

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
NICHOLAS DANO JR.	:	
	:	
Appellant	:	No. 996 WDA 2025

Appeal from the PCRA Order Entered July 10, 2025
In the Court of Common Pleas of Mercer County Criminal Division at
No(s): CP-43-CR-0000597-2020

BEFORE: KUNSELMAN, J., SULLIVAN, J., and STEVENS, P.J.E.*

MEMORANDUM BY SULLIVAN, J.:

FILED: October 16, 2026

Nicholas Dano Jr. ("Dano") appeals *pro se* from the denial of his first Post Conviction Relief Act ("PCRA") petition.¹ Because his claims are procedurally barred or meritless, we affirm.

We take the following facts from Dano's previous appeal to this Court:

[I]n December [] 2019, the Pennsylvania State Police [("PSP")] received a report from the National Center for Missing and Exploited Children ("NCMEC") that, on December 12, 2019, someone in the City of Sharon, Mercer County, had accessed images on Google that included child pornography [("child sexual abuse material")]. [PSP] notified the Sharon Police Department, which investigated the particular Internet Service Provider ("ISP") through which the person viewing these images had accessed the internet.

* Former Justice specially assigned to the Superior Court.

¹ **See** 42 Pa.C.S.A. §§ 9541-9546.

The ISP provided the Sharon Police with the physical address for the router that had been used to access the internet to view those images. When police interviewed the woman who owned the router in question, she noted that her wireless router had been unsecured (*i.e.*, access to the router was not password-protected), and anyone within the router's wireless range could have used the router to access the internet. [Dano] and his roommate, Keith Price, lived in the apartment above this woman.

The Sharon Police Department obtained two separate search warrants: 1) a December 31, 2019 warrant for [Dano's] apartment . . . and 2) a January 3, 2020 warrant for [Dano's] vehicle

At the time of the search, [Dano's] vehicle was located on the property of . . . Gregory Barbalachi ["Barbalachi"]. [] Barbalachi gave his consent to the Sharon Police to remove the vehicle from his property. The search of the vehicle revealed (among other things) two cell phones, a journal with login information to those phones, and notes on what appear[ed] to be how to search for [child sexual abuse material]. [] Barbalachi later testified that, at the direction of [Dano], [] Barbalachi had removed these items from [Dano's] apartment, placed them in [Dano's] vehicle, and drove the vehicle to [] Barbalachi's property.

The Sharon Police Department then obtained a March 4, 2020 warrant . . . to search the contents of the two cell[]phones under Sharon PD case #19-20528, seeking data including but not limited to "incoming and outgoing call logs, MMS and SMS text messages, internet history, subscriber/owner information for each phone, emails, maps/GPS/location services, photos, videos, any and all data stored in an application on either phone along with any other data contained in each phone."

The [PSP] then extracted all the above-described data from the phones. Included in the programs and data on the phones were applications named Gallery Vault and Photo Vault. Their programs and their data were encrypted and password-protected. After the police defeated the encryption, they discovered several images of [child sexual abuse material], including several of the images that had been referenced in the NCMEC report.

Commonwealth v. Dano, No. 210 WDA 2024, 2024 WL 4904598 at *1 (Pa. Super. Nov. 27, 2024) (non-precedential memorandum) (citing Trial Court Opinion, 3/5/24, at 2-4) (unnecessary capitalization omitted).

In July 2020, the Commonwealth charged Dano with sexual abuse of children (possession of child pornography) and criminal use of a communication facility.² Dano filed a motion to suppress *nunc pro tunc*, arguing the police created an “unreasonable delay” in applying for search warrants for his cell phone. **See** Motion to Suppress *Nunc Pro Tunc*, 7/16/21, at 2, 5. The Commonwealth moved to quash the suppression motion as untimely, which the trial court granted, thereby quashing Dano’s suppression motion. On the first day of trial, prior to the jury entering the courtroom, Dano’s counsel made an oral motion to suppress the cell phones due to overbroad search warrants. **See** N.T., 7/20/21, at 3. The trial court denied the motion as meritless. **See** Order, 7/21/21. At the conclusion of trial, Dano moved for acquittal due to insufficient evidence. The trial court denied the motion.

At the conclusion of the trial, the jury found Dano guilty of the above-listed charges. At Dano’s sentencing hearing, the Pennsylvania Sexual Offender Assessment Board (“SOAB”) evaluator testified Dano satisfied the criteria to be designated as a sexually violent predator (“SVP”). **See** N.T., 11/30/21 at 20. Further, the evaluator noted Dano had entered a guilty plea

² **See** 18 Pa.C.S.A. §§ 6312(d), 7512.

to possession of child pornography in Washington County in 1999. **See id.** at 14. The 1999 conviction was based on Dano's possession of two books of child sexual abuse material, titled "Age of Innocence" and "Radiant Identities." **See Dano**, 2024 WL 4904598 at *8 n.7. The court designated Dano as an SVP and imposed an aggregate sentence of twenty-five to fifty years of incarceration; this sentence included a mandatory minimum term for a "second-strike" sex offender.³

Although represented by counsel, Dano filed several *pro se* petitions, including a *pro se* post-sentence motion. The court denied these filings, and counsel timely filed a notice of appeal. This Court dismissed the appeal for failure to file a brief.

Dano timely filed a *pro se* PCRA petition in April 2023, and the PCRA court appointed counsel. In November 2023, the court reinstated Dano's direct appeal rights *nunc pro tunc*. Dano timely appealed, raising claims related to illegal searches of password-protected applications on his cell phone, trial court error of admitting pages from a journal recovered from his vehicle, insufficient evidence to support his convictions, and illegality of his second-strike sentence. **See Dano**, 2024 WL 4904598 at *3. In November 2024, this Court found Dano's claims meritless and/or waived and affirmed the judgment of sentence. **See generally id.**

³ **See** 42 Pa.C.S.A. § 9718.2.

In April 2025, Dano filed the *pro se* PCRA presently at issue. The PCRA court appointed counsel, who subsequently filed a petition to withdraw from representation and a “no-merit” letter pursuant to ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988) and ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1988) (*en banc*), which the PCRA court granted. Dano filed a *pro se* motion for leave to amend the PCRA petition. The trial court granted the motion and, following consideration of Dano’s *pro se* amendments, subsequently denied the PCRA petition. Dano timely appealed. Dano and the PCRA court complied with Pa.R.A.P. 1925.

Dano raises the following issues for our review:

1. Were [Dano’s] due process [rights], equal protection [rights], and right to possess constitutionally protected material under the [First and Fourteenth] Amendments violated when he was given a strike for a prior conviction for possessing two books that are legal to own?
2. Was the application of 42 Pa.C.S.[A.] §[]9718.2 improperly applied by the Commonwealth?
3. Was trial counsel ineffective for failing to call Google or NCMEC employees as witnesses per [Dano’s] request?
4. Was direct appeal counsel ineffective for failing to raise the claim that [Dano’s Sixth] Amendment right to confront witnesses against [him] was violated?
5. Was trial counsel ineffective for failing to object to, and/or, file a motion to suppress evidence illegally obtained by the Sharon [Police Department] absent a warrant?
6. Was direct appeal counsel ineffective for failing to raise the claim that [Dano’s Fourth] Amendment rights were violated?

7. Was trial counsel ineffective for failing to object to, and/or, file a motion to suppress evidence found by the Sharon [Police Department] before they obtained a sep[a]rate search warrant to do so?
8. Was direct appeal counsel ineffective for failing to raise the issue that the trial court erred by allowing a [PSP c]orporal to testify as an expert witness?

Dano's Brief, 12/1/25, at 4 (unnecessary capitalization omitted) (issues re-ordered for ease of disposition).

Our standard of review of an order dismissing a PCRA petition is well-settled:

Our review of a PCRA court's decision is limited to examining whether the PCRA court's findings of fact are supported by the record, and whether its conclusions of law are free from legal error. We view the record in the light most favorable to the prevailing party in the PCRA court. We are bound by any credibility determinations made by the PCRA court where they are supported by the record. However, we review the PCRA court's legal conclusions *de novo*.

Commonwealth v. Staton, 184 A.3d 949, 954 (Pa. 2018) (internal citation and quotations omitted). Further, a "PCRA court's credibility findings are to be accorded great deference, and where supported by the record, such determinations are binding on a reviewing court." ***Commonwealth v. Williams***, 141 A.3d 440, 452 (Pa. 2016). The PCRA petitioner "has the burden to persuade this Court that the PCRA court erred and that such error requires relief." ***Commonwealth v. Wholaver***, 177 A.3d 136, 144–45 (Pa. 2018) (internal citations omitted).

In Dano's first issue, he argues his constitutional rights were violated when he was sentenced as a second-strike offender due to a 1999 conviction

for possession of child pornography. In his second assertion of error, he claims the trial court improperly applied the mandatory minimum sentence required by 42 Pa.C.S.A. § 9718.2 ("Section 9718.2"). As Dano's first two claims involve trial court error, we consider them together.⁴

The PCRA requires a petitioner to plead and prove that "the allegation of error has not been previously litigated or waived" to be eligible for relief. 42 Pa.C.S.A. § 9543(a)(3).⁵ "Whether an issue was previously litigated turns on whether '[the issue] constitutes a discrete legal ground or merely an alternative theory in support of the same underlying issue that was raised on direct appeal.'" **Commonwealth v. Small**, 980 A.2d 549, 569 (Pa. 2009) (quoting **Commonwealth v. Gwynn**, 943 A.2d 940, 944-45 (Pa. 2008)).

Dano's claims in both issues are premised on his argument that the books he was convicted of possessing in 1999 are legal, therefore he was wrongfully sentenced pursuant to the mandatory minimum term for a "second-strike" sex offender. **See** Dano's Brief at 9-22.

The PCRA court considered Dano's claims and concluded, *inter alia*, they were previously litigated. **See** PCRA Court Opinion, 10/8/25, at 6-7.

⁴ While Dano's second claim is phrased as a Commonwealth error, Section 9718.2 is applied by courts during sentencing. **See** 42 Pa.C.S.A. § 9718.2(c) (providing the Commonwealth should give "reasonable notice of the Commonwealth's intention to proceed under this section . . . after conviction and before sentencing. The applicability of this section shall be determined at sentencing.").

⁵ An issue is waived for the purpose of the PCRA "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.A. § 9544(b).

Based on our review, we likewise conclude Dano's challenge to the imposition of a sentence pursuant to the second-strike statute is previously litigated and accordingly discern no error in the PCRA court's legal conclusion. In his 2024 appeal, Dano argued the trial court erred by enhancing his sentence based on the 1999 conviction, thus violating his rights by sentencing him as a second-strike offender and imposing the requisite mandatory sentence. **See Dano**, 2024 WL 4904598 at *3. He "acknowledge[d] that the court imposed a mandatory minimum sentence for his sexual abuse of children conviction, pursuant to [Section] 9718.2. [Dano] insist[ed], however, that the Commonwealth did not produce sufficient evidence at sentencing to prove that Appellant had previously been convicted of another sex offense." **Id.** at *7. This Court found Dano's claim meritless, explaining, in part, that the SOAB evaluator "reviewed [Dano's] criminal record and specifically testified that [Dano] had entered the 1999 guilty plea." **Id.** at *8. The SOAB evaluator also explained she had reviewed records from the case, "demonstrat[ing] that police recovered [child sexual abuse material] from [Dano's] residence." **Id.**

In his present brief, as in his prior direct appeal, Dano argues his 1999 conviction was based on conduct not prohibited by law and cannot serve as the basis for his second strike. **See** Dano's Brief at 13, 17, 22. Dano does not address or attempt to distinguish his current issues from his previous appeal. Moreover, while currently framed as a constitutional violation and Commonwealth error, the legal ground is the same as in 2024, *i.e.*, whether the trial court erred in sentencing him as a second-strike offender, and,

therefore, it is previously litigated. **See *Small***, 980 A.2d at 569. Thus, Dano's first two issues are procedurally barred by the PCRA.

Dano's remaining issues implicate ineffective assistance of trial and appellate counsel. With respect to claims of ineffective assistance of counsel,

counsel is presumed to have been effective and [] the petitioner bears the burden of proving counsel's alleged ineffectiveness. To overcome this presumption, a petitioner must establish that: (1) the underlying substantive claim has arguable merit; (2) counsel did not have a reasonable basis for his or her act or omission; and (3) the petitioner suffered prejudice as a result of counsel's deficient performance, that is, a reasonable probability that but for counsel's act or omission, the outcome of the proceeding would have been different. A PCRA petitioner must address each of these prongs on appeal. A petitioner's failure to satisfy any prong of this test is fatal to the claim.

Commonwealth v. Wholaver, 177 A.3d 136, 144 (Pa. 2018) (citations omitted). Because there is a presumption counsel provided effective representation, the defendant bears the burden of proving ineffectiveness.

See *Commonwealth v. Ali*, 10 A.3d 282 (Pa. 2010). Additionally, we need not analyze the prongs of an ineffectiveness claim in any particular order. Rather, we may discuss any prong that an appellant cannot satisfy under the prevailing law and the applicable facts and circumstances of the case first.

See *Commonwealth v. Evans*, 303 A.3d 175, 182 (Pa. Super. 2023); **see also *Commonwealth v. Johnson***, 289 A.3d 959, 979-80 (Pa. 2023) (stating the failure to satisfy any of the three prongs supports the denial of the claim without further discussion). Counsel cannot be deemed ineffective for failing

to raise a meritless claim. **See *Commonwealth v. Kapellusch***, 323 A.3d 837, 847 (Pa. Super. 2024).

The three-prong ineffectiveness test applies to appellate counsel as well. **See, e.g., *Commonwealth v. Blakeney***, 108 A.3d 739, 749-50 (Pa. 2014). Relevant here, to show prejudice, the PCRA petitioner must demonstrate that “there is a reasonable probability that the outcome of the direct appeal proceeding would have been different but for counsel’s deficient performance.” ***Id.*** at 750.

In his third issue, Dano claims trial counsel was ineffective for failing to call Google and NCMEC as witnesses, thereby either depriving him of exculpatory evidence, or, in the alternative, violating the Confrontation Clause. **See** Dano’s Brief at 22-30. Dano asserts that had Google and NCMEC been called as witnesses, he would have been absolved as the downloads of the child sexual abuse material occurred fifteen miles away from where he was. **See *id.*** at 30. He refers to the unidentified individuals at Google and NCMEC as experts throughout his brief. **See *id.*** at 27, 30. He argues they would have been able to “pinpoint[] the exact times that the [child sexual abuse material] downloads took place.” ***Id.*** at 30. Alternatively, Dano asserts ineffectiveness for trial counsel’s failure to object to testimony that, he alleges, violated the Confrontation Clause. He claims that the cyber tip and NCMEC reports were testimonial and that he had a right to cross-examine the author of the reports. **See *id.*** at 24-25.

To establish a claim of ineffectiveness based upon trial counsel's failure to call an expert witness, a petitioner must plead and prove the following:

(1) the witness existed; (2) the witness was available to testify for the defense; (3) counsel knew of, or should have known of, the existence of the witness; (4) the witness was willing to testify for the defense; and (5) the absence of the testimony of the witness was so prejudicial as to have denied the defendant a fair trial. To demonstrate **Strickland** [**v. Washington**, 466 U.S. 668 (1984),] prejudice, a petitioner must show how the uncalled witnesses' testimony would have been beneficial under the circumstances of the case. Thus, counsel will not be found ineffective for failing to call a witness unless the petitioner can show that the witness's testimony would have been helpful to the defense.

Commonwealth v. Sneed, 45 A.3d 1096, 1109 (Pa. 2012) (internal citations and quotations omitted).

With respect to the Confrontation Clause, our Supreme Court has explained:

The Confrontation Clause guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const.[] amend. VI. The High Court in **Crawford** [**v. Washington**, 541 U.S. 36 (2004)], . . . held that the Confrontation Clause prohibits the admission of **testimonial hearsay** against a criminal defendant, regardless of whether the statements are deemed reliable by the trial court, unless the declarant is unavailable to testify and the defendant had a previous opportunity to cross-examine the witness. **Crawford**, 541 U.S. at 68, ...

In re N.C., 105 A.3d 1199, 1215 (Pa. 2014) (some capitalization omitted) (emphasis added). Importantly, this Court has recently recognized that data collected electronically by a computerized device is not a statement made by a person, and, therefore, is not hearsay. **See Commonwealth v. Grubbs**, 330 A.3d 444, 450 (Pa. Super. 2025). "The Confrontation Clause is not

implicated by the admission of non-testimonial or non-hearsay statements.”

Commonwealth v. Nabried, 327 A.3d 315, 326 (Pa. Super. 2024).

The PCRA court considered Dano’s arguments and concluded they merit no relief. The court explained trial counsel did not subpoena the “unknown individuals” because of the evidence establishing Dano’s guilt. **See** PCRA Court Opinion, 10/8/25, at 10. “Further, [Dano] failed to identify any specific witness, establish the witness’s availability, or show any witness was prepared to testify in his favor.” ***Id.***

Based on our review, we conclude the PCRA court committed no error in determining Dano is due no relief. Dano does not adequately address any of the three ineffectiveness prongs, nor does he address the ***Sneed*** test, nor does he provide anything more than bare assertions. Nowhere in the record does Dano identify a witness at either Google or NCMEC who was willing and available to testify as to the method utilized to flag and report images, nor does he show that trial counsel knew, or should have known, of this person’s existence. Further, while Dano baldly asserts what this testimony would have shown, he does not, apart from his conclusory statements, explain what the specific witness would have testified to such that this evidence would have been favorable to him or how its absence was prejudicial such that he was denied a fair trial. **See *Sneed***, 45 A.3d at 1109 (setting forth the requirements for an ineffectiveness claim for failure to call a witness); **see also *Commonwealth v. Paddy***, 15 A.3d 431, 443 (Pa. 2011) (stating “boilerplate allegations and bald assertions of no reasonable basis and/or

ensuing prejudice cannot satisfy a petitioner's burden to prove that counsel was ineffective.").

With respect to Dano's Confrontation Clause issue, we conclude it also merits no relief.⁶ The evidence Dano complains of, *i.e.*, the cybertip from Google, was collected electronically. As Corporal Novak testified, "So in this case[—]so[,] Google has an automated system, . . . and then when these images are filed or found by the system, they generate these report numbers, and that's their way of doing that, and then they send that information to NCMEC." N.T., 7/20/21, at 58. Accordingly, the record shows the cybertip Dano complains of was collected automatically by Google's electronic system, and, as such, it was not hearsay. **See Grubbs**, 330 A.3d at 450. Because a Confrontation Clause violation requires the challenged evidence to be testimonial **hearsay**, there is no Confrontation Clause issue here, given the evidence at issue was not hearsay. **Cf. In re N.C.**, 105 A.3d at 1215 (stating the Confrontation Clause prohibits the admission of testimonial hearsay). Thus, Dano's issue merits no relief.

In Dano's fourth issue, he asserts direct appeal counsel was ineffective for failing to raise trial counsel's failure to call Google and NCMEC as witnesses. **See** Dano's Brief at 31-32. Dano does not meaningfully address any of the

⁶ The PCRA court addressed Dano's argument solely as a failure to call a witness issue, rather than under the Confrontation Clause. **See** PCRA Court Opinion, 10/8/25, at 9-10. However, it is well settled that this Court may affirm on any legal basis. **See Commonwealth v. Thompson**, 199 A.3d 889, 892 n.4 (Pa. Super. 2018).

three prongs of ineffectiveness and simply states “[appellate counsel] had no reasonable basis for not including this very important issue on . . . direct appeal.” **Id.** at 32. As such, Dano has waived this undeveloped claim. **See Wholaver**, 177 A.3d at 180 (undeveloped arguments are deemed waived).

In his fifth issue, Dano argues trial counsel was ineffective for failing to move to suppress the evidence found pursuant to the warrantless search of his phone.⁷ This claim, as presented in this appeal, appears for the first time in his 1925(b) statement and does not appear in his PCRA petition. Thus, it is waived. **See** Pa.R.A.P. 302(a); **Commonwealth v. Johnson**, 179 A.3d 1105, 1123 n.10 (Pa. Super. 2018) (stating “a claim not raised in a PCRA petition cannot be raised for the first time on appeal”).

In his sixth issue, Dano asserts appellate counsel was ineffective for failing to appeal the Sharon Police Department’s warrantless search of his cell phone. Specifically, Dano claims his phone was searched without a warrant between January 3, 2020, and March 3, 2020. **See** Dano’s Brief at 33.

Following our review, we conclude Dano’s issue is meritless because the record controverts it. Officer McEvoy testified that the phone extraction of the child sexual abuse material from Dano’s phone occurred on March **4** and **5**,

⁷ The Fourth Amendment of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution protect individuals from being subjected to unreasonable searches and seizures. **See Commonwealth v. Lyles**, 97 A.3d 298, 302 (Pa. 2014). A search or seizure conducted without a warrant is presumptively unreasonable, subject to a few specifically established, well-delineated exceptions. **See Commonwealth v. Jones-Williams**, 279 A.3d 508, 515 (Pa. 2022).

2020. **See** N.T., 7/20/21, at 153-54. As this Court noted in our previous memorandum opinion affirming Dano's judgment of sentence on direct appeal, law enforcement obtained a search warrant to search the contents of Dano's two cell phones on March **4**, 2020. **See Dano**, 2024 WL 4904598, at *1. As proof of the warrantless search, Dano limits his citations to his own statements at a pre-trial conference, as well as trial counsel's statements. **See** Dano's Brief at 33-34 (citing statements by himself and trial counsel at the pre-trial conference).⁸ Dano fails to cite to evidence or address the testimony at trial that directly established that the cell phone was not searched until after the warrant was in effect. As Dano has failed to show the issue had any record support, nor has he shown how this claim would have been preserved for appeal, Dano is due no relief. Appellate counsel cannot be found ineffective for failing to raise this baseless claim. **See Commonwealth v. Rivera**, 199 A.3d 365, 385 (Pa. 2018). Thus, Dano's sixth claim is meritless, and the PCRA court did not err in denying relief.

In his seventh claim, Dano argues trial counsel was ineffective for failing to move for suppression of evidence found on password-protected

⁸ Dano also cites to Exhibits N, O, and P; however, notwithstanding Dano's citation to these exhibits, our review of the record discloses that these exhibits are neither identified nor attached to Dano's April 1, 2025, PCRA petition. **See Commonwealth v. Midgley**, 289 A.3d 1111, 1120 (Pa. Super. 2023) (explaining appellants have a duty to ensure the certified record is complete, and "failure to carry out that duty results in waiver of any claim for which a needed item is absent from the certified record.").

applications. He argues his attorney had no reasonable basis for failing to seek suppression of this evidence. **See** Dano's Brief at 44.

This Court has explained that:

[t]he failure to file a suppression motion under some circumstances may be evidence of ineffective assistance of counsel. However, if the grounds underpinning that motion are without merit, counsel will not be deemed ineffective for failing to so move. The defendant must establish that there was no reasonable basis for not pursuing the suppression claim and that if the evidence had been suppressed, there is a reasonable probability the verdict would have been more favorable.

Commonwealth v. Melson, 556 A.2d 836, 839 (Pa. Super. 1989) (internal citations and quotations omitted).

Dano does not address the language of the search warrant, which included "incoming and outgoing call logs, MMS and SMS text messages, internet history, subscriber/owner information for each phone, emails, maps/GPS/location services, photos, videos, ***any and all data stored in an application on either phone*** along with any other data contained in each phone." ***Dano***, 2024 WL 4904598 at *1 (emphasis added) (quoting language of search warrant for Dano's cell phones). Dano does not cite to any case law to support his assertion that this warrant did not include password-protected applications. Moreover, a review of the record reveals that trial counsel was allowed to make an oral motion to suppress the cell phone data due to

overbroad search warrants. **See** N.T., 7/20/21, at 3-4.⁹ The trial court denied the motion as meritless, subject to testimony. **See id.** at 6-7. Dano does not explain why his counseled motion was insufficient or otherwise explain why counsel was ineffective in making an oral motion to suppress an overbroad search warrant for his cell phones, rather than password-protected evidence. Thus, the PCRA court did not err when it denied this claim.

In his eighth and final claim, Dano asserts appellate counsel was ineffective for failing to appeal the admission of Corporal Novak's expert testimony. **See** Dano's Brief at 47-48.¹⁰

Our review reveals that this issue was not preserved at trial; thus, appellate counsel could not be considered ineffective when Dano waived this issue for purposes of direct appeal. It is well-settled that "[i]ssues not raised in the trial court are waived and cannot be raised for the first time on appeal." Pa.R.A.P. 302(a). As it relates to expert testimony, "a party complaining on appeal of the admission of evidence in the [c]ourt below will be confined to

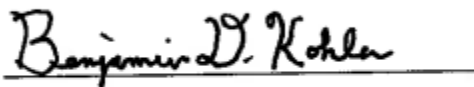
⁹ Notably, the record indicates Dano's prior awareness of this issue, because one of Dano's issues on appeal in 2024 was "[w]hether the trial court erred in denying [his] motion to suppress evidence when the Commonwealth failed to obtain a separate search warrant for the password-protected material on the cell[]phones" **Dano**, 2024 WL 4904598 at *3 (citing Dano's 2024 Brief at 8). This claim was waived on appeal, however, because it relied on a different basis for suppression. **See Dano**, 2024 WL 4904598 at *3 (citing **Commonwealth v. Little**, 903 A.2d 1269, 1272-73 (Pa. Super. 2006)).

¹⁰ In his brief, Dano asserts trial counsel was also ineffective for failing to object to this testimony. Trial counsel's ineffectiveness was not included in Dano's 1925(b) statement and is therefore waived. **See Commonwealth v. Snyder**, 316 A.3d 178, 181 (Pa. Super. 2024); Pa.R.A.P. 1925(b)(4)(vii).

the specific objection there made.” ***Commonwealth v. Santiago-Burgos***, 314 A.3d, 535, 545 (Pa. Super. 2024) (citation omitted). A review of the record reveals that trial counsel not only did not object to Corporal Novak’s expert testimony, counsel also stated on the record, “Your Honor, we accept Corporal Novak being an expert, and have no need to cross.” N.T., 7/20/21, at 44. Because the issue of Corporal Novak’s expert testimony was not preserved, it was waived on appeal. ***See Commonwealth v. Nabried***, 327 A.3d 315, 326 n.4 (Pa. Super. 2024) (explaining failure to object to officer’s testimony resulted in waiver). Appellate counsel was not ineffective for failing to raise a waived claim. Thus, Dano’s eighth argument is meritless and the PCRA court did not err in denying his claim.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

10/16/2026