope in which the document was mailed bears a date stamp of July 1,
(Footnote Continued Next Page)

Appellant's PCRA petition. It merits mention that throughout the proceedings, and on direct appeal, both Appellant and the PCRA court listed all five docket numbers on each filing. The court's July 23, 2021, order denying relief informed Appellant that he had "thirty (30) days from the date of [that] order to file **an appeal** to the Superior Court." Order, 7/23/21 (emphasis added).

Appellant initially filed a notice of appeal in the Superior Court, which was forwarded to the PCRA court on August 30th. ***See*** Pa.R.A.P. 905(a)(4) ("If a notice of appeal is mistakenly filed in an appellate court, . . . the clerk shall immediately stamp it with the date of receipt and transmit it to the clerk of the court which entered the order appealed from, and . . . the notice of appeal shall be deemed filed in the trial court on the date originally filed."). That notice of appeal — docketed in this Court at 1765 EDA 2021 — listed all five trial court docket numbers.[6] ***See*** Notice of Appeal, 8/30/21.

On October 25, 2021, this Court issued Appellant a *per curiam* rule to show cause concerning two issues. First, because the notice of appeal was date-stamped as received in the PCRA court on August 30, 2021, we directed

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2021. "Under the prisoner mailbox rule, we deem a *pro se* document filed on the date it is placed in the hands of prison authorities for mailing." ***Commonwealth v. Crawford***, 17 A.3d 1279, 1281 (Pa. Super. 2011). Although the reply was still untimely filed, it is evident the PCRA court excused the untimely filing and considered the document in disposing of Appellant's petition. ***See*** Order, 7/23/21 (noting that, in denying relief, court considered Appellant's PCRA petition, counsel's no merit letter, and Appellant's reply to the Rule 907 notice).

[6] The PCRA court did not direct Appellant to file a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal.

Appellant to show cause why the appeal should not be quashed as untimely filed from the July 23, 2021, order denying PCRA relief. ***See*** Order, 10/25/21. Second, we directed Appellant to show cause why the appeal should not be quashed in light of the Pennsylvania Supreme Court's decision in ***Commonwealth v. Walker***, 185 A.3d 969 (Pa. 2018), *overruled in part*, ***Commonwealth v. Young***, 265 A.3d 462 (Pa. Dec. 22, 2021), which held that "where a single order resolves issues arising on more than one docket, separate notices of appeal must be filed for each case." ***Id.*** at 971.

Appellant filed a timely response, asserting that he did not receive the court's order in a timely manner but "did [his] best to respond in 30 days," and requesting an extension of time to file "a proper appeal for each docket." ***See*** Appellant's Reply to Order dated 10-25-21, 11/3/21, at 1 (unpaginated). By order entered November 8, 2021, this Court referred the issues to the merits panel, and informed Appellant that he would have to file an application for relief separate from his response. ***See*** Order, 11/8/21. The appeal at Docket 1765 EDA 2021 was later dismissed when Appellant failed to file a brief, but then reinstated upon his application for relief. ***See*** Order, 4/13/22.

Meanwhile, on December 2, 2021, Appellant filed five separate notices of appeal, one for each trial court docket.[7] ***See*** Notices of Appeal, 12/2/21,

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[7] Appellant, once again, improperly filed these notices of appeal in the Superior Court, rather than the trial court. ***See*** Pa.R.A.P. 905(a)(4). Thus, while they are date-stamped as received on December 7, 2021, we refer to the date they were forwarded to the trial court by the Superior Court — December 2, 2021 — as the date of filing. ***See id.***

in the Superior Court. Once again, this Court forwarded the notices of appeal to the PCRA court. ***See*** Pa.R.A.P. 905(a)(4). They were subsequently docketed in this Court at 2548-2552 EDA 2021. On March 23, 2022, this Court issued a *per curiam* rule at each docket number, directing Appellant to show cause why the appeals should not be quashed as untimely filed. Appellant filed five identical responses on April 11, 2022, insisting that he originally filed the notices of appeal in a timely manner. ***See*** Appellant's Responses to Show Cause, 4/11/22, at 1-2 (unpaginated). On April 21, 2022, this Court referred the issue to the merits panel. ***See*** Orders, 4/21/22. Finally, on May 16, 2022, this Court consolidated the five appeals docketed at 2548-2552 EDA 2021, ordered that those appeals shall be listed consecutively to the appeal docketed at 1765 EDA 2021, and directed the parties to file one consolidated brief listing all six docket numbers. Order, 5/16/22.

Appellant presents the following questions for our review:

> 1) Was [Appellant] denied due process & ineffective assistance of counsel, when misstatement, omissions, & assertions of material facts were allowed to stand as truth in warrants on [M]arch 16th to arrest [Appellant] and search and seize property from . . . Penn Valley Road . . . also in violation of [Appellant's] 4th and 14th amendments? Causing an unlawful arrest and search on March 17th 2011?
>
> 2) Was [Appellant] denied due process & his constitutional rights to a fair trial, when [the trial court] denied a request for continuance by [Appellant] (pre trial) without applying any of the factors listed in [***Commonwealth v. Prysock***, 972 A.2d 539 (Pa. Super. 2009)?]
>
> 3) Was [Appellant] denied due process and a fair trial through prosecutorial misconduct . . . throughout the entire case?

> 4) Was [Appellant] denied effective assistance of counsel by [K]evin [W]ray, [Esquire,] through his handling on[e] case for over a year?
>
> 5) Does [Appellant] prove ineffective assistance of counsel for pretrial, trial, post trial and [PCRA] counsel with prior arguments?
>
> 6) Was [Appellant] denied effective assistance when trial counsel failed to file [an] alibi defense?
>
> 7) Was [Appellant] denied his right to be present and help in his defense due to side effects caused by medication ([Zyprexa])[?]

Appellant's Brief at 7 (unpaginated).[8]

Before we consider the claims raised on appeal, we must first address the appealability and ***Walker*** issues identified in this Court's show cause orders. Considering first the appeal at Docket 1765 EDA 2021, we note that a notice of appeal must be filed within 30 days "after entry of the order from which the appeal is taken." ***See*** Pa.R.A.P. 903(a). The PCRA court denied Appellant's petition on July 23, 2021. Thus, his notice of appeal was due by August 23, 2021.[9] Although Appellant (incorrectly) filed the notice of appeal in this Court on August 26, 2021, the envelope for the mailing bears a postage stamp date of **August 23, 2021**; thus, pursuant to the prisoner mailbox rule,

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[8] We have corrected Appellant's spelling and omitted unnecessary punctuation. We also note, with disapproval, Appellant's lengthy brief is unpaginated. Thus, we refer to the page numbers of the electronic version of the brief, which designates the cover page as page one.

[9] The thirtieth day for filing a timely notice of appeal — August 22, 2021 — fell on a Sunday; therefore, Appellant had until Monday, August 23rd to file a timely notice of appeal. ***See*** 1 Pa.C.S. § 1908 (when the last day of a time period falls on a weekend, that day shall be omitted from computation).

we consider that to be the date of filing. ***See Crawford***, 17 A.3d at 1281; Pa.R.A.P. 121(f). Accordingly, Appellant's notice of appeal at Docket 1765 EDA 2021 was timely filed.

We also directed Appellant to address the fact that the notice of appeal, docketed at 1765 EDA 2021, listed all five trial court docket numbers in contravention of the Supreme Court's decision in ***Walker***. We note, however, that the Supreme Court subsequently overruled ***Walker***, in part, in its decision in ***Young***. The ***Young*** Court reaffirmed that Pa.R.A.P. 341 requires separate notices of appeal when a single order resolves issues under more than one docket, but held that, "where a timely appeal is erroneously filed at only one docket, [Pa.R.A.P.] 902 permits the appellate court, in its discretion, to allow correction of the error, where appropriate." ***Young***, 265 A.3d at 477 (footnote omitted).

Here, Appellant attempted to remedy the defect in his August 23, 2021, notice of appeal by filing five separate notices of appeal — one for each trial court docket — on December 2, 2021. These appeals are docketed at 2548-2552 EDA 2021. However, he did so without obtaining permission from this Court. ***See*** Pa.R.A.P. 902 ("Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but it is subject to such action **as the appellate court deems appropriate**, which **may include**, but is not limited to, **remand of the matter** to the lower court so that the omitted procedural step may be taken.") (emphasis added).

Nevertheless, we note that this Court may overlook an appellant's failure to comply with ***Walker*** when "a breakdown occurs in the court system, and a defendant is misinformed or misled regarding his appellate rights." ***Commonwealth v. Larkin***, 235 A.3d 350, 354 (Pa. Super. 2020) (*en banc*). In ***Larkin***, as in the present case, the PCRA court misinformed the appellant that he had thirty days "from the date of [the] order to file **an** appeal." ***See id.*** (citation omitted). ***See also*** Order, 7/23/21. Therefore, because Appellant was also misinformed as to his requirement to file more than one notice of appeal, we conclude a breakdown in the court system occurred and we decline to quash his appeal docketed 1765 EDA 2021.

Our ruling, however, renders Appellant's appeals docketed at 2548-2552 EDA 2021 superfluous. Indeed, Appellant only filed those notices of appeal in an attempt to comply with ***Walker***. Because we conclude Appellant's original notice of appeal was sufficient, we quash the appeals docketed at 2548-2552 EDA 2021 as moot.

We now proceed to the issues raised on appeal. Our review of an order denying PCRA relief is well-established. "[W]e examine whether the PCRA court's determination is supported by the record and free of legal error." ***Commonwealth v. Mitchell***, 141 A.3d 1277, 1283–84 (Pa. 2016) (citation and quotation marks omitted). Furthermore,

> [A] petitioner is not entitled to a PCRA hearing as a matter of right; the PCRA court can decline to hold a hearing if there is no genuine issue concerning any material fact and the petitioner is not entitled to post-conviction collateral relief, and no purpose would be served by any further proceedings. A reviewing court

> on appeal must examine each of the issues raised in the PCRA petition in light of the record in order to determine whether the PCRA court erred in concluding that there were no genuine issues of material fact and in denying relief without an evidentiary hearing.

Commonwealth v. Smith, 121 A.3d 1049, 1052 (Pa. Super. 2015) (citations & quotation marks omitted).

Preliminarily, we are compelled to address the substantial defects in Appellant's *pro se* brief. It is well-established that appellate briefs "must conform materially to the requirements of the Pennsylvania Rules of Appellate Procedure, and this Court may quash or dismiss an appeal if the defect in the brief is substantial." ***Commonwealth v. Tchirkow***, 160 A.3d 798, 804 (Pa. Super. 2017) (citation omitted). ***See also*** Pa.R.A.P. 2101 ("Briefs and reproduced records shall conform in all material respects with the requirements of these rules as nearly as the circumstances of the particular case will admit, otherwise they may be suppressed, and, if the defects are in the brief or reproduced record of the appellant and are substantial, the appeal or other matter may be quashed or dismissed."). Moreover, while "this Court is willing to construe liberally materials filed by a *pro se* litigant, a *pro se* appellant enjoys no special benefit[,]" and is required to comply with the Rules of Appellate Procedure. ***Tchirkow***, 160 A.3d at 804 (citation omitted).

Here, at first glance, Appellant's brief appears to conform to the Rules. He includes a statement of jurisdiction, a statement of the scope and standard

of review, the order in question,[10] a statement of the questions presented, and a statement of the case. ***See*** Pa.R.A.P. 2111(a)(1)-(5); 2114-2117. ***See also*** Appellant's Brief at 4-9 (unpaginated). However, Appellant fails to present a summary of his arguments, or divide the arguments in his brief in any discernable manner. ***See*** Pa.R.A.P. 2118, 2119(a). Rather, the remainder of his brief consists of 209 pages of disjointed, rambling "argument" — presented in an incoherent manner — interspersed with copies of various exhibits and transcripts. ***See*** Appellant's Brief at 10-219. From what we can discern, Appellant contends that either the Commonwealth, the police or his victims fabricated evidence which led to several "illegal" searches, and that the search warrants contained misstatements and omissions. ***See id.*** at 13-16, 59-66, 102-06. Appellant also challenges the chain of custody of various items recovered during execution of the warrants and raises allegations of prosecutorial misconduct. ***See id.*** at 67-77. Lastly, Appellant insists the PCRA court exhibited "judicial bias" by denying a continuance request and disregarding the effect his medication had on his ability to assist in his defense. ***See id.*** at 210-16. Our review reveals little reference to Appellant's purported ineffectiveness claims save for his bald assertion that "all issues

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[10] Appellant, however, incorrectly identifies the order on appeal as issued by the PCRA court on **October 25, 2021**. ***See*** Appellant's Brief at 6 (unpaginated). That is the date the PCRA court issued its opinion; the order on appeal was entered on July 23, 2021.

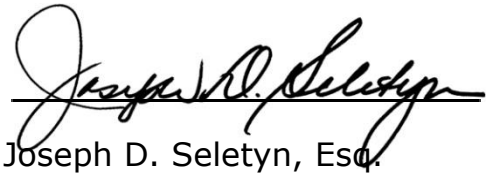
raised in this brief should have been previously raised by counsel." ***Id.*** at 76 (capitalization omitted).

Pennsylvania Rule of Appellate Procedure 2119 requires that the argument section in a brief "be divided into as many parts as there are questions to be argued; and shall have at the head of each part . . . the particular point treated therein, followed by such discussion and citation of authorities as are deemed pertinent." Pa.R.A.P. 2119(a). The brief Appellant has presented to this Court fails to present any coherent argument concerning the issues identified in his Statement of the Questions, and provides little, if any, citation to relevant statutory authority or case law. ***See*** Appellant's Brief at 7 (unpaginated). For this reason, we conclude his claims are waived on appeal.

We note, however, that the PCRA issued a 67-page opinion on October 25, 2021, in which it addressed the "50 claims of ineffective assistance of counsel" Appellant presented in his *pro se* petition. ***See*** PCRA Ct. Op. at 27. The court provided a detailed and thorough analysis of Appellant's claims, such that, were we to conclude his arguments were not waived, we would rest on the PCRA court's opinion. ***See id.*** at 34-67. Accordingly, we direct that a copy of the PCRA court's October 25, 2021, opinion be filed along with this memorandum, and attached to any future filings of this memorandum.

Order affirmed. Appellant's Application for Relief is denied as moot.[11]

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 2/10/2023

[11] On December 3, 2022, Appellant filed an application for relief seeking to "reopen this case to review [his b]rief." ***See*** Appellant's Application for Relief, 12/2/22. Appellant apparently misread a docket sheet and believed his appeal was still dismissed for his failure to file a brief. ***See id.*** However, as noted ***supra***, the appeal was later reinstated. Thus, his claim is moot.

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :	No.	CP-09-CR-0004709-2011
:	No.	CP-09-CR-0004719-2011
:	No.	CP-09-CR-0004747-2011
v. :	No.	CP-09-CR-0004863-2011
:	No.	CP-09-CR-0002035-2012
:		
WALTER FRANK MEYERLE III :		[1765 EDA 2021]

OPINION

Petitioner, Walter Frank Meyerle III, appeals from this Court's July 23, 2021 order, denying his Petition for Relief Under the Post Conviction Relief Act, 42 Pa.C.S. § 9541 *et seq.*, without a hearing in accordance with Pa.R.Crim.P. 907.

Factual and Procedural History

On March 16, 2011, Petitioner was charged with 42 criminal offenses for crimes committed against K.M., a female minor (Docket No. 4719-2011). On May 13, 2011, Petitioner was charged with 213 criminal offenses for crimes committed against 13 additional victims, male and female minors (Docket No. 4747-2011). On June 27, 2011, Petitioner was charged with 40 counts of Child Pornography and Criminal Use of a Communications Facility (Docket No. 4709-2011). On June 27, 2011, Petitioner was charged with two criminal offenses in connection with Petitioner's plan to escape from Bucks County Correctional Facility (Docket No. 4863-2011). Private counsel, Kevin Mark Wray, Esquire, (hereinafter "Pretrial Counsel/Mr. Wray") was retained to represent Petitioner in May, 2011. In July of 2011, Petitioner, waived his preliminary hearings in all four cases. On October 24, 2011, Mr. Wray filed an omnibus pretrial motion.

On February 21, 2012, Petitioner was charged with eight criminal offenses for crimes committed against M.C., a female minor (Docket No. 2035-2012). The preliminary hearing was held on March 21, 2012. All charges were held for court.

On March 21, 2012, Mr. Wray filed four additional pretrial motions. A hearing on all of Petitioner's motions began on April 16, 2012 and concluded on April 20, 2012. During the course of that hearing, Petitioner advised this Court that he wanted to fire Mr. Wray and asked for time to find new counsel. N.T. 4/16/12, Pretrial Motions, at 44-45; N.T. 4/17/12, Pretrial Motions, at 20, 22. Petitioner's request for a continuance of the trial to obtain new counsel was granted. Trial was scheduled for July 16, 2012. The pretrial hearings continued as scheduled. N.T. 4/17/12, Pretrial Motions, at 23.

Petitioner thereafter applied and was approved for Public Defender representation. Due to a conflict of interest, on June 27, 2012, private conflict counsel, Michael S. Goodwin, Esquire and William Craig Penglase, Esquire, (hereinafter "Trial Counsel/Mr. Goodwin and Mr. Penglase") were appointed to represent Petitioner. Two attorneys were appointed due to the nature of the case and because trial was scheduled to begin at the end of July. N.T. 7/26/12, Pretrial Motions, at 40. On July 23, 2012, Trial Counsel filed eight supplemental pretrial motions.

On July 24, 2012, the trial was continued to August 13, 2012. A hearing on the supplemental pretrial motions was held on July 26, 2012. Prior to the hearing, the Commonwealth requested a continuance of the trial date due to the unavailability of one of the lead detectives. That request was denied. N.T. 7/26/12, Pretrial Motions, at 4-5. On the day of the hearing, Trial Counsel requested a continuance of the trial date. That motion was also denied. N.T. 7/26/12, Pretrial Motions, at 6-7.

On August 13, 2012, Petitioner waived his right to trial by jury and the cases proceeded by stipulated waiver trial. N.T. 8/13/12, at 5-11. Petitioner stipulated to the admission of the Commonwealth's evidence through police reports, the testimony of the investigators and other exhibits. On August 21, 2012, Petitioner was found guilty of 188 criminal offenses arising from the sexual abuse of 15 male and female victims ranging in age between 4 years old and 17 years old. The abuse occurred over a span of 14 years. Petitioner was convicted of the following crimes: Rape by Forcible Compulsion, 18 Pa.C.S. § 3121(a)(1); Attempted Rape by Forcible Compulsion, 18 Pa.C.S. § 901; Sexual Assault, 18 Pa.C.S. § 3124.1; Involuntary Deviate Sexual Intercourse by Forcible Compulsion, 18 Pa.C.S. § 3123(a)(1); Involuntary Deviate Sexual Intercourse - victim less than 13 years old, 18 Pa.C.S. § 3123(a)(6); Involuntary Deviate Sexual Intercourse - victim less than 16 years old/Defendant four or more years older, 18 Pa.C.S. § 3123(a)(7); Involuntary Deviate Sexual Intercourse with a Child, 18 Pa.C.S. 3123(b); Unlawful Contact with Minor (for the purpose of engaging in Involuntary Deviate Sexual Intercourse), 18 Pa.C.S. § 6318(a)(1); Aggravated Indecent Assault – victim less than 13 years old, 18 Pa.C.S. § 3125(a)(7); Aggravated Indecent Assault – victim less than 16 years old/defendant four or more years older than victim, 18 Pa.C.S. § 3125(a)(8); Aggravated Indecent Assault of a Child, 18 Pa.C.S. § 3125(b); Statutory Sexual Assault, 18 Pa.C.S. § 3122.1; Indecent Assault - without consent, 18 Pa.C.S. § 3126(a)(1); Indecent Assault - victim less than 13 years old, 18 Pa.C.S. § 3126(a)(7); Indecent Assault – victim less than 16 years old/defendant four or more years older, 18 Pa.C.S. § 3126(a)(8); Obscene and Other Sexual Materials and Performances - Dissemination to Minors, 18 Pa.C.S. § 5903(c)(1); Terroristic Threats, 18 Pa.C.S. § 2706(a)(1); Corruption of Minors, 18 Pa. C.S. § 6301(a)(1); Tattooing Minor, 18 Pa.C.S. § 6311(a); Criminal Use of a Communication Facility, 18 Pa. C.S. §

7512; Sexual Abuse of Children - Child Pornography, 18 Pa.C.S. § 6312(d); and Solicitation to Commit Escape, 18 Pa.C.S. § 902(a).

The facts of the cases were previously summarized by this Court as follows:

> The 15 victims, many of whom were unknown to each other, corroborated one another and were corroborated by numerous other witnesses including other uncharged victims. The victims' statements were substantiated by telephone records and wire interceptions. Their accounts of abuse at the hands of [Petitioner] followed a strikingly similar pattern of grooming and escalation.
>
> V.K. – female, born September 29, 1993
>
> At the time of trial, V.K. was 18 years old and living in Florida. V.K. was sexually assaulted by [Petitioner] at least 40 to 50 times [fn. 22 Described by V.K. as a low estimate. Exhibit C-1] between the ages of four or five and nine years old. [Petitioner], born on September 10, 1976, was 20 years old when he began to abuse V.K. He was 27 when he last abused her.
>
> V.K. met [Petitioner] at the Top of the Ridge Trailer Park in Bensalem Township, Bucks County, where she lived with her mother, who was at the time abusing alcohol and drugs. [Petitioner], who loitered around the trailer park, befriended V.K., buying her presents and referring to her as his "buddy". At [Petitioner's] request, V.K. began spending nights at [Petitioner's] home. She slept on the couch in the living room or in the bedroom set up for [Petitioner's] son. On some of the occasions, there were other children present.
>
> Each assault of V.K. began in the middle of the night while she was sleeping. On each occasion, she would wake to find [Petitioner] putting his hand down her pants. [Petitioner] would then rub her "private area", digitally penetrated her, and put his finger in her mouth while he masturbated. He moved his finger in and out of her mouth, causing her to gag. When the assaults first began, she tried to prevent him from putting his finger in her mouth by clenching her teeth. [Petitioner] scratched her gums until they bled to force her to open her mouth. To avoid further injury, she stopped clenching her teeth. If other children were present, the sexual assaults were limited to fondling and digital penetration of her mouth and vagina. If other children were not present, [Petitioner] would also put his penis in her mouth. He ejaculated into her mouth on one occasion. On at least 20 occasions, he held

her hand on his penis while he masturbated, often ejaculating onto her hand and arm. [Petitioner] attempted vaginal intercourse with her but was unsuccessful.

[Petitioner] also exposed V.K. to pornographic and violent images. On one occasion, her told her the woman having sexual intercourse in the movie was pop singer Brittany Spears. He also showered her how, in the video game Grand Theft Auto II, he could make the character have sex with a prostitute, take money from her, and then kill her.

V.K. described the terror she felt during the assaults and told investigators that she feared [Petitioner] would kill her if she told anyone. The assaults finally stopped when she told a friend at summer camp who convinced her to tell her mother. The abuse was reported to the Bensalem Township Police Department on August 3, 2003. [fn. 23 Exhibit C-15]. For unknown reasons, the report was not followed up and no charges were filed at that time].

J.C. – female, born January 27, 1995

At the time of trial, J.C was 17 years old. The sexual assaults began when she was four years old and occurred approximately 10 times over a period of years. [Petitioner] had access to J.C. as a result of his intimate relationship with J.C.'s mother. [Petitioner] regularly stayed the night at J.C. and her mother's apartment in Bensalem Township, Bucks County. After J.C. fell asleep in her bedroom, [Petitioner] would carry her to the living room couch, where he touched her breasts and rubbed her vagina. On one occasion, [Petitioner] made J.C. watch a pornographic movie. J.C.'s mother reported that during the course of their relationship, [Petitioner] wanted to have sex with her in J.C.'s bedroom.

J.O.H. – female, born on November 23, 1982

At the time of trial, J.O.H. was twenty-nine years old and residing in Philadelphia. In the summer of 1999, she lived on Overlook Avenue in Croydon, Bucks County. She was sexually assaulted by [Petitioner] on two separate occasions that summer. J.O.H. was 16 years old. [Petitioner] was 22.

The assaults occurred at 724 Third Avenue, Croydon, the residence of [Petitioner's] 16-year-old girlfriend at the time. The first assault occurred when J.O.H., a friend of A.B., spent the night at A.B.'s home. After falling asleep on the floor of A.B.'s bedroom, J.O.H. awoke to discover [Petitioner] lying next to her, pulling down

her top, and masturbating. He indicated he wanted to have sex with her, but she fled the residence.

A few weeks later, J.O.H. was asleep on A.B's living room couch. During the night, [Petitioner] woke her and told her that A.B. wanted her to sleep upstairs. J.O.H. went upstairs and fell asleep on A.B.'s bedroom floor. Later that night, she awoke to discover [Petitioner] lying next to her, pulling down her top, and masturbating. She repeatedly told him to "stop" and "get off" but [Petitioner] kept grabbing her breasts, telling her she "wanted it." A physical struggle ensued during which J.O.H. kicked and punched [Petitioner] who "only laughed." J.O.H. was able to extricate herself and flee the residence. She never returned, terminating her contact with [Petitioner], A.B., and their friends.

C.D. – female, born on November 15, 1985

At the time of trial, C.D. was 26 years old and was residing in Philadelphia. C.D. was 13 years old when her 16-year-old-sister, A.B., began to date [Petitioner]. C.D. lived at the 724 Third Avenue, Croydon address with her sister, her brother and her drug and alcohol addicted mother. After he began to date A.B., [Petitioner] moved into the home.

In 2000, when C.D. was 14 or 15 years old, she was sexually assaulted by [Petitioner], then 23 or 24 years old. C.D. was sleeping on the living room couch of her home and awoke to find pornography playing on the television and [Petitioner] kneeling next to her and putting his finger in her mouth. He then moved his finger in and out of her mouth and fondled her breasts. He rubbed her vagina and tried to insert his middle finger. When C.D. jumped up, [Petitioner] laid on the floor and pretended to be asleep. C.D. immediately fled her home. She sat behind a gas station for hours until she saw [Petitioner's] car leave the house. C.D. then moved out of the residence and did not return until [Petitioner] and A.B. had moved out of the home.

E.Z. – male, born on May 23, 1986

At the time of trial, E.Z. was 26 years old. When E.Z. was 14 years old he lived at 725 Third Avenue in Croydon, across the street from the 724 Third Avenue residence of A.B., C.D., and their brother N.H. E.Z. met [Petitioner], who was dating 17-yer-old A.B. at the time, through his friend N.H. [Petitioner] tried to befriend E.Z. by giving him alcohol. Between December 2000 and February 2001, [Petitioner], who was then 24 years old, sexually assaulted

E.Z. on 3 separate occasions. All 3 incidents occurred at N.H.'s home. During each incident, E.Z. was sleeping at one end of the couch, [Petitioner], at the other. E.Z. was awakened by [Petitioner] rubbing his penis. When E.Z. stood up, [Petitioner] laid down and pretended to be asleep. E.Z. immediately left the house after each assault.

M.C. – female, born May 5, 1987

M.C. – male, born April 6, 1992

M.C. – male, born April 29, 1986 [uncharged victim]

The three victims identified above are siblings. Each was identified at trial as M.C. For purposes of clarity, the female sibling will hereinafter be identified as M.C. Her brothers will be identified as the older brother or the younger brother according to their respective dates of birth.

At the time of trial, M.C. was 25 years old and was residing in Tullytown, Bucks County. [Petitioner] began to abuse M.C. when she was 13 years old. Between December 2000 and May 2002, she was sexually assaulted almost every weekend by [Petitioner] who was then 24 years old. While M.C. was being abused, unbeknownst to her, her older and younger brothers were also being abused by [Petitioner]. [fn. 24 M.C.'s older brother was sexually abused by [Petitioner] but chose not to prosecute]

At the time of the offenses, M.C. and her family lived on Buckley Street in Bristol Borough, Bucks County. [Petitioner] was a long-time family friend. In December 2000, M.C.'s grandmother died and her mother was diagnosed with cancer. As a result, the children started spending time at [Petitioner's] home on Jefferson Avenue in Bristol Borough where he lived with 17-year-old A.B. [Petitioner] attempted to befriend the children by driving them around in his monster truck, taking them bowling, letting them watch movies and play video games at his home, and otherwise entertaining them.

The first time M.C. was sexually assaulted she was sleeping on the couch in [Petitioner's] living room. [Petitioner] woke M.C. by touching her breasts and whispering in her ear that she was pretty. He digitally penetrated her vagina. At first, she pretended to sleep. When he continued, she asked what he was doing. He told her it was "fine" and that "all girls do it." M.C. told him she did not want to do it and asked him to stop. M.C. was assaulted in a similar manner for several weeks. Thereafter, [Petitioner] began the

assaults as he always had but then told her that he wanted to try something new. He put his penis in her mouth. M.C. said she did not want to do it and cried. [Petitioner] then forced her head onto his penis, pinching the comers of her mouth to force her mouth open. He told her to open wider and not to scrape his penis with her teeth. He told M.C. they would continue until she did it right. He ultimately ejaculated into her mouth and told her to swallow it. He then told her she did a good job and told her to go back to sleep.

A couple months later, the assaults escalated to include vaginal intercourse. The pattern was always the same. [Petitioner] woke her, fondled her, digitally penetrated her, laid her on the carpet, removed her clothing, forced her legs open, and ejaculated on her stomach or chest. He then told her she did a good job and made her shower. On each occasion M.C. cried and told [Petitioner] that she did not want to do what he wanted. [Petitioner] threatened to hurt her brothers and make them do it, if she did not. He also told her that she would not be believed if she told anyone what he did to her.

On one occasion, [Petitioner] attempted to force M.C. to have sexual contact with her older brother. On that occasion, she was awakened by [Petitioner]. He fondled and digitally penetrated her following his usual routine. This time, however, he told her that he wanted her to make her older brother "feel good." He told her to go to where her brother was sleeping and to sit next to him. When M.C. objected, [Petitioner] threatened to hurt her brothers if she refused and told her it was up to her to protect her brothers. M.C.'s brother woke up and left the room, terminating the incident.

At the time of trial, M.C.'s younger brother was 20 years old. He was sexually assaulted by [Petitioner] at least four times between December 2000 and February 2001. At the time of the offenses, he was eight years old. The assaults always occurred shortly after he went to sleep. On each occasion, [Petitioner] woke him, put his finger in the boy's mouth, and moved it in and out. When the boy bit his finger, [Petitioner] used his fingers to hold his mouth open. [Petitioner] then continued to hold the boy's mouth open and inserted his penis, moving his penis in and out or moving the child's head back and forth. The boy tried to pretend he was asleep. M.C.'s younger brother also saw [Petitioner] watching a pornographic movie where a little "Shirley Temple looking girl" was having sex with "some guy."

S.H. – female, born October 31, 1986

At the time of trial, S.H. was 25 years old. S.H. was sexually assaulted by [Petitioner] approximately nine times between December 2000 and December 2001, when she was 14 and 15 years old. At the time of the incidents, she was in eighth grade at Armstrong Middle School. [Petitioner], a family friend since she was six years old, was 24 and 25 years of age.

The first sexual assault occurred in S.H.'s Bensalem home, in the bedroom she shared with her brother, who was present during the incident. After she went to bed, [Petitioner] entered the bedroom, kissed her, fondled her breasts, digitally penetrated her, performed oral sex on her, put his penis in her mouth, and had vaginal and anal sex with her. Each of the subsequent assaults involved oral, vaginal, and digital penetration. Five of the assaults occurred in the victim's home, two occurred in her aunt's Bensalem home and two occurred in the Radford Motel in Bensalem. While engaged in sex, [Petitioner] wanted S.H. to call him "Daddy." On one occasion, [Petitioner] photographed S.H. during their sexual contact. S.H. also participated in "telephone sex" with [Petitioner] on approximately 10 occasions. The incidents were reported to the Bensalem Township Police Department in 2003. [fn. 25 Exhibit C-15].

R.C. – female, born July 31, 1993

At the time of trial, R.C. was 19 years old and was living in Philadelphia. In the summer of 2001, when she was seven or eight years old, she was sexually assaulted by [Petitioner]. At the time of the incident, R.C. was living at the Top of the Ridge Trailer Park in Bensalem. [Petitioner], then 24 years old, was living at the trailer park with Kathy Worner, who babysat R.C. R.C. was assaulted in her home. She was in her bedroom asleep and was awaken by [Petitioner] touching her lips with his finger. She pretended to be asleep, rolled over, and pulled up the blanket. [Petitioner] then took her out of bed and laid her on the floor. He rubbed her breasts and vagina. The assault was reported to the Bensalem Police on November 18, 2003. [fn. 26 Exhibit C-15.]

A.O. – female, born March 13, 1987

At the time of trial, A.O. was 25 years old. She was sexually assaulted by [Petitioner] between 15 and 20 times during the summer and early fall of 2002 when she was 15 years old. In October of that year, she was forcibly raped by [Petitioner] who was

then 26 years old. At that time of these incidents, A.O. was living in Yardley Borough, Bucks County.

A.O. met [Petitioner] through her friend, S.H. in June of 2002. Soon after, [Petitioner] began to have sexual contact with her which included oral and vaginal intercourse. [Petitioner] claimed he videotaped one of their sexual encounters at his Jefferson Avenue apartment. He also regularly supplied A.O. with drugs and alcohol during this period of time.

[Petitioner] then began to call A.O. in the middle of the night, asking her to perform a sex act with a friend while he listened. On one occasion, [Petitioner] insisted she have sex with her father while he listened. She was able to convince [Petitioner] that her father had rejected her advances. A.O. engaged in "telephone sex" with [Petitioner] approximately 15 times. When she refused, [Petitioner] threatened to kill her. Out of fear for her safety, she blocked her bedroom door at night. In the fall of 2002, A.O. began to ignore [Petitioner's] telephone calls and all contact between the two stopped.

In October of 2002, A.O. attended a party at a friend's home. [Petitioner] also attended that party. While there, [Petitioner] vaginally raped A.O. When she cried, [Petitioner] told her he thought tears were "sexy." After ejaculating, [Petitioner] told A.O. she would have a surprise in nine months. On November 11, 2002, A.O., age 15, had an abortion. [fn. 27 Exhibit C-19.]

J.B. – female, born June 22, 1990

At the time of trial, J.B. was 22 years old. Between May and August of 2004, she was sexually assaulted by [Petitioner] five times. When the assaults began, she was 13 years old. [Petitioner] was 27 and was residing on Jefferson Avenue in Bristol Borough, Bucks County with his girlfriend. J.B.'s sister dropped out of high school and moved into [Petitioner's] residence with her boyfriend. J.B. met [Petitioner] when she visited her sister on weekends.

The first sexual assault occurred on an overnight visit. J.B. was asleep on the living room couch and was awakened by [Petitioner] rubbing her vagina and digitally penetrating her. He performed oral sex on her. She told him to stop and kicked him. [Petitioner] did not stop until he heard his girlfriend moving around. Later that day, after everyone else left the residence, [Petitioner] forcibly removed J.B's pants and sexually assaulted her. That assault included digital penetration, oral intercourse, and vaginal

intercourse. Each of the subsequent assaults began while J.B. was sleeping and involved the same sexual acts.

Over a period of more than a year, [Petitioner] routinely called J.B. on the telephone while he was masturbating. He made hundreds of such calls to her during that period.

J.R.B. – female, born March 10, 1994

At the time of trial, J.R.B. was 18 years old and was living in Bensalem, Bucks County. Between August of 2004 and February of 2005, J.R.B. was sexually assaulted by [Petitioner] on 20 to 30 separate occasions. She was 10 years old. [Petitioner] was 27 when it began.

J.R.B.'s mother worked with [Petitioner's] girlfriend, A.B. As a result of that relationship, J.R.B. and her two brothers regularly slept over at [Petitioner] and A.B.'s residence on Jefferson Avenue in Bristol Borough. In the summer of 2004, J.R.B. was sleeping on the living room couch of that residence when she was awakened by [Petitioner], who was kneeling next to the couch, putting his hand up her shirt while he masturbated. During the assault, he tried to put his hand down her pants, tried to pry her mouth open, and repeatedly told her to "be nice" to him.

Two weeks later, J.R.B. was again sleeping on the couch and was awakened by [Petitioner], who was kneeling next to her. On that occasion, [Petitioner] fondled her breasts and digitally penetrated her vagina. Once again [Petitioner] masturbated during the assault.

In October of 2004, J.R.B.'s house was destroyed by fire. [Petitioner] offered to let the family move into his Jefferson Avenue apartment. J.R.B.'s parents moved into a one-room apartment in [Petitioner's] building. The children moved into [Petitioner's] apartment where they were to sleep in the bedroom set up for [Petitioner's] son's use. At first, J.R.B. and her brothers slept in that bedroom. [Petitioner] then moved J.R.B. to the living room couch where she continued to sleep until February of 2005 when her family found a new place to live. During that stay, [Petitioner] sexually assaulted J.R.B. approximately 20 to 30 times.

All of the assaults occurred after J.R.B. went to sleep for the night. On these occasions, [Petitioner] fondled her, digitally penetrated her, and masturbated. [Petitioner] always tried to pry J.R.B.'s mouth open. When he was successful, he would slide his

finger in and out of her mouth or put his penis in her mouth. On one occasion, he put his penis in her mouth, moved it in and out, and told her, "A.B. likes when I do this to her." [Petitioner] then ejaculated into her mouth. J.R.B. estimated that [Petitioner] ejaculated into her mouth on two or three different occasions. On one occasion, he pulled her to the floor and removed her pants and underwear. On another occasion he removed his clothes and lay on top of her. When she struggled against him, [Petitioner] told her to "knock it off" and "be nice" to him. After one sexual assault, [Petitioner] showed J.R.B. a pornography movie. [Petitioner] told J.R.B. that, if she ever told anyone or if anyone ever found out, he would kick her and her family out, and they would be homeless. After moving out, she was assaulted five more times.

A.B. was interviewed and advised investigators that on one occasion she saw [Petitioner] kneeling on the floor, straddling J.R.B., and masturbating, while a pornographic movie was playing. She stated that on another occasion, [Petitioner] had her wake J.R.B. and bring her from the living room to the bedroom so that [Petitioner] could teach her about sex. [Petitioner] then made J.R.B. touch her own breasts, had A.B. touch J.R.B.'s breasts, used J.R.B.'s hand to masturbate, and made J.R.B. perform oral intercourse on A.B.

J.H. – female, born June 7, 1990

At the time of trial, J.H. was 22 years old. She was assaulted by [Petitioner] in February and March of 2007. [Petitioner] was 30 years old at the time. J.H. was 16 years old and attended the Center for Student Learning, a charter school for at-risk students, with [Petitioner's] then girlfriend, now wife, K.H. [fn. 28 K.H. began to date [Petitioner] when she was 16 years old and was engaged to him at age 17.] J.H. and K.H. were best friends.

During 2006 and 2007, [Petitioner] supplied J.H. and K.H. with cocaine and alcohol on a daily basis. [Petitioner] and K.H. then began to ask J.H. to shower with them. J.H. refused. In early 2007, J.H. was at [Petitioner's] residence and fell asleep on the couch. She was awakened by [Petitioner] unbuttoning her pants. He attempted to place his hand in her pants. J.H. rolled over to prevent him from doing so, pretending to be asleep.

In February of 2007, J.H. was spending the night at [Petitioner's] apartment. [Petitioner] offered to give J.H. and K.H. cocaine if they allowed him to photograph them in lingerie. J.H. agreed. [Petitioner] then asked J.H. to perform oral sex on K.H.

When J.H. refused, [Petitioner] grabbed her by the hair and forced her face onto K.H.'s vagina. After [Petitioner] had sex with K.H., he vaginally raped J.H. During the rape, J.H. cried, screamed for [Petitioner] to get off her, and pleaded with K.H. K.H. told her to be quiet and lay there. She told J.H. to "Do it for me," because [Petitioner] will "f--- me up" if he stops. After being raped, J.H. fled the residence and ended her relationship with K.H.

K.M. – female, born May 30, 1995

At the time of trial, K.M. was 17 years old and was living in Croydon, Bucks County. She was sexually assaulted by [Petitioner] between April 1, 2010 and March 17, 2011. The assaults began when she was 14 years old. [Petitioner] was 33.

K.M. first met [Petitioner] in 2001 or 2002 when she was seven years old and living at the Top of the Ridge Trailer Park in Bensalem, Bucks County. When K.M. and her mother lost their trailer, they moved in with K.M.'s aunt. When K.M.'s aunt fell behind on the rent, all three moved in with [Petitioner] at his Jefferson Avenue apartment. [fn. 29 K.M.'s aunt and [Petitioner] were previously boyfriend and girlfriend. K.M.'s aunt began dating [Petitioner] when she was 16 years old.] K.M.'s aunt reported that K.M. told her that she woke up and found [Petitioner] watching pornography. [Petitioner] instructed K.M. to watch the girl in the film and then asked her to "play a game" which involved her touching his penis.

After leaving the apartment, K.M. re-established contact with [Petitioner] via MySpace in 2008, when she was 13. [Petitioner] asked her to call him "Uncle" or "Daddy." She met [Petitioner] again when she was 15 through her friend S.H.

K.M. had sexual intercourse with [Petitioner] four times beginning in the spring of 2010. [Petitioner] picked her up near her Croydon residence and took her to his residence located at 901 East Penn Valley Road, Morrisville, Bucks County. She asked [Petitioner] to give her a tattoo. [Petitioner] agreed but only if she would do "stuff with him." At first she declined. [Petitioner] told her that if she wanted the tattoo, she would have to "do it." He then digitally penetrated her vagina and they had vaginal intercourse.

The following day, [Petitioner] again had sexual intercourse with K.M. at his residence. When he dropped her off in her neighborhood, he asked her if she was going to call him that night. When she said "maybe," [Petitioner] told her, "There is no maybe."

Later that night K.M. called as instructed. [Petitioner] then taught her how to engage in "telephone sex."

Approximately a week later, when K.M. asked him about the tattoo, [Petitioner] drove her to his Morrisville home where he engaged in oral and vaginal intercourse with her. He then gave her a tattoo on her lower pelvis incorporating his initial into the design. [fn. 30 Exhibit C-50.]

In November 2010, while K.M. was at [Petitioner's] residence, he put his hand down her pants and digitally penetrated her vagina.

The last sexual contact between [Petitioner] and K.M. was in January 2011. He picked her up in Croydon at 11:00 PM and took her to his Morrisville residence where he engaged in oral and vaginal intercourse with her. [Petitioner] then dropped her off near her home.

[Petitioner] induced K.M. to participate in more than 50 sexually explicit telephone calls. The calls usually occurring late at night or during the early morning hours, after K.M.'s parents went to bed. On one occasion, [Petitioner] told K.M. and L.H., whom he was also victimizing, that he wanted them to have sex while he listened on the telephone. To satisfy [Petitioner], K.M. and L.H. pretended to do so. In the fall of 2010, when K.M.'s parents took her cellular telephone away from her, [Petitioner] gave her a pre-paid cellular telephone to continue his contact with her. [fn. 31 Police later confirmed the telephone had been activated on November 15, 2010. The subscriber was identified as K.H. The contact list included ""Britt." "Britt" had left incoming messages: "do we have to wait until their asleep" and "good I'm so excited." K.M. confirmed that "Britt" was [Petitioner]. When K.M.'s aunt took this telephone away from her, the Defendant provided K.M. with a new pre-paid cellular telephone. N.T. 8/13/12 pp. 31-32.]

In January 2011, 15-year-old K.M. and 16-year-old L.H., sent photographs of themselves using L.H.'s cellular telephone. K.M. was photographed in her bra and underpants, topless with only her hands covering her breasts, and in a tight-fitting Alice in Wonderland costume. L.M. was also photographed in her bra and underpants and the same Halloween costume.

Telephone records revealed that between July 2010 and November 2010 thousands of cellular communications occurred between [Petitioner's] cellular telephone and K.M.'s cellular

telephone, 151 of which were voice calls placed between 10:00 P.M. and 4:00 A.M.

Electronic surveillance conducted by investigators in March of 2011 confirmed that [Petitioner] was in fact engaging in "telephone sex" with K.M. An exhibit identified as "Wire 3" contained a recording of a telephone call initiated by [Petitioner] on March 10, 2011 at 12:04 A.M. wherein K.M. and [Petitioner] engaged in "phone sex." [fn. 32 N.T. 8/13/12 pp. 74, 77-79; Exhibit C-4.] On March 12, 2011, K.M. and [Petitioner] began text messaging at 11:23 P.M. [Petitioner] texted that he "needed" a call adding, "nephew in room, can't talk but can listen." Upon learning of the presence of a child, Detectives had K.M. terminate the contact. [fn. 33 N.T. 8/13/12 pp. 82-88; 235; Exhibit C-48.] Two minutes later, [Petitioner] texted L.H. [fn. 34 Exhibit C-34.]

L.H. – female, born January 18, 1994

At the time of trial, L.H. was 18 years old. She met [Petitioner] through her friend, K.M., during her freshman year of high school. [Petitioner] was identified as K.M.'s "uncle." L.H. was 16 years old when [Petitioner] also coerced L.H. into engaging in "telephone sex" on approximately 10 different occasions by threatening to kill her and by threatening to burn down her house. [Petitioner], then 24, told her what he wanted her to do during the telephone calls. He called her a "whore" and made racially derogatory remarks.

After being repeatedly threatened, L.H. sent him naked photographs of herself. [fn. 35 Exhibits C-40 and C-41.] She confirmed that she and K.M. took photographs of themselves and sent them to [Petitioner]. [fn. 36 Exhibits C-35 to C-39, C-42 to C-47] When she told [Petitioner] that she wanted to stop, he threatened to have her "'jumped." He told her he would "kill police" if they came after him. [Petitioner] tried to force L.H. to take "hot" photographs of "everyone" in the locker room of her high school. He tried to force her to masturbate where she could be seen by others, telling her to "tease" them. She did not comply with either demand.

Threatening text messages from [Petitioner] to L.H. and sexually explicit photographs of L.H. were retrieved from [Petitioner's] iPhone by investigators. [fn. 37 Exhibit C-34] In October of 2010, [Petitioner] sent a text to L.H. telling her to take her "sis" into the bathroom and send him "special pics." She sent him a topless photograph of herself with her ten-year-old sister

standing next to her. [Petitioner] instructed her to have her sister "touch her boobs." L.H. complied. Photographs of L.H. and her sister were also sent on February 22, 2011. [Petitioner] made L.H. remove her bra and take a "Hi Steve" photograph. [Petitioner] forwarded that photograph to a man he had just met. [Petitioner] later used these sexually explicit photographs to control L.H., threatening to send them to her mother and other people.

Cellular telephone records revealed that from January of 2011 to February 9, 2011 there were thousands of communications between [Petitioner's] cellular telephone and L.H.'s cellular telephone. There were 216 voice calls, the majority of which occurred in the late evening or early morning hours, and 43 multimedia messaging service text messages.

Sexual Abuse of Children – Child Pornography

Forensic examination of [Petitioner's] computers led to the recovery of numerous pornographic videos, still photographs, and videos of still photographs of children being raped and otherwise sexually abused. [fn. 38 Exhibits C-26, C-49. These images were reviewed by the court *in camera* in the presence of counsel and the prosecuting officers. The evidence was thereafter described for the record by Detective Gregory Beidler of the Bristol Township Police Department. N.T. 8/16/12 pp. 155-197.] The children all appeared to be 10 years of age or younger. The children were depicted being penetrated vaginally, orally, and anally by adult men. Some of the videos had an audio track. One video captured the sobs of a female victim who appears to be approximately six years of age as she was being vaginally raped. Another video captured a victim who appears to be three or four years old pleading "no, no" before her assailant ejaculated into her mouth. One child was vaginally penetrated by a dog. Some images depicted objects being used to sexually assault the children. Other images depicted children engaging in sexual contact with other children. All of the children knew that they were being photographed and/or videotaped. Some were posed for the camera. Two were forced to perform for the camera; the first performing sexual acts on her abuser in costume; another, approximately five to seven years old, unwillingly performing a striptease is instructed by the person behind the camera on how to perform. One very young girl was videotaped with her hands and legs bound. A leash had been placed around her neck. She was being sexually assaulted by the man holding the leash.

Solicitation – Escape

> On March 16, 2011, [Petitioner] was charged with 42 criminal offenses for crimes committed against K.M. (Case no. 4719-2011). He was remanded to Bucks County Correctional Facility on $1,000,000/10% monetary bail. While [Petitioner] was incarcerated awaiting trial, he formulated a plan of escape whereby he would injure himself or get in a fight with another inmate so that he would have to be taken to the hospital. Once at the hospital, he planned on having "his people take care of the guards." To carry out this plan, [Petitioner] attempted to obtain a needle from another inmate. He questioned yet another inmate who had been hospitalized about the security measures taken by the prison at the hospital. [Petitioner] inquired about the number of guards used to transport the inmate, what vehicle was used to transport the inmate, whether the guards were armed with handguns or pepper gas, what hospital was used by the prison, what entrance was utilized, if that entrance was utilized by the public, where the prison vehicle parked, whether the inmate was shackled, if he was handcuffed to the bed, whether his handcuffs or shackles had been removed for treatment or before X-rays were taken, whether the guards used cellular telephones or radio, and how they left the hospital.
>
> [Petitioner] also sent a letter to his friend, Robert Gremmel, asking for Gremmel's assistance with the escape attempt and telling him to wait for a telephone call at [Petitioner's] home for further instructions. [fn. 39 N.T. 4/18/12 p. 112; Exhibit CS-7 (4/18/12).] [Petitioner] called Gremmel from the Bucks County Correctional Facility on March 29, 2011, detailing to Gremmel his plan for escape. [fn. 40 N.T. 4/18/12 pp. 113-118, 131; Exhibit CS-8 (4/18/12)] Specifically, [Petitioner] asked Gremmel to recruit people he trusted or hire someone to "grab him" at the hospital. [fn. 41 Exhibit CS-7 (4/18/12).]

Opinion (direct appeal), 8/14/13, at 2-19 (footnotes incorporated).

In October, 2012, Stuart Wilder, Esquire, (hereinafter "Post Trial Counsel/Mr. Wilder") was appointed to represent Petitioner.

On January 24, 2013, Petitioner was sentenced to an aggregate term of incarceration of 494½ to 989 years. By order dated January 30, 2013, this Court vacated sentence on two counts in Docket No. 2035-2012, reducing the aggregate minimum sentence to 479½ to 959 years

imprisonment.[1] On February 4, 2013, Petitioner filed post-sentence motions. On March 28, 2013, the post-sentence motions were withdrawn.

On April 22, 2013, Petitioner filed a timely appeal. On December 24, 2014, the Superior Court affirmed the judgment of sentence. On January 21, 2015, Petitioner filed a Petition for Allowance of Appeal. That Petition was denied on June 11, 2015.

On April 21, 2016, Petitioner filed a *pro se* request for PCRA relief. See Petition for Relief Under the Post-Conviction Relief Act (hereinafter "*Pro se* PCRA Petition"). On February 7, 2016, Paul G. Lang, Esquire, was appointed to represent Petitioner. On May 15, 2017, Mr. Lang filed a Motion to Appoint Substitute Counsel based on Petitioner's multiple allegations of ineffective assistance, Petitioner's allegation that Mr. Lang's law partner represented one of the victim's and Mr. Lang's belief that there was an irretrievable and irrevocable breakdown in the attorney/client relationship. Motion to Appoint Substitute Counsel, at ¶¶ 4-5. On October 18, 2017, a hearing on PCRA counsel's motion was held. At that time, Petitioner agreed that Mr. Lang did not have a conflict of interest and advised this Court that he wanted Mr. Lang to continue to represent him. N.T. 10/18/17, at 9-11. The Motion to Appoint Substitute Counsel was therefore withdrawn.

On January 8, 2018, Mr. Lang filed a request for an extension of 90 days within which to file an amended PCRA petition. The request was based on Petitioner's case being reassigned to new conflict counsel as a result of the hiring of additional attorneys to serve as conflict counsel and the restructuring of conflict counsel duties. Motion to Enlarge the Time for Filing of Amended Petition, ¶¶ 3-5. By order dated January 12, 2018, the appointment of Mr. Lang was vacated and

[1] Petitioner was convicted of multiple sexual offenses he committed against M.C. (female, born May 5, 1987). Two charges, Involuntary Deviate Sexual Intercourse - victim less than 13 years old, 18 Pa.C.S. § 3123(a)(6) and Aggravated Indecent Assault – victim less than 13 years old, 18 Pa.C.S. § 3125(a)(7), were demurred at trial based on M.C.'s age at the time of the sexual assaults occurred. In error, sentence was imposed on those two offenses. The sentences were therefore later vacated.

Patrick J. McMenamin, Jr., Esquire, was appointed to represent Petitioner in the PCRA proceedings.

On May 29, 2018, Mr. McMenamin filed a Post Conviction Relief Act No Merit Letter & Memorandum of Law Pursuant to Commonwealth v. Finley (hereinafter "No Merit Letter") and a Petition to Withdraw as Counsel. On June 4, 2018, Petitioner filed a *pro se* motion for appointment of new PCRA counsel. See Appellant's Motion for Change of Appointed PCRA Counsel and Review of PCRA Petition Due to Conflict of Interest. On October 4, 2018, Mr. McMenamin was directed to file a supplemental no merit letter and memorandum of law or an amended PCRA petition within 90 days of the order to address Petitioner's search warrant claims in light of the Supreme Court decision in Commonwealth v. Hopkins, 164 A.3d 1133 (Pa. 2017). On January 4, 2019, Mr. McMenamin filed a Post Conviction Relief Act Supplemental No Merit Letter & Memorandum of Law Pursuant to Commonwealth v. Finley ("Supplemental No Merit Letter") and a motion to withdraw.

On July 12, 2019, a video hearing was held at which time Petitioner was advised of this Court's intent to dismiss his PCRA Petition. N.T. 7/12/19, at 4. He was advised that he would be given 20 days to respond, that he could proceed *pro se* or with privately retained counsel and that an extension of the time to file a response would be granted upon request. N.T. 7/12/19, at 4-5, 11. He was further advised that the exhibits/documents Petitioner sent to PCRA counsel would be returned to him for his use in preparing a response. N.T. 7/12/19, at 6-10. Written Notice of Intent to Dismiss was filed of record on July 15, 2019 and PCRA counsel was granted leave to withdraw.[2]

On July 18, 2019, Petitioner filed a petition requesting a 120-day extension within which to file his response. By order dated July 22, 2019, Petitioner was granted until November 18, 2019

[2] Because this Court's order of July 15, 2019 did not appear on the docket, a second order granting leave to withdraw was entered on December 18, 2020.

to file his response. On August 28, 2019, Mr. McMenamin filed a Certification of Compliance verifying that all documents received from prior counsel and/or Petitioner as well as copies of all of the notes of testimony had been sent to Petitioner. In a letter docketed on October 8, 2019, Petitioner advised this Court that several items were missing from the documents he had been provided. On October 28, 2019, Petitioner filed for an extension of time within which to file his response based on his failure to receive the missing documents. A video hearing was therefore scheduled for December 12, 2019 at which time, after an off the record discussion, Petitioner acknowledged that he received two boxes of documents from Mr. McMenamin but asserted that certain documents were missing. Petitioner was directed to file of record a list of the documents that had previously been provided in discovery but which had not been included in the materials forwarded to him by Mr. McMenamin. Petitioner was given two weeks to file that itemized list. The Commonwealth was directed to file a response within two weeks of receipt of Petitioner's request. N.T. 12/12/19, at 6-7; Order docketed 12/13/19. Petitioner was granted 60 days from the date of the hearing to file his response to the Notice of Intent to Dismiss. N.T. 12/12/19, at 8; Order docketed 12/13/19. On January 2, 2020, Petitioner filed a list of the documents he was requesting. The Commonwealth did not file a response. On March 3, 2020, the Commonwealth was directed to file a response on or before May 4, 2020. On March 12, 2020, the Commonwealth filed its Answer identifying those items of original discovery that would be reproduced and provided to Petitioner and those items that were not part of original discovery and/or were not in possession of the Commonwealth. See Answer to Motion to Petitioner's Request for Copies of Original Discovery Pursuant to Post Conviction Collateral Relief.

On May 14, 2020, Petitioner file a petition seeking to obtain documents he alleged the District Attorney's Office agreed to produce but which had not been provided to him. He also

advised this Court that the notes of testimony from the December 12, 2019 hearing had not been transcribed. On June 10, 2020, an order directing the notes of testimony be transcribed was entered. On July 1, 2020, the District Attorney's Office filed a Certification of Compliance with the Order of the Court Dated December 12, 2019 and March 3, 2020, verifying that the materials the District Attorney's Office agreed to reproduce had been reproduced and sent to Petitioner. In a "Response" filed on July 6, 2020, Petitioner confirmed that he received a box of material from the District Attorney's Office but alleged that the information provided was incomplete. On July 20, 2020, Petitioner filed a "Reply" requesting an extension to respond to the Notice of Intent to Dismiss on the grounds that he did not receive all of the materials he requested. On August 6, 2020, the official court reporter filed a Certification of Compliance verifying that all transcripts had been provided to Petitioner. On October 1, 2020, Petitioner filed a Motion to Compel Response to his previously filed "Reply." By order dated October 8, 2020, Petitioner's request for an extension to respond to this Court's Notice of Intent to Dismiss pending receipt of the discovery materials he requested was denied. Petitioner was given until October 22, 2020 to file a response. On October 30, 2020, Petitioner filed an "Answer" requesting a further extension based upon his alleged failure to receive the discovery items he requested and upon his limited access to the resources required to prepare a response as a result of the restrictions imposed by the Department of Corrections during the COVID-19 pandemic. Based upon Petitioner's limited access to resources during the pandemic, Petitioner was granted until March 31, 2021 to file his response. On March 23, 2021, Petitioner filed a written request for additional time to file a response to the Notice of Intent to Dismiss, again relying on his limited access to the resources required to prepare a response as a result of the restrictions imposed by the Department of Corrections during the pandemic. By order dated March 26, 2021, Petitioner was granted until June 30, 2021 to file his

response. Petitioner's subsequent requests for an extension beyond June 30, 2021 to respond to this Court's July 5, 2019 Notice of Intent to Dismiss were also denied.

On July 6, 2021, the Bucks County Clerk of Courts received "Petitioner's Objections to Courts Intent to Dismiss Appellants PCRA without a Hearing Pursuant to Pa.R.Crim.P. Rule 907". By order dated July 23, 2021, Petitioner's *pro se* PCRA Petition was dismissed.

Discussion

To obtain PCRA relief, a petitioner must plead and prove by a preponderance of the evidence that his conviction or sentence resulted from one or more of the enumerated grounds for relief set forth in 42 Pa.C.S. §9543(a)(2); that his claims were not previously litigated or waived, 42 Pa.C.S. §9543(a)(3); and that the failure to litigate the issue prior to or during trial or on direct appeal could not have been the result of any rational, strategic or tactical decision by counsel, 42 Pa.C.S. 9543(a)(4). Commonwealth v. Reid, 99 A.3d 470, 481 (Pa. 2014). "[A]n issue has been previously litigated if ... the highest appellate court in which the petitioner could have had review as a matter of right has ruled on the merits of the issue." 42 Pa.C.S. § 9544(b)(2). "[A]n 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 postconviction proceeding." 42 Pa.C.S. § 9544(b). A petitioner is not entitled to a PCRA hearing as a matter of right; the PCRA court can decline to hold a hearing if there is no genuine issue concerning any material fact and the petitioner is not entitled to post-conviction collateral relief, and no purpose would be served by any further proceedings. Commonwealth v. Smith, 121 A.3d 1049, 1052 (Pa.Super. 2015), appeal denied, 136 A.3d 981 (Pa. 2016); Pa.R.Crim.P. 907(1).

In his *pro se* PCRA Petition, Petitioner relies on 42 Pa.C.S. § 9543(a)(2)(ii), ineffective assistance of counsel, as his sole basis for relief. The standards applicable to claims of ineffective

assistance of counsel are well established. Counsel is presumed to be effective and the burden is on the petitioner to prove otherwise. Commonwealth v. Smith, 17 A.3d 873, 883 (Pa. 2011). This presumption arises from the recognition that it is "all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland v. Washington, 466 U.S. 668, 689 (1984). Therefore, when evaluating ineffectiveness claims, "judicial scrutiny of counsel's performance must be highly deferential." Id., 466 U.S. at 671. A reviewing court must make every effort "to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Id.

To prevail on an ineffectiveness claim, a petitioner must satisfy, by a preponderance of the evidence, the performance and prejudice standard set forth in Strickland. Commonwealth v. Cousar, 154 A.3d 287, 296 (Pa. 2017). Specifically, the petitioner must establish that:

> (1) the underlying claim is of arguable merit; (2) no reasonable basis existed for counsel's action or failure to act; and (3) the petitioner suffered prejudice as a result of counsel's error, with prejudice measured by whether there is a reasonable probability that the result of the proceeding would have been different. Commonwealth v. Pierce, 567 Pa. 186, 786 A.2d 203, 213 (2001).

Commonwealth v. Housman, 226 A.3d 1249, 1260 (Pa. 2020).

Under the first prong of the analysis, a petitioner must demonstrate that his claim has arguable merit. Trial counsel may not be deemed ineffective for failing to raise a meritless claim. Commonwealth v. Keaton, 82 A.3d 419, 426 (Pa. 2013). Regarding matters of tactics and strategy, defense counsel is afforded broad discretion. Commonwealth v. Fowler, 670 A.2d 153, 155 (Pa.Super. 1996). Therefore, under the second prong of the analysis, whether counsel had a reasonable basis for his action, "we do not question whether there were other more logical courses of action which counsel could have pursued: rather, we must examine whether counsel's decisions

had any reasonable basis." Commonwealth v. Rios, 920 A.2d 790, 799 (Pa. 2007). The test for deciding whether counsel had a reasonable basis for his action or inaction is whether no competent counsel would have chosen that action or inaction, or, the alternative, not chosen, offered a significantly greater potential chance of success. Commonwealth v. Stewart, 84 A.3d 701, 707 (Pa.Super. 2013). Counsel's decisions will be considered reasonable if they effectuated his client's interests. Id. If counsel's chosen course had some reasonable basis, the inquiry ends and counsel's assistance is deemed effective. Commonwealth v. Williams, 899 A.2d 1060, 1064 (Pa. 2006). Under the third prong of the analysis, prejudice, a petitioner "must show that there is a reasonable probability that the outcome of the proceedings would have been different but for counsel's action or inaction." Commonwealth v. Watley, 153 A.3d 1034, 1040 (Pa.Super. 2016) (quoting Commonwealth v. Spotz, 18 A.3d 244, 260 (Pa. 2011)). "A reasonable probability 'is a probability sufficient to undermine confidence in the outcome.'" Stewart, 84 A.3d at 707 (quoting Commonwealth v. Rathfon, 899 A.2d 365, 370 (Pa.Super. 2006)).

A court is not required to analyze the elements of an ineffectiveness claim in any particular order of priority; if a claim fails under any necessary element of the *Strickland* test, the court may proceed to that element first." Commonwealth v. Cousar, 154 A.3d at 297. "[I]f a claim fails under any required element of the *Strickland* test, the court may dismiss the claim on that basis." Housman, 226 A.3d at 1260-61 (citing Commonwealth v. Ali, 10 A.3d 282, 291 (Pa. 2010)).

In attempting to rebut the presumption of effectiveness, a petitioner must offer more than mere conclusory allegations to establish entitlement to relief. Commonwealth v. Cousar, 154 A.3d at 299. A petitioner is required to set forth in his PCRA petition his specific grounds for relief and the facts supporting each ground as set forth in the record or by accompanying affidavits or documents. Pa.R.Crim.P. 902(A)(11), (12) (a) & (b). In his PCRA Petition, Petitioner cites to

numerous "Exhibits" to support his claims for relief. The supporting documentation is not, however attached to the Petition. At the hearing held on July 12, 2019, Petitioner indicated that the exhibits were not duplicated due to the number of documents and the limitations regarding duplication of documents at the state correctional facility and that the originals were sent to PCRA counsel. In order to address that issue, the original documents Petitioner provided to PCRA counsel were returned to Petitioner for his use in supplementing his *pro se* PCRA Petition. In addition, Petitioner was also provided copies of the original discovery materials and the notes of testimony of the proceedings for his use in preparing his response to PCRA counsel's no merit letter and this Court's Notice of Intent to Dismiss. N.T. 7/12/19, at 6-10. To date, Petitioner has failed to submit the previously cited "Exhibits" or any other facts to support his claims for relief as required. Having failed to set forth facts to support his multitude of claims, Petitioner has effectively waived his claims.

Even if Petitioner's claims were properly plead, he is not entitled to PCRA relief. After reviewing the extensive record in this case, including the "hundreds if not a thousand pages of notes, records, reports charts and cross-referenced notations" Petitioner supplied to support his *pro se* claims,[3] interviewing prior counsel and discussing the claims with Petitioner, PCRA counsel filed a No Merit Letter and a Supplemental No Merit Letter along with Petitions to withdraw as PCRA counsel. This Court also conducted an independent review of Petitioner's claims and the record and concluded that there are no genuine issues of material fact, that Petitioner is not entitled to post conviction collateral relief and that no purpose would be served by any further proceedings. PCRA counsel was therefore granted leave to withdraw and Petitioner was given notice of this Court's intent to dismiss without a hearing.

[3] No Merit Letter, 5/29/18, at 2.

The prerequisites for court-appointed counsel to withdraw from PCRA representation are as follows:

> Independent review of the record by competent counsel is required before withdrawal is permitted. Such independent review requires proof of:
>
> 1) A "no-merit" letter by PCRA counsel detailing the nature and extent of his review;
>
> 2) A "no-merit" letter by PCRA counsel listing each issue the petitioner wished to have reviewed;
>
> 3) The PCRA counsel's "explanation", in the "no-merit" letter, of why the petitioner's issues were meritless;
>
> 4) The PCRA court conducting its own independent review of the record; and
>
> 5) The PCRA court agreeing with counsel that the petition was meritless.

Commonwealth v. Pitts, 981 A.2d 875, 876 n.1 (Pa. 2009) (quoting Commonwealth v. Finely, 550 A.2d 213, 215 (Pa.Super. 1988) (citations omitted)). In addition, PCRA counsel seeking to withdraw must "forward to the petitioner a copy of the application to withdraw that includes (i) a copy of both the "no-merit" letter, and (ii) a statement advising the PCRA petitioner that, in the event the trial court grants the application of counsel to withdraw, the petitioner has the right to proceed *pro se*, or with the assistance of privately retained counsel." Commonwealth v. Widgins, 29 A.3d 816, 818 (Pa.Super. 2011). If counsel fails to satisfy the technical prerequisites of Turner/Finley, counsel's request to withdraw will be denied and counsel will be directed to file a proper Turner/Finley request or an advocate's brief. Where counsel has satisfied the technical prerequisites of Turner/Finley, a PCRA court must conduct an independent review. If the court finds no claims of arguable merit, counsel will be permitted to withdraw and relief will be denied.

Commonwealth v. Wrecks, 931 A.2d 717, 721 (Pa.Super. 2007). In the instant case, PCRA counsel has complied with the procedural requirements set forth above.

Petitioner raises 50 claims of ineffective assistance of counsel in his *pro se* PCRA Petition. He alleges that all of his prior attorneys were ineffective – Pretrial Counsel, Mr. Wray, during pretrial preparation and proceedings; Public Defender Nicholas Williamson, during the pretrial application process for Public Defender/conflict counsel representation; Trial Counsel, Mr. Goodwin and Mr. Penglase, during pretrial and trial proceedings; and Post Trial Counsel, Mr. Wilder, during sentencing and appellate proceedings. The claims are set forth below in the order presented by Petitioner in his *pro se* Petition:

A. Kevin Wray, Esquire

1. Was Petitioner denied his constitutional right to effective assistance of counsel when attorney Kevin Wray failed and refused to perform an independent investigation of Petitioner's case or to familiarize himself with Petitioner's work product for his own defense or discovery material willingly provided by the Commonwealth?

2. Through ineffectiveness was Petitioner denied his constitutional right to due process of law and a fair trial when attorney Kevin Wray failed and refused to file a motion to suppress pursuant to Franks v. Delaware, 1978, for every affidavit of probable cause, application, and warrant filed by Detective Gregory Beidler?

3. Through ineffectiveness was Petitioner denied his constitutional right to effective cross examination during pretrial testimony when attorney Kevin Wray failed and refused to object to perjury and fabrication of evidence by Detective Gregory Beidler, which led to the court's finding of probable cause and the reliability and trustworthiness of [K.M.] and others?

4. Through ineffectiveness was Petitioner denied his constitutional right to a fair trial and due process of law when attorney Kevin Wray told Petitioner he filed a second motion to recuse after Judge Diane Gibbons made a statement

showing bias against Petitioner which he never filed causing fundamental error?

5. Was Petitioner through ineffective assistance of counsel denied his constitutional right to a fair trial and due process of law when Petitioner through attorney Kevin Wray waived his preliminary hearing on counsel's advice that magistrate was a rubber stamp and Petitioner through counsel would have an opportunity to question all alleged victims, witnesses and detectives before trial in a higher court?

6. Was Petitioner through ineffectiveness denied his constitutional right to due process of law, fair trial, and right to be free from cruel and unusual punishment when attorney Kevin Wray allowed a Commonwealth witness, Sergeant Vingless, to intimidate, harass, and put the safety and wellbeing of Petitioner in jeopardy while overseeing Petitioner on a daily basis for over 11 months?

7. Was Petitioner denied his constitutional right to a fair trial when through ineffective assistance attorney Kevin Wray filed a motion requesting that Petitioner's cases be joined together?

8. Was Petitioner denied his constitutional right to effective assistance of counsel when attorney Kevin Wray broke attorney-client privilege when speaking to Bucks County attorneys, mainly attorney Craig Penglase, about private conversations between himself and Petitioner without Petitioner consenting to the conversations?

9. Was Petitioner denied his constitutional right to a speedy trial, fair and impartial trial and due process of law through the ineffective assistance of counsel when attorney Kevin Wray requested and received numerous and unnecessary continuances?

10. Was Petitioner denied his constitutional right to a fair and impartial trial and due process of law through the ineffective representation of attorney Kevin Wray at pretrial hearings when his lack of knowledge of legal terms, procedure and arguments, along with his refusal to take notes and answer simple questions which, among other things, led to Petitioner firing attorney Kevin Wray which was looked at by the court as a stalling tactic?

11. Was Petitioner through the ineffective assistance of attorney Kevin Wray denied his constitutional right to due process of law, a fair and impartial trial, and right to be free from unreasonable search and seizures without probable cause when attorney Kevin Wray failed and refused to at the very least argue the defense prepared by Petitioner well before pretrial hearings?

12. Was Petitioner through the ineffective assistance of attorney Kevin Wray denied his constitutional rights to a fair and impartial trial and due process of law when attorney Kevin Wray failed and refused to challenge the refutable case by the Commonwealth with the actual evidence available and known to exist by the Commonwealth in their own discovery?

13. Was Petitioner through the ineffective assistance of attorney Kevin Wray denied his constitutional right to a fair and impartial trial and due process of law when attorney Kevin Wray failed and refused to object to the prosecutorial misconduct of Assistant District Attorney Jennifer Shorn throughout pretrial hearings?

14. Was Petitioner denied his constitutional right to effective assistance of counsel when attorney Kevin Wray failed and refused to file a second motion to recuse Judge Diane Gibbons after telling Petitioner he had done so?

15. Was Petitioner through the ineffective assistance of attorney Kevin Wray denied his constitutional right to a fair and impartial trial and due process of law when attorney Kevin Wray failed and refused to file a motion to suppress all evidence seized on March 17, 2011, due to chain of custody issues?

16. Was Petitioner through the ineffective assistance of counsel by attorney Kevin Wray denied his constitutional right to due process of law and a fair and impartial trial when attorney Kevin Wray failed and refused to raise the issue of the interference by Judge Diane Gibbons during cross examination of Detective Gregory Beidler?

17. Was Petitioner through the ineffective assistance of attorney Kevin Wray denied his constitutional right to due process of law and a fair and impartial trial when attorney Kevin Wray

failed and refused to raise the argument that Detective Gregory Beidler allowed physical evidence to be destroyed?

18. Was Petitioner through the ineffective assistance of attorney Kevin Wray denied his constitutional right to due process and a fair and impartial trial when attorney Kevin Wray failed and refused to raise and argue the inconsistent and fabricated allegations throughout this case from conception to conviction?

19. Was Petitioner denied his constitutional right to effective assistance of counsel when attorney Kevin Wray failed and refused to raise the issue of abuse of discretion and bias committed during pretrial hearings by Judge Diane Gibbons?

20. Was Petitioner denied effective assistance of counsel when attorney Kevin Wray failed and refused to raise the issue of entrapment "right to be left alone" that was provided by Petitioner?

21. Was Petitioner through ineffective assistance of counsel Kevin Wray denied his constitutional right to due process of law, a fair and impartial trial and to be free from an overbroad search warrant when Kevin Wray failed to file a motion to suppress evidence from the April 14, 2011, search?

22. Was Petitioner through ineffective assistance of attorney Kevin Wray denied his constitutional right to be present in court when attorney Kevin Wray failed and refused to investigate and prove Petitioner was in fact suffering from a side effect of Zyprexa taken with Zoloft?

23. Was Petitioner through ineffective assistance by attorney Kevin Wray denied his constitutional right to due process of law and a fair and impartial trial when the prosecution used evidence against Petitioner, which was illegally seized from Petitioner's home by police and lead Detective Gregory Beidler who was acting unlawfully?

24. Was Petitioner denied his constitutional right to effective assistance of counsel when attorney Kevin Wray failed and refused to raise objections to the prosecutor using testimony and evidence known by the prosecution to be false and was allowed to stand uncorrected?

25. Was Petitioner denied his constitutional right to effective assistance of counsel when attorney Kevin Wray failed and refused to file a motion to suppress evidence from the wire intercept?

26. Was Petitioner denied his constitutional right to effective assistance of counsel when attorney Kevin Wray failed and refused to file motions based on Franks v. Delaware, 1978, to prove Petitioner's arrest and the search of his home on March 17, 2011, were illegal and without probable cause by challenging the veracity of Detective Gregory Beidler?

27. Was Petitioner denied his constitutional right to effective assistance of counsel when attorney Kevin Wray abandoned all aspects of investigation, preparation, and representation of Petitioner's case and his defense?

28. Was Petitioner denied his constitutional right to effective assistance of counsel when attorney Kevin Wray failed and refused to file a motion to suppress evidence seized on March 17, 2011, pursuant to United States v. Zimmerman, 2002, and/or Franks v. Delaware, 1978?

B. Michael Goodwin and Craig Penglase, Esquires

1. Was Petitioner denied his constitutional right to effective assistance of counsel when attorneys Michael Goodwin and Craig Penglase took on Petitioner's five cases without stipulating that they would only do so if sufficient time was given to prepare?

2. Was Petitioner through the ineffective assistance of attorneys Michael Goodwin and Craig Penglase denied his constitutional right to due process and a fair and impartial trial when they failed and refused to file any motions to suppress pursuant to Franks v. Delaware, 1978 and/or United States v. Zimmerman, 2002?

3. Was Petitioner through ineffective assistance of counsel by attorneys Michael Goodwin and Craig Penglase denied his constitutional right to due process of law and a fair and impartial trial when no motion to recuse was filed after Judge Diane Gibbons showed blatant bias against Petitioner and abuse of discretion when denying Petitioner's motion for a

continuance, including bias shown in previous pretrial transcripts?

4. Was Petitioner denied effective assistance of counsel when attorneys Michael Goodwin and Craig Penglase failed and refused to at least file motions to suppress based on Petitioner's complete work product?

5. Was Petitioner through ineffective assistance of attorneys Michael Goodwin and Craig Penglase denied his constitutional right to due process of law and a fair and impartial trial when they failed and refused to prove the weight of the actual evidence available, pretrial was insufficient to raise to the level needed for probable cause?

6. Was Petitioner through ineffective assistance by attorneys Michael Goodwin and Craig Penglase denied his constitutional right to due process of law and a fair and impartial trial when they failed and refused to file a motion to suppress evidence seized on March 17, 2011, due to chain of custody issues?

7. Was Petitioner through ineffective assistance by attorneys Michael Goodwin and Craig Penglase denied his constitutional right to due process and a fair trial when they allowed a biased and partial Judge, Diane Gibbons, to continue to oversee Petitioner's case without objection, causing fundamental error?

8. Was Petitioner denied his constitutional right to effective assistance of counsel when attorneys Michael Goodwin and Craig Penglase failed to object to the viewing of child pornography by Judge Diane Gibbons acting as Petitioner's jury?

9. Was Petitioner through ineffective assistance of counsel by attorneys Michael Goodwin and Craig Penglase denied his constitutional right to due process of law and a fair and impartial trial when counsel failed and refused to object to Judge Diane Gibbons viewing of child pornography?

10. Was Petitioner denied his constitutional right to effective assistance of counsel when attorneys Michael Goodwin and Craig Penglase did not know the rulings of the court made prior to their appointment to the case in order to object to prosecutorial misconduct?

11. Was Petitioner through the ineffective assistance by attorneys Michael Goodwin and Craig Penglase denied his constitutional right to due process of law and a fair and impartial trial when the prosecution was permitted to commit a fraud upon the court without objection?

12. Was Petitioner denied effective assistance of counsel violating his constitutional rights when attorneys Michael Goodwin and Craig Penglase failed and refused to interview public defender Nicholas Williamson concerning delay in representation?

13. Was Petitioner through attorneys Michael Goodwin and Craig Penglase denied his constitutional right to due process of law and a fair trial when counsel withdrew the motion to suppress illegal wire intercept evidence, while in chambers, and without discussion or explanation to the Petitioner, whose work product the motion was based on?

14. Was Petitioner through ineffective assistance of counsel by attorneys Michael Goodwin and Craig Penglase denied his constitutional right to due process of law and a fair and impartial trial when counsel failed and refused to raise issues of fabricated evidence and inconsistent allegations in all of Detective Gregory Beidler's memorandums, affidavits of probable cause, applications and warrants?

15. Was Petitioner denied his constitutional right to effective assistance of counsel when attorneys Michael Goodwin and Craig Penglase gave Petitioner improper legal advice which Petitioner relied on when waving a jury trial, stipulating evidence and not putting on a defense?

16. Was Petitioner denied his constitutional right to effective assistance of counsel when attorneys Michael Goodwin and Craig Penglase failed and refused to raise pretrial arguments for entrapment and alibi defenses?

17. Was Petitioner denied his constitutional right to effective assistance of counsel when attorneys Michael Goodwin and Craig Penglase failed and refused to file a motion to suppress evidence seized from Petitioner's phones and computers for being overbroad?

18. Was Petitioner denied his constitutional right to effective assistance of counsel when attorneys Michael Goodwin and Craig Penglase failed and refused to file a motion to suppress evidence from the wire intercept due to outrageous police conduct, entrapment and no probable cause?

C. Stuart Wilder, Esquire

1. Was Petitioner denied his constitutional right to effective assistance of counsel when attorney Stuart Wilder failed to object to Judge Diane Gibbons misuse of evidence during sentencing?

2. Was Petitioner denied his constitutional right to effective assistance of counsel when attorney Stuart Wilder was unprepared to argue continuance issues based on prior counsel's motion or perfect Petitioner's appeal?

D. Nicholas Williamson, Esquire

1. Was Petitioner denied his constitutional right to effective assistance of counsel when public defender Nicholas Williamson abandoned Petitioner and Petitioner's case?

2. Was Petitioner through the ineffective assistance of public defender Nicholas Williamson denied his right to a fair trial and due process of law when Nicholas Williamson failed and refused to file anything with the court on Petitioner's behalf regarding the Commonwealth's interference with Petitioner's counsel and representation?

See *Pro se* PCRA Petition.

Many of the claims raised overlap and present similar issues. Petitioner's claims have therefore been reorganized and consolidated for purposes of efficiency and clarity.

I. **Alleged Police Fabrication/Prosecutorial Misconduct [Claims A-2; A-3; A- 11; A-12; A-13; A-17; A-18; A-23; A-24; A-26; A-28; B-2; B-4; B-10; B-11; B-14; B-18]**

Petitioner broadly alleges that the Commonwealth engaged in a persistent scheme of police fabrication, misrepresentations, omissions of fact, destruction of evidence, and prosecutorial misconduct. Petitioner asserts that Pretrial and Trial Counsel, Mr. Wray, Mr. Goodwin, and Mr.

Penglase, were ineffective for failing to file various motions to suppress based on that alleged misconduct. Petitioner further alleges that these attorneys were ineffective for failing to object to the alleged perjury and fabrication/destruction of evidence by Detective Gregory Beidler of the Bristol Township Police Department and Assistant District Attorney Jennifer Schorn and for failing to make the appropriate arguments regarding that alleged misconduct. Petitioner's claims fail under all three prongs of the ineffective assistance of counsel test.

A. **Suppression of Evidence Obtained Pursuant to Search Arrest Warrants [Claims A-2; A-11; A-12; A-18; A-23; A-26; A-28; B-2; B-4; B-5]**

In his *pro se* PCRA Petition, Petitioner asserts that all three attorneys who represented him during the pretrial proceedings were ineffective for failing to file a motion to suppress evidence seized pursuant to search warrants which, Petitioner generally claims, contain unidentified material misrepresentations. Four search warrants were obtained during the course of the investigation. The first warrant, issued on March 16, 2011, authorized the search of Petitioner's home. The second warrant, issued on April 14, 2011, authorized the search of Petitioner's computers and two iPhones that were seized during the execution of the warrant on Petitioner's home. The third warrant, issued on June 16, 2011, authorized a search for Petitioner's mail to and from Bucks County Correctional Facility as part of the escape investigation. The fourth warrant, issued on June 22, 2012, authorized the search of one of the iPhones seized during the execution of the warrant on Petitioner's home.

The June 16, 2011 search warrant for Petitioner's mail did not result in the seizure of any items of evidentiary value. N.T. 7/26/12, Pretrial Motions, at 74-75. As a result, Petitioner cannot establish that he was prejudiced by any alleged material misrepresentation contained in that

warrant. Petitioner's inability to establish that he was prejudiced precludes a finding that his attorneys were ineffective for failing to challenge that warrant. Housman, 226 A.3d at 1260-61.

As to the remaining search warrants, the issue regarding material misrepresentations was raised prior to trial. N.T. 7/26/12, Pretrial Motions, at 87-90, 111-130. This Court found that the warrants did not contain misrepresentations as alleged. See Opinion (direct appeal), 8/14/13, at 25-30. The claim was also considered and rejected by the Superior Court on direct appeal.[4] See Superior Court Memorandum Opinion, 12/24/14, at 8-13. Since the underlying claim has been determined to lack merit, Petitioner's claim of ineffective assistance of counsel must fail due to Petitioner's inability to demonstrate a meritorious claim and prejudice. Housman, 226 A.3d at 1260-61.

In Petitioner's Response to this Court's Notice of Intent to Dismiss, Petitioner for the first time identifies what he alleges to be material misrepresentations which were not previously litigated. All three search warrants contain the same alleged misrepresentations. Specifically, Petitioner relies on the following alleged inconsistencies between the probable cause affidavits authored by County Detective Tim Perkins and Bristol Township Detective Greg Beidler, and a police report authored by Bensalem Detective Christopher McMullin:[5]

1. Search Warrant Probable Cause Affidavits: "KM estimated that it was in the late *spring of 2010 when she had sexual intercourse with Meyerle for the first time.*"

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[4] Collateral claims of trial counsel ineffectiveness deriving from an underlying claim of error that was litigated on direct appeal cannot automatically be dismissed as "previously litigated" for purposes of 42 Pa.C.S. §§ 9543(a)(3) and 9544(a). Commonwealth v. Grove, 170 A.3d 1127, 1139 (Pa.Super. 2017). Claims of ineffective assistance of counsel are considered discrete and separate claims from "direct appeal" claims that are cognizable under the PCRA and must be addressed under the three-pronged ineffectiveness test under Commonwealth v. Pierce, 527 A.2d 973 (Pa. 1997). Commonwealth v. Collins, 888 A.2d 564, 573 (Pa. 2005).

[5] The entirety of the statements are quoted for purposes of this opinion. The specific portions relied on by Petitioner are italicized. See Petitioner's Response, 7/7/21, at 15-16.

Police Report: KM recalled at least four occasions where she had sexual contact with Walt while at his house. In 2010 KM texted Walt asking if she could spend the night at his house. KM was not sure exactly when this occurred but she stated that it was *during the school year prior to the summer*.

2. Search Warrant Probable Cause Affidavits: KM stated that when they would have sex Meyerle would come down to ... and pick her up at an intersection near her home.[6] Meyerle *would then drive K.M. to his house at 901 East Penn Valley Road, Morrisville, Pa. 19067.*

   Police Report: After picking her up he *drove right to his house in Morrisville which is located in an area where there are a lot of trailer homes.*

3. Search Warrant Probable Cause Affidavits: Sometime around November 2010 K.M. was grounded by her parents and had her cellular telephone taken from her. Meyerle then provided K.M. with a cricket pre-paid cellular telephone with telephone number ... *When the Cricket cellular telephone was taken from K.M.*, K.M. advised that Meyerle gave her a second Pre-paid cellular telephone. This phone was a Tracfone with T-Mobile telephone number .... *Meyerle provided the two prepaid cellular telephones to K.M. to aid in keeping their relationship* secret and to facilitate Meyerle's desire for phone sex and also to aid in arranging meeting times and places for physical sexual contact.

   Police Report: *Sometime in November K.M.'s boyfriend Dan Counseller and Walt got K.M. a Cricket pre-paid cell phone that Dan delivered to K.M.* K.M.'s Aunt Danielle discovered the Cricket Cell phone and took it from her. *After this phone was taken* from her K.M. had her friend ... come to the house. *K.M. used [the friend's] cell phone to text Walt. Walt told her that he would get K.M. a pre-paid cell phone with 60 minutes on the phone.*

In challenging the validity of the search warrants Petitioner relies on Franks v. Delaware, 438 U.S. 154 (1978). The holding of the Court in Franks has been summarized as follows:

[6] The portion omitted from the statement refers to the area where K.M. resided. It has been omitted to avoid identifying her or the location of her residence.

> The United States Supreme Court recognized the right to challenge an affidavit's veracity in Franks v. Delaware, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978), which addressed whether a defendant has the right, under the Fourth and Fourteenth Amendments, to challenge the truthfulness of factual averments in an affidavit of probable cause. Id., at 155. The Court held where the defendant makes a substantial preliminary showing the affiant knowingly and intentionally, or with reckless disregard for the truth, included a false statement in the affidavit, the Fourth Amendment requires a hearing be held at the defendant's request. Id., at 155-56. The Court emphasized the defendant's attack on the affidavit must be "more than conclusory and must be supported by more than a mere desire to cross-examine[]"; the defendant must allege deliberate falsehood or reckless disregard for the truth, accompanied by an offer of proof. Id., at 171. If the defendant meets these requirements, but the remainder of the affidavit's content is still sufficient to establish probable cause, no hearing is required. Id., at 171-72. If the affidavit's remaining content is insufficient, a hearing is held, at which the defendant must establish, by a preponderance of the evidence, the allegation of perjury or reckless disregard. Id., at 156, 172. If he meets this burden, the affidavit's false material is disregarded; if its remaining content is insufficient to establish probable cause, the search warrant is voided, and the fruits thereof are excluded. Id., at 156.

Commonwealth v. James, 69 A.3d 180, 188 (Pa. 2013).[7]

> In determining whether a search warrant is based upon probable cause, "we would do well to heed the sound admonition of United States v. Ventresca, 380 U.S. 102, 108, 85 S.Ct. 741, 745, 13 L.Ed.2d 684 (1965)":
>
> > [T]he Fourth Amendment's commands, like all constitutional requirements, are practical and not abstract. If the teachings of the Court's cases are to be followed and the constitutional policy served, affidavits for search warrants, such as the one involved here, must be tested and interpreted by magistrates and courts in a commonsense and realistic fashion. They are normally drafted by the nonlawyers in the midst and haste of a criminal

[7] Although Petitioner did not allege a violation of Article I, Section 8 of the Pennsylvania Constitution, three Justice of an equally divided Supreme Court concluded that evidence obtained pursuant to a search warrant should be suppressed where "information contained in the affidavit in support of probable cause is later determined to be demonstrably untrue, despite the absence of any showing of police misconduct." Commonwealth v. Hopkins, 164 A.3d 1133, 1133 (Pa. 2017).

> investigation. Technical requirements of elaborate specificity once exacted under common law pleadings have no proper place in this area. A grudging or negative attitude by reviewing courts toward warrants will tend to discourage police officers from submitting their evidence to a judicial officer before acting.

Commonwealth v. Baker, 24 A.3d 1006, 1017 (Pa.Super. 2011) (quoting Commonwealth v. Council, 421 A.2d 623, 627-628 (Pa. 1980)).

While the right to challenge the veracity of the facts set forth in a search warrant affidavit has been recognized, not every inaccuracy will justify the exclusion of evidence obtained as a result of that warrant. Baker, 24 A.3d at 1017 "[T]he mere presence of an error in an affidavit of probable cause supporting a search warrant does not invalidate the warrant." Id. at 1018. A misstatement of fact will only invalidate a warrant if it is material, i.e., a fact "without which probable cause to search would not exist." Id. "In deciding whether a misstatement is material, the test is not whether the statement strengthens the application for the search warrant, but rather whether it is essential to it." Id. at 1018, n.10 (quoting Commonwealth v. Cameron, 664 A.2d 1364, 1367 (Pa.Super. 1995)).

In the instant case, Petitioner has failed to demonstrate that the probable cause affidavits contained any misstatement of fact or information which is demonstrably untrue. The statements alleged to be inconsistent with the facts set forth in the probable cause affidavit simply are not inconsistent. Petitioner has also failed to establish that any of the statements relied on are material. The search warrant affidavits recounted the accounts of multiple victims and witnesses who corroborated each other and were corroborated by telephone records. The minor details relied upon by Petitioner are of no consequence to the findings of probable cause. Having failed to establish that the underlying suppression claim would have been meritorious, Petitioner's claim of ineffective assistance of counsel fails. Commonwealth v. Johnson, 179 A.3d 1153, 1160

(Pa.Super. 2018) ("[W]here a defendant alleges that counsel ineffectively failed to pursue a suppression motion, the inquiry is whether the failure to file the motion is itself objectively unreasonable, which requires a showing that the motion would be meritorious."). Since the claim lacks merit, counsels' decision to forgo challenging the search warrants on the grounds now alleged, was reasonable and Petitioner suffered no prejudice as a result of counsels' decision.

In his *pro se* PCRA Petition, Petitioner asserts that all three attorneys who represented him during the pretrial proceedings were ineffective for failing to challenge the legality of his arrest on March 16, 2011 for crimes committed against K.M., a female minor (Docket No. 4719-2011) based on alleged material misrepresentations in the arrest warrant. Specifically, Petitioner relies on the following alleged inconsistencies between arrest warrant and the search warrant probable cause affidavits authored by County Detective Tim Perkins and Bristol Township Detective Greg Beidler, and a police report authored by Bensalem Detective Christopher McMullin

1. Arrest Warrant Affidavit: *Sometime after receiving the tattoo but before November of 2010 K.M. had a friend drop her off at Meyerle's house one evening.*

   Police Report: *After getting the tattoo but prior to her being grounded in November of 2010*, K.M. went to Walt's house a third time. *On this occasion she was dropped off at Walt's house by her boyfriend Dan Counseller. K.M. was smoking marijuana on this evening and she was very tired when she was dropped off.* K.M. recalled that on this evening Walter had put his hand down her pants and "fingered" her vagina by rubbing and inserting his fingers into her vagina before she fell asleep. *K.M. does not recall having intercourse with Walt on this occasion.*

2. Arrest Warrant Affidavit: The last time that KM and Meyerle had sexual contact was during one of the last weekends of January 2011.

   Search Warrant Probable Cause Affidavits: The last time [L.M.] had sexual intercourse with Meyerle was on the weekend of January 29/30, 2011.

See *Pro se* PCRA Petition.

Petitioner's claims regarding the arrest warrant cannot support his request for PCRA relief. First, he has failed to plead a claim for relief. An unlawful arrest "does not affect the jurisdiction or power of a trial court to proceed in a criminal case, and an illegal arrest or detention does not void a subsequent conviction." Commonwealth v. Gibson, 638 A.2d 203, 205 (Pa. 1994). "The remedy for an illegal arrest...is suppression of the fruits of the illegal arrest." Commonwealth v. Shaffer, 710 A.2d 89, 92 (Pa.Super. 1998). Here Petitioner has failed to identify what if any evidence was obtained as a result of his arrest for the crimes committed against K.M. Moreover, Petitioner has failed to plead any misstatement of fact in the arrest warrant probable cause affidavit. His claim that the arrest warrant invalid based on the alleged inconsistencies therefore lacks merit. Trial counsel may not be deemed ineffective for failing to raise a meritless claim. Commonwealth v. Keaton, 82 A.3d 419, 426 (Pa. 2013). Finally, even if the challenged information were redacted from the affidavit, the affidavit is sufficient to establish probable cause for the arrest which documented in detail the abuse of K.M. Since Petitioner cannot establish that his arrest was unlawful, Petitioner cannot establish any of the three prongs required to establish ineffective assistance of counsel.

Petitioner argues that the attorneys who represented him during the pretrial proceedings were ineffective for failing to present his arguments regarding material misrepresentations. Since those arguments have been shown to be of no merit, Petitioner's ineffective assistance of counsel claim fails under all three prongs of the Pierce test.

Finally, Petitioner argues that he was denied due process of law and a fair and impartial trial as a result of his attorneys' failure to successfully exclude the evidence seized pursuant to the

search warrants. Having determined that the evidence was not illegally seized, Petitioner's claim of ineffective assistance of counsel fails.

B. **Alleged Perjury and Fabrication/Destruction of Evidence [Claims A-3; A-7; B-14]**

Petitioner claims that Detective Gregory Beidler perjured himself on the witness stand, fabricated evidence, and allowed physical evidence to be destroyed. He argues that Pretrial Counsel was ineffective for failing to object to or otherwise cross-examine Detective Beidler regarding these issues during his pretrial testimony. Petitioner further argues that Trial Counsel were ineffective for failing to raise these alleged issues of fabricated, inconsistent and destroyed evidence during trial.

Petitioner does not identify, either in his *pro se* PCRA Petition or in his Response to this Court's Notice of Intent to Dismiss without a Hearing, what testimony he alleges to be perjured, what evidence he alleges is fabricated and what evidence Detective Beidler is alleged to have destroyed. He has not demonstrated that the alleged destroyed evidence was materially exculpatory or potentially useful such that its destruction would constitute a potential due process violation. Commonwealth v. Chamberlain, 30 A.3d 381, 402 (Pa. 2011).

"Assertions of ineffectiveness in a vacuum cannot be ineffectiveness." Commonwealth v. Pettus, 424 A.2d 1332, 1335 (Pa. 1981). "PCRA hearings are not discovery expeditions; rather, they are conducted when necessary to offer the petitioner an opportunity to prove that which he already has asserted, and only when his proffer establishes a colorable claim about which there remains a material issue of fact." Commonwealth v. Sneed, 45 A.3d 1096, 1107 (Pa. 2012). "[T]o obtain reversal of a PCRA court's decision to dismiss a petition without a hearing, an appellant must show that he raised a genuine issue of fact which, if resolved in his favor, would have entitled him to relief, or that the court otherwise abused its discretion in denying a

hearing." Commonwealth v. Sneed, 45 A.3d 1096, 1106 (Pa. 2012) (quoting Commonwealth v. D'Amato, 856 A.2d 806, 820 (Pa. 2004)). Petitioner's unsupported and undeveloped claim is insufficient to support his request for PCRA relief. See Commonwealth v. Wharton, 811 A.2d 978, 986 (Pa. 2002).

There is nothing in the trial record to indicate that there was any perjured testimony or manufactured evidence or that any evidence was destroyed. Petitioner has therefore failed to demonstrate that his claims are of merit. Having failed to demonstrate a meritorious claim, this Court cannot conclude that counsel had no reasonable basis for failing to raise the claims or that Petitioner was in any way prejudice as a result of counsels' failure to do so. Petitioner has therefore failed to satisfy all three prongs of the ineffective assistance of counsel test.

C. Alleged Prosecutorial Misconduct [Claims A-13; A-18; A-23; A-24; B-10; B-11]

"A claim of ineffective assistance grounded in trial counsel's failure to object to a prosecutor's conduct 'may succeed when the petitioner demonstrates that the prosecutor's actions violated a constitutionally or statutorily protected right, such as the Fifth Amendment privilege against compulsory self-incrimination or the Sixth Amendment right to a fair trial, or a constitutional interest such as due process.'" Commonwealth v. Kohler, 36 A.3d 121, 144 (Pa. 2012) (quoting Commonwealth v. Cox, 983 A.2d 666, 685 (Pa. 2009)). "To constitute a due process violation, the prosecutorial misconduct must be of sufficient significance to result in the denial of the defendant's right to a fair trial." Kohler, 36 A.3d at 144 (quoting Cox, 983 A.2d at 685). "The touchstone is fairness of the trial, not the culpability of the prosecutor." Kohler, 36 A.3d at 144 (quoting Cox, 983 A.2d at 685). "Finally, "[n]ot every intemperate or improper remark mandates the granting of a new trial;" Kohler, 36 A.3d at 144 (quoting Cox, 983 A.2d at 685). "[r]eversible error occurs only when the unavoidable effect of the challenged comments would

prejudice the jurors and form in their minds a fixed bias and hostility toward the defendant such that the jurors could not weigh the evidence and render a true verdict." Kohler, 36 A.3d at 144 (quoting Cox, 983 A.2d at 685).

Petitioner has failed to identify, either in his *pro se* PCRA Petition or in his Response to this Court's Notice of Intent to Dismiss without a Hearing, the basis for his claim of prosecutorial misconduct. To this extent Petitioner's prosecutorial claim is based on the alleged material misrepresentations by police addressed above, this court has found those claims to be without merit and therefore they cannot support a claim of prosecutorial misconduct. Petitioner's attorneys cannot be deemed to be ineffective for failing to raise a meritless claim. Commonwealth v. Keaton, 82 A.3d 419, 426 (Pa. 2013). Moreover, the record is devoid of any indication that the prosecutor suborned perjury or presented fabricated evidence. To the extent Petitioner seeks to raise any other basis for his claim of prosecutorial misconduct, he cannot do so. Petitioner's unsupported and undeveloped claim cannot support a finding of ineffective assistance of counsel so as to warrant PCRA relief. See Commonwealth v. Wharton, 811 A.2d 978, 986 (Pa. 2002). In any case, a review of the record in the instant case reveals no instance where the prosecutor's actions were in any way questionable.

II. Pretrial counsels' failure to file a motion to suppress his computer and other equipment seized during the March 17, 2011 search of his residence [A-15; B-6]

Petitioner alleges that Pretrial Counsel and Trial Counsel were ineffective for failing and refusing to file motions to suppress the computer, technology and video/camera equipment seized on March 17, 2011 due to alleged breaks in the chain of custody. This claim is devoid of merit. Counsel may not be deemed to have been ineffective for failing to file a motion to suppress based on any alleged gaps in the chain of custody since chain of custody matters are not subject to suppression, but are trial matters that go to the weight, not the admissibility, of the

evidence. Commonwealth v. Alarie, 547 A.2d 1252, 1255 (Pa.Super. 1988). Having failed to establish that the underlying suppression claim would have been meritorious, Petitioner's claim of ineffective assistance of counsel fails. Commonwealth v. Johnson, 179 A.3d 1153, 1160 (Pa.Super. 2018) ("[W]here a defendant alleges that counsel ineffectively failed to pursue a suppression motion, the inquiry is whether the failure to file the motion is itself objectively unreasonable, which requires a showing that the motion would be meritorious."). Having failed to establish a meritorious claim, Petitioner has also failed to establish that he was prejudiced by counsels' inaction as required. Housman, 226 A.3d at 1260-61. Moreover, Petitioner failed to allege any facts to establish that there were gaps in the chain of custody or any facts to establish that any such gaps would have resulted in a different verdict and, as a result, cannot establish that he was prejudiced by its admission. See Commonwealth v. Carroll, 2013 Pa. Super. Unpub. LEXIS 4381 (Mar. 6, 2013) (Appellant failed to establish that the alleged defects in the chain of custody of a piece of evidence would have caused the jury to weigh the evidence differently and therefore failed to establish prejudice).

III. April 14, 2011 search warrant for Petitioner's Toshiba Laptop [Claim A-21]

Petitioner alleges that Pretrial Counsel was ineffective for failing and refusing to file motions to suppress the April 14, 2011 search warrant for Petitioner's laptop on the basis that the search warrant was "overbroad."[8] Petitioner has once again failed to plead a factual basis to support his underlying suppression claim. It appears that Petitioner's overbreadth argument is based on the search warrant's alleged failure to properly identify the computer to be searched. While it is clear, that Pretrial Counsel did not raise this claim in a motion to suppress, Trial Counsel

[8] Although the April 14, 2011 search warrant additionally sought court approval to search an Apple iPhone cellular telephone in a blue protective sleeve also seized pursuant to the March 16, 2011 warrant, this iPhone was ultimately not searched until after a June 22, 2012 warrant for cellular telephonic forensic analysis due to encryption.

subsequently litigated the claim on Petitioner's behalf. N.T. 7/26/12, Pretrial Motions, at 76-86. This court found the claim to be without merit. Opinion (direct appeal), 8/14/13, at 34-36. That decision was affirmed on appeal. Superior Court Memorandum Opinion, 12/24/14, at 16-18. Petitioner has therefore failed to establish that he was prejudiced by Pretrial Counsel's inaction as required. Housman, 226 A.3d at 1260-61.

IV. Search of Petitioner's Electronic Devices [Claim B-17]

Petitioner alleges that Trial Counsel were ineffective for failing and refusing to file motions to suppress evidence seized from Petitioner's computers and cell phones due to overbroad search warrants. This claim is without merit as the warrants at issue were specifically tailored to discover targeted evidence.

> [In assessing the lawfulness of the warrant] [i]t is a fundamental rule of law that a warrant must name or describe with particularity the property to be seized and the person or place to be searched. . . . The particularity requirement prohibits a warrant that is not particular enough and a warrant that is overbroad. These are two separate, though related, issues. A warrant unconstitutional for its lack of particularity authorizes a search in terms so ambiguous as to allow the executing officers to pick and choose among an individual's possessions to find which items to seize. This will result in the general "rummaging" banned by the [F]ourth [A]mendment. A warrant unconstitutional for its overbreadth authorizes in clear or specific terms the seizure of an entire set of items, or documents, many of which will prove unrelated to the crime under investigation. An overbroad warrant is unconstitutional because it authorizes a general search and seizure.
>
> ....
>
> The language of the Pennsylvania Constitution requires that a warrant describe the items to be seized "as nearly as may be . . . ." The clear meaning of the language is that a warrant must describe the items as specifically as is reasonably possible. This requirement is more stringent than that of the Fourth Amendment, which merely requires particularity in the description. The Pennsylvania Constitution further requires the description to be as particular as is reasonably possible . . . . Consequently, in any assessment of the

> validity of the description contained in a warrant, a court must initially determine for what items probable cause existed. The sufficiency of the description must then be measured against those items for which there was probable cause. Any unreasonable discrepancy between the items for which there was probable cause and the description in the warrant requires suppression. An unreasonable discrepancy reveals that the description was not as specific as was reasonably possible.

Commonwealth v. Orie, 88 A.3d 983, 1002-03 (Pa.Super. 2014) (third and fourth alteration in original) (quoting Commonwealth v. Rivera, 816 A.2d 282, 290-91 (Pa.Super. 2003) (citations omitted)). See also, Pa.R.Crim.P. 205 (Contents of Search Warrant), 206 (Contents of Application for Search Warrant); see also Commonwealth v. Dougalewicz, 113 A.3d 817 (Pa.Super. 2015).

A reading of the April 14, 2011 warrant for Petitioner's Toshiba laptop reveals that it was specifically tailored to discover evidence of illegal photographs or videos, email exchanges, or other evidence that either established crimes committed or corroborated other evidence. Similarly, a reading of the June 22, 2012 warrant for Petitioner's cell phone reveals that it too was specifically tailored to discover evidence of text message conversations, phone logs that corroborated the victims' stories, or photographs of an illicit nature.[9] The warrants at issue were not overbroad. Having failed to establish that the underlying suppression claim would have been meritorious, Petitioner's claim of ineffective assistance of counsel fails. Commonwealth v. Johnson, 179 A.3d 1153, 1160 (Pa.Super. 2018). Having failed to establish a meritorious claim, Petitioner has also failed to establish that Trial Counsel had no reasonable basis for failing to raise the claim or that he was prejudiced by counsels' inaction as required. Housman, 226 A.3d at 1260-61.

V. Consensual Interception of Electronic Communications [Claims A-25; B-13; B-18]

Petitioner asserts that Pretrial Counsel was ineffective for failing to file a motion to suppress evidence obtained as a result of consensual electronic surveillance which occurred on multiple dates in February and March of 2011. However, Trial Counsel did file a motion to

[9] The validity of the search warrants obtained during the investigation and the authorized scope of those warrants is discussed in detail in this Court's Opinion for direct appeal.

suppress evidence based on the Commonwealth's alleged failure to comply with the Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. §§ 5701-5782. See Motion to Suppress Evidence from Consensual Wire Interceptions, 7/23/12. Petitioner was therefore not prejudiced by Pretrial Counsel's failure to do so.

Petitioner's asserts that Trial Counsel were ineffective for failing to file a motion challenging the consensual electronic surveillance. Since they did in fact file the motion, this claim of ineffective assistance of counsel also fails.

Lastly, Petitioner asserts that Trial Counsel were ineffective for withdrawing the motion during the July 26, 2012 pretrial motions hearing. N.T. 7/26/12, Pretrial Motions, at 70-71. The motion to suppress electronic surveillance evidence filed by Trial Counsel sought to suppress evidence obtained as a result of several one-party consensual interceptions based on potential violations of Section 5704(2)(ii). Section 5704(2)(ii) of the Wiretapping and Electronic Surveillance Control Act provides:

> One of the parties to the communication has given prior consent to such interception. However, *no interception under this paragraph shall be made unless* the Attorney General or a deputy attorney general designated in writing by the Attorney General, or *the district attorney, or an assistant district attorney designated in writing by the district attorney, of the county wherein the interception is to be initiated, has reviewed the facts and is satisfied that the consent is voluntary and has given prior approval for the interception*; however, such interception shall be subject to the recording and record keeping requirements of section 5714(a) (relating to recording of intercepted communications) and that the Attorney General, deputy attorney general, district attorney or assistant district attorney authorizing the interception shall be the custodian of recorded evidence obtained therefrom.

18 Pa.C.S. § 5704(2)(ii) (emphasis added).

The motion filed by Trial Counsel alleged that "[t]he Commonwealth has provided no information that [the prosecutor who approved the interception] was designated in writing by the

District Attorney as an individual authorized to approve consensualizations" and had not provided information that the same prosecutor "reviewed the facts of the consensualization and was satisfied that that the consent was voluntarily given prior to interception." Motion to Suppress Evidence from Consensual Wire Interceptions, 7/23/12, ¶ 25. The motion also alleged that, assuming the prosecutor involved was authorized to approve the consensual wiretaps, he violated Section 5704(2)(ii) by failing to take custody of recorded electronic surveillance evidence. Id., ¶ 26. The motion challenged each of the consensual intercepts based on those two grounds. Id., ¶¶ 27-32. At a hearing held on July 26, 2012, Trial Counsel withdrew the motion stating that he had been provided the information that he had not had at the time that he filed the motion to suppress and that, based on the new information, the motion to suppress the evidence obtained as a result of the consensual interceptions was being withdrawn. N.T. 7/26/12, Pretrial Motions, at 70-71.

The motion makes clear that the evidence was being challenged based on the Commonwealth's failure to provide proof of compliance. When that proof was provided, the motion was appropriately withdrawn. Petitioner has made no showing that the motion would have been meritorious had it been pursued. His claim of ineffective assistance of counsel therefore cannot support a claim for PCRA relief. Commonwealth v. Johnson, 179 A.3d 1153, 1160 (Pa.Super. 2018). To the contrary, the record supports Trial Counsels' decision. See Exhibit C-3, 8/13/12 (wiretap documents). Having failed to establish a meritorious claim, Petitioner has also failed to establish that Trial Counsel had no reasonable basis for withdrawing the motion or that he was prejudiced by counsel's decision to do so as required to do in order to obtain PCRA relief. Housman, 226 A.3d at 1260-61. Assuming *arguendo* that Petitioner could successfully challenge the electronic interceptions, he cannot establish that he suffered any prejudice given the overwhelming evidence presented at trial.

VI. Recusal [Claims A-4; A-14; A-19; B-3; B-7]

"It is the burden of the party requesting recusal to produce evidence establishing bias, prejudice or unfairness which raises a substantial doubt as to the jurist's ability to preside impartially." Commonwealth v. Abu-Jamal, 720 A.2d 79, 89 (Pa. 1998). There is a presumption that a judge has "acted properly, bound by the oaths of his or her office and faithful to the requirements of an unprejudiced, unbiased judiciary." Commonwealth v. Tainan, 734 A.2d 886, 889 (Pa.Super. 1999).

Petitioner asserts that the Court "made a statement showing bias against Petitioner" and that the court's bias was further demonstrated by the denial of his request for a continuance of the trial. Based on these allegations, Petitioner asserts that his attorneys were ineffective in failing to move for recusal.[10] While it is not clear what statement Petitioner is relying upon, this Court's independent review of the record did not reveal any remarks that evidenced a bias against Petitioner. Moreover, it is well established that adverse rulings alone do not establish the requisite bias warranting recusal, especially where the rulings are legally proper. Abu-Jamal, 720 A.2d at 90. See Liteky v. United States, 510 U.S. 540, 555 (1994) ("[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion...[They] can only in the rarest circumstances evidence the degree of favoritism or antagonism required...when no extrajudicial source is involved. Almost invariably, they are proper grounds for appeal, not for recusal."). In the context

[10] Pretrial Counsel did move for recusal based on the fact that the undersigned was District Attorney when Petitioner was convicted of a prior misdemeanor offense. Since the undersigned had no knowledge of the case, that motion was properly denied. N.T. 4/16/12, Pretrial Motions, at 9-21. See Commonwealth v. Jones, 663 A.2d 142 (Pa. 1995) (held that fact that judge's name had appeared on papers in connection with defendant's conviction, which had occurred while judge was district attorney, did not warrant recusal absent showing that judge had any direct personal contact with defendant's file during his prosecution and conviction). Pretrial Counsel also argued for recusal based on allegation of prison mistreatment and the alleged failure of other judges of the Bucks County Court of Common Pleas to properly address the situation. N.T. 4/16/12, Pretrial Motions, at 25-29. Since the undersigned had no knowledge of the alleged mistreatment or of the communications with other judges, the undersigned concluded that those circumstances could have no impact on my ability to be fair and impartial N.T. 4/16/12, Pretrial Motions, at 28. The Motion for recusal based on those circumstances was therefore denied as well.

of this case, the denial of Petitioner's request for a continuance was based on the nature of the allegations and the fact that the charges against all but one of the victims had been pending for eighteen months to a year. The denial of Petitioner's request for further delay does not indicate any bias against him, a conclusion further demonstrated by the fact that the Commonwealth's previous request for a continuance of that same trial date had also been denied. Since Petitioner's claims of bias lack merit, Trial Counsel may not be deemed to be ineffective for failing to move for recusal on that basis.

In addition, there was overwhelming evidence presented at trial. Petitioner has therefore also failed to establish prejudice, i.e., that but for his counsel's failure to request recusal, he would not have been convicted. See Commonwealth v. Tainan, 734 A.2d at 889.

VII. Potential Defenses of Entrapment and Alibi [Claims A-20; B-4; B-16; B-18]

Petitioner assert that his attorneys were ineffective for failing to raise the defense of entrapment based on the consensual electronic interceptions conducted after K.M. reported that she had been sexually abused by Petitioner. Entrapment is an affirmative defense to the charges on trial. See Commonwealth v. Joseph, 848 A.2d 934, 938 (Pa.Super. 2004). Entrapment occurs where "[a] public law enforcement official or a person acting in cooperation with such an official ... induces or encourages" the defendant to commit the crime on trial by engaging in certain prohibited conduct. 18 Pa.C.S. § 313(a). In the instant case, Petitioner was not charged with any criminal offense based on the electronic interceptions. Petitioner does not contend that the crimes of which he was convicted were "induced or encouraged" by law enforcement or any person acting in cooperation with law enforcement. There is therefore no viable defense of entrapment and Trial Counsel may not be deemed ineffective for failing to pursue that defense.

With regard to an alibi defense, Petitioner offered no explanation as to what charges the alibi defense would apply, has failed to assert any facts or identify any witnesses to establish an alibi defense and does not allege that he provided Trial Counsel with any information regarding a potential alibi. In attempting to rebut the presumption of effectiveness, an appellant must offer more than mere conclusory allegations to establish entitlement to relief. Commonwealth v. Cousar, 154 A.3d at 299. Petitioner is required to set forth in his PCRA petition his specific grounds for relief and the facts supporting each ground as set forth in the record or by accompanying affidavits or documents. Pa.R.Crim.P. 902(A)(11), (12) (a) & (b). Having failed to do so, Petitioner's claim that Trial Counsel were ineffective for failing to raise an alibi defense fails.

VIII. Preliminary Hearing Waivers [Claim A-5]

Petitioner alleges that Pretrial Counsel was ineffective for advising him to waive his preliminary hearings in the first four cases filed against him. Petitioner's claim fails as he has failed to demonstrate that his waiver of those hearings resulted in prejudice.

The only consequence of waiving a preliminary hearing is the loss of an opportunity to challenge whether the Commonwealth has sufficient evidence to establish a *prima facie* case of guilt. See Pa.R.Crim.P. Rule 541; Commonwealth v. Stultz, 114 A.3d 865, 881 (Pa.Super. 2015), appeal denied, 125 A.3d 1201 (Pa. 2015) ("a preliminary hearing only establishes whether *prima facie* evidence that a crime occurred and that the person charged committed it exists.") Once the Commonwealth has established Petitioner's guilt beyond a reasonable doubt at trial, "any defect in the preliminary hearing is rendered immaterial." Commonwealth v. Stultz, 114 A.3d at 882 (quoting Commonwealth v. Sanchez, 82 A.3d 943, 984 (Pa. 2013). Trial Counsel may therefore not be deemed ineffective for failing to challenge the existence of a *prima facie* case against

Petitioner where the evidence established Petitioner's guilt beyond a reasonable doubt at trial. Commonwealth v. Lyons, 568 A.2d 1266, 1268 (Pa.Super. 1989). (Any error occurring when the Commonwealth was allowed to file information without holding a preliminary hearing was harmless where petitioner was otherwise properly tried, convicted and sentenced and, thus, defense counsel was not ineffective for failing to pursue a preliminary hearing issue).

Petitioner's assertion that he was improperly deprived of an opportunity to cross-examine a witness at the preliminary hearing stage likewise cannot support a claim for PCRA relief. Commonwealth v. Sanchez, 82 A.3d at 984 (Pa. 2013). In Sanchez, the court rejected a claim that the appellant was entitled to PCRA relief based on counsel's failure to appear at a preliminary hearing which resulted in a missed opportunity to cross-examine a Commonwealth witness prior to trial. In rejecting the claim, the court stated:

> The purpose of a preliminary hearing is to avoid the incarceration or trial of a defendant unless there is sufficient evidence to establish that a crime was committed and a probability that the defendant was connected therewith. Although a preliminary hearing may permit capable defense counsel to lay the groundwork for a trial defense, its intended purpose is not primarily to provide defense counsel with the opportunity to assess the credibility of Commonwealth witnesses, or to prepare a defense theory for trial, or to design avenues for the impeachment of witnesses at trial. Nor is the purpose of a preliminary hearing to prove a defendant's guilt. Indeed, once a defendant has gone to trial and has been found guilty of the crime or crimes charged, any defect in the preliminary hearing is rendered immaterial. Accordingly, because Appellant's primary complaint here is simply that he lost a pre-trial opportunity to cross-examine a Commonwealth witness, and because Appellant was properly convicted of the crimes charged following a trial on the merits, we determine that Appellant is entitled to no relief.

Id. at 984 (citations omitted).

As was the case in Sanchez, Petitioner's primary complaint is "simply that he lost a pre-trial opportunity to cross-examine witnesses." As was the case in Sanchez, Petitioner was

ultimately properly convicted of the crimes charged in those cases. His claim for PCRA relief therefore must likewise fail. In addition, Petitioner elected to stipulate to all of the testimony at trial. Having again forfeited the opportunity to cross-examine those witnesses and to discredit their testimony, he cannot now establish he was prejudiced by counsel's advice at the preliminary hearing stage.[11]

He also cannot establish prejudice since he has not alleged that had the preliminary hearings been held, new evidence helpful to the defense would have been discovered. As a result, he cannot demonstrate that the result of the proceedings would have been different had preliminary hearings been held.

IX. Pretrial Incarceration Mistreatment [Claim A-6]

Petitioner alleges that Pretrial Counsel was ineffective for failing to intervene after allegations that Petitioner was intimidated and harassed by a Corrections Officer while he was incarcerated pending trial. This claim is belied by the record. Pretrial Counsel brought the alleged mistreatment to the attention of the District Attorney and two other members of this Court. N.T. 4/16/2, Pretrial Motions, at 25-30. Moreover, Pretrial Counsel raised this issue with the undersigned during the pretrial proceedings. N.T. 4/16/12, Pretrial Motions, at 48-51. Approximately four months before trial, the undersigned entered an order directing that the corrections officer involved was to have no supervisory authority over, or contact with, Petitioner while he was incarcerated. Since Pretrial Counsel took appropriate action and obtained the desired

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[11] In addressing Petitioner's assertion that this court erred in denying his motion for a remand for preliminary hearing, this Court stated,

> [Petitioner]'s claim that he was prejudiced at trial because cross-examination of the Commonwealth's witnesses at the preliminary hearings might have resulted in evidence favorable to [Petitioner] is not only speculative, it is now moot. [Petitioner] gave up the opportunity to cross-examine those witnesses and to discredit their testimony at trial by stipulating to the Commonwealth's evidence. The Defendant is, therefore, not entitled to relief based on the court's decision to deny his motion for a remand.

Opinion (direct appeal), 8/14/13, at 23.

relief, he cannot be found to be ineffective for failing to take appropriate action in response to Petitioner's complaint. Moreover, Petitioner has not claimed that this alleged mistreatment impacted his trial in any way. He has therefore failed to establish that Counsel's alleged inaction caused him any prejudice.

X. **Joinder of Offenses** [Claim A-7]

On October 24, 2011, Pretrial Counsel filed an omnibus pretrial motion, petitioning for, *inter alia*, joinder of all of the then charged offenses. On February 21, 2012, a complaint was filed in CP-09-CR-0002035-2012 for eight (8) counts involving one (1) additional victim, bringing the total charged victims to fifteen (15). On April 16, 17, 18, and 20, 2012, hearings were held on the pretrial motions. The motion for joinder was granted by agreement. On July 23, 2012, Trial Counsel filed additional pretrial motions which included a motion for separate trials. Following another pretrial hearing on July 26, 2012, this Court denied the motion for separate trials.

Petitioner argues that Pretrial Counsel was ineffective for filing a motion requesting that Petitioner's cases be joined together. Joinder and severance of offenses is controlled by the Rules of Criminal Procedure. Rule 582 allows for separate offenses to be tried together if: "the evidence of each of the offenses would be admissible in a separate trial for the other and is capable of separation by the jury so that there is no danger of confusion." Rule 583 provides that: "[t]he court may order separate trials of offenses or defendants or provide other appropriate relief, if it appears that any party may be prejudiced by offenses or defendants being tried together." Prejudice, for purposes of these rules, is prejudice that "would occur if the evidence tended to convict [a petitioner] only by showing his propensity to commit crimes, or because the jury was incapable of separating the evidence or could not avoid cumulating the evidence." Commonwealth

v. Ferguson, 107 A.3d 206, 210 (Pa.Super. 2015) (quoting Commonwealth v. Lauro, 819 A.2d 100, 107 (Pa.Super. 2003)).

In the instant case, Petitioner cannot establish that he was in any way prejudiced by Pretrial Counsel's joinder motion for several reasons. First, Since Trial Counsel filed a motion to sever the cases, Pretrial Counsel's action with regard to consolidation had no impact on the proceedings. In addition, Petitioner waived his right to have the cases decided by a jury. Where a judge is the finder of fact, it is presumed that judges disregard inadmissible evidence, exercise restraint, and preclude prejudicial opinions based on emotion. Commonwealth v. Harvey, 526 A.2d 330 (Pa. 1987) ("[W]here a criminal case is tried before a judge sitting without a jury, there is a presumption that [her] knowledge, experience and training will enable [her] to disregard inadmissible evidence and other improper elements."); See, e.g., Commonwealth v. Davis, 421 A.2d 179 (Pa. 1980); Commonwealth v. Batty, 393 A.2d 435 (Pa. 1978); Commonwealth v. Green, 347 A.2d 682 (Pa. 1975); Commonwealth v. Tainan, 734 A.2d 887 (Pa.Super. 1999). Petitioner therefore cannot establish that he was convicted based on evidence of propensity or that the Court was incapable of separating the evidence. Finally, the evidence to which Petitioner stipulated set forth in detail above was sufficient to establish guilt beyond a reasonable doubt as to each victim. Petitioner therefore cannot demonstrate that the outcome would have been any different had the cases been tried separately. Accordingly, Petitioner was not prejudiced by the consolidation of the offenses and his claim therefore fails.

XI. Attorney-Client Privilege [Claim A-8]

Petitioner baldly asserts that Pretrial Counsel violated the attorney-client privilege by disclosing Petitioner's conversations with Pretrial Counsel to Trial Counsel as they prepared for trial. "Claims of ineffective assistance of counsel are not self-proving...." Commonwealth v.

Wharton, 811 A.2d 978, 986 (Pa. 2002). Boilerplate allegations of ineffective assistance of counsel fail because they are undeveloped. Commonwealth v. Bond, 819 A.2d 33, 40-41 (Pa. 2002). "[A]n underdeveloped argument, which fails to meaningfully discuss and apply the standard governing the review of ineffectiveness claims, simply does not satisfy Appellant's burden of establishing that he is entitled to relief." Commonwealth v. Bracey, 795 A.2d 935, 940 n. 4 (Pa. 2001). In order to be entitled to relief, "a petitioner must set forth and individually discuss substantively each prong of the [ineffectiveness] test." Commonwealth v. Steele, 961 A.2d 786, 797 (Pa. 2008). Where a petitioner "failed to set forth all three prongs of the ineffectiveness test and meaningfully discuss them, he is not entitled to relief, and we are constrained to find such claims waived for lack of development." Id.

In the instant case, Petitioner has not set forth or meaningfully discussed any legal principles or facts to support his underlying claim of ineffective assistance. He has not set forth or meaningfully discussed any aspect of the three prongs of the ineffective assistance of counsel test. He simply has not satisfied his burden of demonstrating that he is entitled to PCRA relief. "Assertions of ineffectiveness in a vacuum cannot be ineffectiveness." Commonwealth v. Pettus, 424 A.2d 1332 (Pa. 1981).

XII. Continuance Requests [Claim A-9]

Petitioner argues that Pretrial Counsel was ineffective for requesting and receiving allegedly unnecessary continuances during his representation of Petitioner. This claim fails because there was a reasonable basis for Counsel's requests.

"The test for deciding whether counsel had a reasonable basis for his action or inaction is whether no competent counsel would have chosen that action or inaction, or, the alternative, not chosen, offered a significantly greater potential chance of success." Commonwealth v. Stewart,

84 A.3d 701, 707 (Pa.Super. 2013). "Counsel's decisions will be considered reasonable if they effectuated his client's interests." Id. If counsel's chosen course had some reasonable basis, the inquiry ends and counsels' assistance is deemed effective. Commonwealth v. Williams, 899 A.2d 1060, 1064 (Pa. 2006). Here, Pretrial Counsel stated on the record that he requested continuances for the purpose of having a specific judge assigned to the case to address pretrial issues prior to the commencement of trial. N.T. 4/16/12, Pretrial Motions, at 6-8. Given the extent and nature of the pretrial issues involved, counsel's chosen course was both reasonable and designed to effectuate Petitioner's interests.

Petitioner's claim also fails due to Petitioner's failure to identify how he was prejudiced by counsel's continuance request. Having failed to do so, his claim of ineffective assistance of counsel must fail. Commonwealth v. Pettus, 424 A.2d 1332, 1335 (Pa. 1981) (mere abstract or boilerplate allegations of ineffectiveness "cannot be ineffectiveness").

XIII. Cross-Examination of Detective Gregory Beidler [Claim A-16]

Petitioner argues that Pretrial Counsel was ineffective for failing to object to the Court's alleged "interference" during the testimony of Detective Beidler at trial. This claim lacks merit.

It is always the right and sometimes the duty of a trial judge to question witnesses. "However, questioning from the bench should not show bias or feeling or be unduly protracted." Commonwealth v. Gibbs, 563 A.2d 1244, 1247 (Pa. Super. 1989); Commonwealth v. Hammer, 494 A.2d 1054, 1060 (Pa. 1985) (quoting Commonwealth v. Watts, 56 A.2d 81, 83 (Pa. 1948). In the instant case, the record reveals that none of the questions posed by this Court were inappropriate and none of the questioning was protracted.

During direct-examination of Detective Beidler, this Court asked questions for the purpose of clarification only. N.T. 4/18/12, Pretrial Motions, at 175-76, 184-86, 207, 216-17, 222-23, 227.

This Court engaged in similar clarification questioning during cross-examination of Detective Beidler. N.T. 4/18/12, Pretrial Motions, at 239, 248-9, 250, 254, 257-59. This Court also briefly provided some information to Trial Counsel regarding what was testified to on direct-examination. N.T. 4/18/12, Pretrial Motions, at 253. Finally, this Court advised Trial Counsel that the transcript of the telephone wire intercept would speak for itself and that Detective Beidler was not permitted to testify as to his interpretation thereof. N.T. 4/18/12, Pretrial Motions, at 255. Since Petitioner is not entitled to relief with regard to the underlying claim upon which his ineffectiveness claim is premised, he is not entitled to relief with regard to his ineffectiveness claim. Commonwealth v. Ousley, 21 A.3d 1238, 1246 (Pa.Super. 2011). In any case, this matter was a stipulated waiver trial. There was no jury. There is therefore no basis to conclude that this Court was in any way "interfering" in the determination of guilt or innocence.

XIV. Child Pornography [Claims B-8; B-9]

Petitioner asserts that Trial Counsel were ineffective for failing to object to this Court's viewing of the child pornography admitted into evidence.[12] This claim is patently frivolous.

Petitioner was charged with multiple counts of Sexual Abuse of Children, specifically possession of child pornography, 18 Pa.C.S. § 6312(d), and multiple counts of Criminal Use of a Communication Facility, 18 Pa.C.S. § 7512(a), in connection with that child pornography. Section 6312 requires the Commonwealth to prove that Petitioner "knowingly possesses or controls any book, magazine, pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such act." Section 7512(a) requires the Commonwealth to prove that Petitioner used

[12] Images recovered from Petitioner's computer were reviewed by the court *in camera* in the presence of counsel and the prosecuting officers. Exhibits C-20-23, C-26, C-49. The evidence was thereafter described for the record by Detective Gregory Beidler. N.T. 8/16/12, at 155-197.

a communication facility to "commit, cause or facilitate the commission or the attempt thereof of any crime which constitutes a felony." This Court, as finder of fact, was therefore required to view the pornographic images submitted into evidence to support those charges. Trial Counsel may not be deemed to be ineffective for failing to interpose a meritless objection. Commonwealth v. Brown, 196 A.3d 130, 151 (Pa. 2018).

XV. Waiver of Jury and Failure to Present a Defense [Claim B-15]

On August 13, 2012, following a colloquy, Petitioner knowingly, voluntarily and intelligently waived his right to a trial by jury and proceeded by stipulated waiver trial. N.T. 8/13/12, at 5-11. On the morning of August 16, 2012, as the Commonwealth was continuing to present its case-in-chief, Petitioner instructed his two attorneys not to present any defense evidence and not to make any argument on behalf of the defense. N.T. 8/17/12, at 12. Upon being informed of this development, this Court recessed early for the day to allow Petitioner the opportunity to reevaluate his decisions. N.T. 8/17/12, at 12. The following morning, August 17, 2012, the parties stipulated that if called to testify, Petitioner would issue a general denial as to each and every one of the crimes charges. N.T. 8/17/12, at 11. Counsel then placed Petitioner's instructions not to make argument or to present a defense on the record. N.T. 8/17/12, at 12. After an extensive colloquy, this Court determined that Petitioner's decisions were knowing, voluntary and intelligent. N.T. 8/17/12, at 11-60. Petitioner now asserts that in making these decisions he relied on "improper legal advice" and was therefore denied effective assistance of counsel.

Petitioner's claim that his decision not to testify or present a defense was based on the advice of counsel is belied by the record. The record establishes that Trial Counsel were prepared to present a defense and make argument but that Petitioner, on his own initiative, proposed the

idea of not presenting a defense or making argument. Petitioner ultimately decided to follow that course and instructed counsel to act in accordance with his decision.

> **THE COURT:** All right. Mr. Meyerle, it has been represented to me that you have instructed your attorneys not to present any defense to the charges that have been filed.
>
> It has been - - I have been advised that you have instructed your attorneys that you do not wish them to make a closing argument on your behalf.
>
> Let's start with the first half [of] what I just said. Have you, in fact, instructed your attorneys not to present any defense other than your general denial which we have just heard placed on the record?
>
> **[PETITIONER]:** Yes, Your Honor.
>
> **THE COURT:** And is it correct that you have advised your attorneys not to make a closing argument on your behalf?
>
> **[PETITIONER]:** Yes. Your Honor.

N.T. 8/17/12, at 13-14.

> **BY MR. GOODWIN:** Mr. Penglase mentioned that in the beginning, and it is correct, that the initiation of this idea that you would waive or give up your right at this point to make a defense came from you?
>
> **[PETITIONER]:** Yes, it did.
>
> **MR. GOODWIN:** You recommended that to us and then we discussed with you all the ramifications of it?
>
> **[PETITIONER]:** Yes, you did.
>
> **THE COURT:** ...It is also my understanding, correct me if I am wrong, that your attorneys have, in fact, prepared a defense and were prepared to present that defense for you today?
>
> **[PETITIONER]:** Yes, Your Honor.
>
> **THE COURT:** And that they have prepared a closing argument to be made about challenging the Commonwealth's

evidence and the Commonwealth's theory, and they were prepared to also do that today?

[PETITIONER]: Yes, Your Honor.

N.T. 8/17/12, at 59-60.

Petitioner testified that did not act on the advice of counsel and cannot now obtain PCRA relief by claiming otherwise. See Commonwealth v. Bishop, 645 A.2d 274, 277 (Pa.Super. 1994) ("appellant may not obtain post-conviction relief by claiming that he lied during his waiver colloquy").

Petitioner's bald assertion that he relied on "improper legal advice" when he waived his right to a trial by jury and proceeded by stipulated waiver trial also cannot support a claim for relief. "Claims of ineffective assistance of counsel are not self-proving...." Commonwealth v. Wharton, 811 A.2d 978, 986 (Pa. 2002). Boilerplate allegations of ineffective assistance of counsel fail because they are undeveloped. Commonwealth v. Bond, 819 A.2d 33, 40-41 (Pa. 2002). "[A]n underdeveloped argument, which fails to meaningfully discuss and apply the standard governing the review of ineffectiveness claims, simply does not satisfy Appellant's burden of establishing that he is entitled to relief." Commonwealth v. Bracey, 795 A.2d 935, 940 n. 4 (Pa. 2001). In order to be entitled to relief, "a petitioner must set forth and individually discuss substantively each prong of the [ineffectiveness] test." Commonwealth v. Steele, 961 A.2d 786, 797 (Pa. 2008). Where a petitioner fails to "set forth all three prongs of the ineffectiveness test and meaningfully discuss them, he is not entitled to relief, and we are constrained to find such claims waived for lack of development." Id.

Here, Petitioner does not identify the alleged "improper legal advice." He does not explain how the advice was improper. He does not support his allegation with any legal authority or analysis. He does not discuss how the advice affected his decision making or even assert that he

would not have waived his right to a trial by jury had he not received the "improper advice." Finally, he makes no attempt to demonstrate that he was prejudiced in deciding to proceed by stipulated waiver trial. Given the overwhelming evidence against him, Petitioner cannot establish either that his decisions, made following extensive colloquies, would have been different or that the result of the proceedings would have been different had he not waived his right to a trial by jury or had not stipulated to the testimony. See N.T. 8/13/12, Trial, at 5-11; N.T. 8/17/12, Trial, at 11-60. Petitioner's unsupported and undeveloped claim is insufficient to support Petitioner's request for PCRA relief. See Commonwealth v. Wharton, 811 A.2d 978, 986 (Pa. 2002).

XVI. Petitioner's Ability to Understand the Proceedings on April 17, 2012 [Claim A-22]

Petitioner asserts that Trial Counsel was ineffective for failing to investigate and prove that during the pretrial proceedings he was suffering from a side effect of Zyprexa taken with Zoloft to such an extent that he was denied his constitutional right to be present. The record, however, demonstrates that an inquiry regarding Petitioner's medications was in fact undertaken and that Trial Counsel participated in that inquiry which revealed no evidence that would support Petitioner's claim.[13] See Order dated April 12, 2012; N.T. 4/16/12, Pretrial Motions, at 45-48; N.T. 4/17/12, Pretrial Motions, at 2-16. Petitioner has therefore failed to demonstrate that the

[13] On April 16, 2012, this Court entered an order directing that Petitioner be evaluated by a mental health professional to determine his mental health status and to address his medications before proceeding with the pretrial motions. Court was adjourned to allow those inquiries to be made. See Order dated April 12, 2012; N.T. 4/16/12, Pretrial Motions, at 45-48. The following morning, additional inquiries were made by the attorney for the Commonwealth and Pretrial Counsel. The attorneys thereafter advised this Court that Petitioner was seen by a psychiatrist at the prison. The psychiatrist informed counsel that Petitioner did not report any problems with his existing medications but did report feeling added stress and anxiety and was therefore prescribed Zyprexa. The treating psychiatrist informed counsel that the medication would help Petitioner sleep but would not impair his ability to communicate or participate in his own defense. N.T. 4/17/12, Pretrial Motions, at 7-9. In making the decision to proceed, this Court noted that Petitioner was alert and responsive, that he understood the questions posed to him and that he responded appropriately. N.T. 4/17/12, Pretrial Motions, at 6. When questioned, Petitioner testified that he understood and was able to communicate with his attorney, (N.T. 4/17/12, Pretrial Motions, at 14), that he was able to read and comprehend what he was reading, and that he understood the Court (N.T. 4/17/12, Pretrial Motions, at 16).

underlying claim has merit, that Trial Counsel had no legitimate basis for his actions or that he suffered any prejudice as a result of counsel's alleged deficiencies.

XVII. **Failure to Investigate, Prepare and Represent Petitioner [Claims A-1; A-10; A-27]**

Petitioner baldly asserts that his attorney during pretrial proceedings Pretrial Counsel was deficient in connection with his investigation, preparation and representation of Petitioner alleging:

A. that he "failed and refused to perform an independent investigation of Petitioner's case for to familiarize himself with Petitioner's work product for his own defense or discovery material willingly provided by the Commonwealth"; [*Pro se* PCRA Petition, A-1]

B. that he was prejudiced by counsel's "lack of knowledge of legal terms, procedure and arguments, along with his refusal to take notes and answer simple questions; [*Pro se* PCRA Petition, A-10] and

C. that he "abandoned all aspects of investigation, preparation, and representation." [*Pro se* PCRA Petition, A-27].

It is well settled that "[f]ailure of trial counsel to conduct a more intensive investigation or to interview potential witnesses does not constitute ineffective assistance of counsel, unless there is some showing that such investigation or interview would have been helpful in establishing the asserted defense." Commonwealth v. Pursell, 724 A.2d 293, 306 (Pa. 1999). "The defendant must sustain his burden of proving how the testimony of the interviewed witness would have been beneficial under the facts and circumstances of his case." Id. Here, the evidence against Petitioner was overwhelming and he has not identified what a more intensive investigation by Pretrial Counsel would have revealed or how it would have benefited him during pretrial proceedings or at trial. Petitioner's failure to do so necessitates dismissal of his claims since they are insufficient to warrant PCRA relief.

Petitioner's claim that Pretrial Counsel was ineffective for failing to "familiarize himself with Petitioner's work product" fails for the same reason. He has failed to identify any beneficial

information or issue that counsel would have discovered had he more thoroughly familiarized himself with Petitioner's "work product." See Commonwealth v. Elliott, 80 A.3d 415, 432 (Pa. 2013) (reversing the PCRA court's award of a new trial based on a claim that trial counsel was ineffective for failing to interview the defendant in person prior to trial, stating based on the fact that "neither [the defendant] nor the PCRA court have identified any beneficial information or issue that trial counsel would have discovered had he engaged in a more thorough pretrial consultation with [the defendant], which would have changed the outcome of his trial.").

Pretrial Counsel's alleged lack of knowledge of the law and procedure is also insufficient to establish a claim for relief. Petitioner has not alleged that Pretrial Counsel failed to raise a meritorious claim or that Petitioner was in any way prejudiced by Pretrial Counsel's alleged failings. Petitioner's allegations therefore cannot support a claim for PCRA relief. Commonwealth v. Pierce, 786 A.2d 203, 213 (Pa. 2001).

XVIII. Miscellaneous Claims – Trial Counsel [Claims B-1; B-12]

Petitioner baldly asserts that Trial Counsel were ineffective "when they took on Petitioner's five cases without stipulating that they would only do so if sufficient time was given to prepare" and when they "failed and refused to interview Public Defender Nicholas Williamson concerning delay in representation." See *Pro se* PCRA Petition. These claims lack merit.

When he was originally charged in March or 2011, Petitioner retained private counsel, Kevin Wray, Esquire. Mr. Wray remained Petitioner's attorney until April of 2012 at which time Petitioner fired him and applied for Public Defender representation. Due to a conflict of interest with the Public Defender's Office, conflict counsel, Mr. Goodwin and Mr. Penglase, were court-appointed to represent Petitioner at trial. They therefore had no ability to require "sufficient time to prepare" as a condition of their entry of appearance on Petitioner's behalf.

As to Trial Counsels' failure to interview the Public Defender regarding the alleged delay in the appointment of conflict counsel, Petitioner has failed to identify any beneficial information that would have been obtained had the interview been conducted. Petitioner has therefore failed to demonstrate that he was in any way prejudiced by Trial Counsels' alleged inaction. Having failed to do so, he cannot obtain PCRA relief. Commonwealth v. Pierce, 786 A.2d 203, 213 (Pa. 2001).

XIX. Miscellaneous Claims – Public Defender's Office [Claims D-1; D-2]

Petitioner asserts that Public Defender Nicholas Williamson was ineffective in refusing to file "anything with the court on Petitioner's behalf regarding the Commonwealth's alleged interference with Petitioner's counsel and representation." *Pro se* PCRA Petition, D-2. He characterizes Mr. Williamson's actions as abandoning him. Both claims lack merit. Mr. Williamson did not "abandon" Petitioner, he determined that he had a conflict of interest and filed a petition seeking appointment of conflict counsel.[14] Since Mr. Williamson had a conflict of interest, he was precluded from representing Petitioner and therefore could not file any motions on his behalf. Petitioner's claim of ineffective assistance of counsel as to Mr. Williamson must therefore fail.

XX. Miscellaneous Claims – Post-Trial Counsel [Claims C-1; C-2]

Petitioner asserts that Post-Trial Counsel, Stuart Wilder, Esquire, was ineffective in failing to object to this Court's alleged "misuse of evidence" at sentencing. However, he does not identify the evidence to which he refers and does not cite to the record where the alleged error

[14] The conflict was filed because the Public Defender's Office represented two individuals who were necessary Commonwealth witnesses in Petitioner's trial and had previously represented of one of the minor victims in the case. Petition for Appointment of Private Counsel, 6/21/12, ¶¶ 4-6.

occurred. Petitioner's unsupported and undeveloped claim is insufficient to support Petitioner's request for PCRA relief. See Commonwealth v. Wharton, 811 A.2d 978, 986 (Pa. 2002).

Petitioner also asserts that Mr. Wilder was ineffective in that he was allegedly unprepared to argue a post-sentence motion challenging this Court's denial of his continuance request. See Defendant's Post-Sentence Motions for a New Trial, 2/4/13, at ¶ 1. This claim likewise cannot support his request for PCRA relief. Petitioner's challenge to this Court's denial of Trial Counsels' request for a continuance was withdrawn by counsel with the agreement of Petitioner following a full colloquy. N.T. 3/28/13, at 24-30. Petitioner's current claim that Mr. Wilder was unprepared to argue the motion is belied by the record. Trial Counsel were present at the hearing and were prepared to testify. N.T. 3/28/13, at 31. More importantly, Petitioner testified that he had sufficient time to discuss the withdrawal of the motion with Mr. Wilder and was satisfied with his representation during the proceeding. N.T. 3/28/13, at 28, 30. Trial Counsel may not be deemed to be ineffective for failing to pursue a claim Petitioner knowingly, voluntarily and intelligently waived.

Conclusion

For the aforementioned reasons, PCRA counsel was permitted to withdraw and Petitioner's request for PCRA relief was denied without a hearing for failing to raise a claim upon which relief could be granted.

BY THE COURT:

10-25-21
Date

DIANE E. GIBBONS, J.