

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
SHAUN JOSEPH BROWN	:	
	:	
Appellant	:	No. 3226 EDA 2025

Appeal from the PCRA Order Entered November 5, 2025
In the Court of Common Pleas of Chester County Criminal Division at
No(s): CP-15-CR-0002427-2021

BEFORE: SULLIVAN, J., BECK, J., and BENDER, P.J.E.

MEMORANDUM BY BENDER, P.J.E.:

FILED SEPTEMBER 29, 2026

Appellant, Shaun Joseph Brown, appeals from the order denying his petition filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546, without a hearing. After careful consideration, we affirm.

The PCRA court explained the history of this case as follows:

On October 11, 2022, [Appellant] tendered an open plea of guilty to Counts 101 through 105 of the Information, charging Sexual Abuse of Children (Possession of Child Pornography), 18 Pa.C.S. § 6312(d), graded as Felonies of the Second Degree (F-2), and to Count 1, Sexual Abuse of Children (Dissemination of Child Pornography), 18 Pa.C.S. § 6312(c), also graded as an F-2. The factual predicate recited in the written Guilty Plea Colloquy states, "On June 2021 West Pikeland Twp Chester County PA – Def possessed at least several hundred photos and videos of [child pornography] + uploaded to kick + snapchat."

* * *

After a detailed colloquy by the court, [Appellant] admitted on the record that the facts recited by the Commonwealth were true. Following additional colloquy by the court, the court determined

that [Appellant's] plea was knowingly, voluntarily, and intelligently tendered.

On March 2, 2023, [the court] sentenced [Appellant] to a term of ten months to twenty months on Count 1, the dissemination conviction, a consecutive term of ten months to twenty months on Count 101, ... a consecutive term of two months to eight months on Count 102, ...a consecutive term of five years of probation on Count 103, ... a term of five years of probation on Count 104 ... to run consecutive to the probation imposed on Count 103, and a term of five years of probation on Count 105 ... to run concurrently with the probation imposed on Count 104. Thus, [Appellant's] aggregate sentence is one year and ten months to four years in state prison followed by ten years of consecutive probation. [Appellant] was given credit for time served from July 19, 2021 through August 3, 2021 and prohibited from having any unsupervised contact with minors. By agreement of the parties, it was determined that [Appellant] did not meet the criteria to be considered a sexually violent predator. [Appellant] did not file a post-sentence motion or take a direct appeal. Consequently, [Appellant's] judgment of sentence became final on April 1, 2023.

PCRA Court Opinion, 2/6/26 at 1-3 (some formatting altered). The PCRA court further explained that it had received a letter from Appellant on November 17, 2023, asking why his sentence was not limited to the 18 to 36 months that the prosecution had promised him. ***Id.*** at 3-4. Treating this letter as a first PCRA petition, the PCRA court appointed counsel for Appellant.¹ After several extensions of time, counsel filed an amended PCRA petition on February 3, 2025, alleging that trial counsel ineffectively failed to "enforce" the agreement for a maximum of 36 months of incarceration.

¹ The court properly treated the letter as a PCRA petition. **See *Commonwealth v. Hagan***, 306 A.3d 414, 421-22 (Pa. Super. 2023) (issues that are cognizable under the PCRA must be addressed in a PCRA petition).

After the Commonwealth filed a reply to the amended petition, the court issued a notice under Rule 907(1), stating that it found no issues of merit and giving notice of the court's intent to dismiss the PCRA petition. Thereafter, Appellant retained new counsel who filed a response to the Rule 907 notice. The PCRA court then dismissed the petition on November 5, 2025.²

Appellant now raises one issue on appeal, namely:

1. Did the PCRA [c]ourt err when it dismissed [Appellant's] Amended PCRA Petition without an evidentiary hearing because factual issues existed that can only be properly resolved after an evidentiary record is created at an evidentiary hearing?

Appellant's Brief at 3.

"We review the denial of a PCRA petition to determine whether the record supports the PCRA court's findings and whether its order is free of legal error." **Commonwealth v. Min**, 320 A.3d 727, 730 (Pa. Super. 2024) (citation omitted). The scope of our review is "limited to the findings of the PCRA court and the evidence of record, viewed in the light most favorable to the prevailing party at the trial level." **Commonwealth v. Hanible**, 30 A.3d 426, 438 (Pa. 2011) (citation omitted). The PCRA court's legal determinations, however, are subject to *de novo* review and our scope of review is plenary. **Commonwealth v. Nero**, 58 A.3d 802, 805 (Pa. Super. 2012).

With respect to a need for an evidentiary hearing, our Court has stated that "a petitioner is not entitled to a PCRA hearing as a matter of right; the

² Both Appellant and the PCRA court have complied with Pa.R.A.P. 1925.

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. Williams**, 313 A.3d 249, 253 (Pa. Super. 2024); Pa.R.Crim.P. 907(1). On appeal, our task is to 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 a hearing. **Id.** To obtain relief on appeal, a petitioner must demonstrate that he raised a genuine issue of fact which, if resolved in his favor, would have entitled him to relief. **Commonwealth v. Maddrey**, 205 A.3d 323, 328 (Pa. Super. 2019).

Appellant contends that plea counsel was ineffective for failing to enforce an alleged agreement limiting his sentence to a “cap” of 18 to 36 months of incarceration. **See** Appellant’s Brief at 8; **see also** Amended PCRA Petition, 2/3/25, at 3-7. When reviewing a claim of ineffective assistance, we first presume that counsel was effective. **Commonwealth v. Brown**, 235 A.3d 387, 391 (Pa. Super. 2020). To overcome this presumption, “a PCRA petitioner must show the underlying claim has arguable merit, counsel's actions lacked any reasonable basis, and counsel's actions prejudiced the petitioner.” **Commonwealth v. Velazquez**, 216 A.3d 1146, 1149 (Pa. Super. 2019). Failure to establish any one of these elements will defeat the claim. **Id.**

Here, Appellant's claim lacks arguable merit because the record affirmatively contradicts his assertion that the parties agreed to an 18 to 36 month sentencing cap. Although counsel argues that we need testimony from plea counsel about the terms of the plea agreement, and how he advised Appellant to accept the plea, such information is irrelevant without some showing of a plea agreement in the record. No such showing is apparent. At the outset of the guilty plea hearing, the Commonwealth told the court that Appellant intended to enter an "open guilty plea," and defense counsel agreed. N.T., 10/11/22, at 2. When the court again asked if Appellant intended to enter an open plea, defense counsel responded, "That is correct, your Honor." **Id.** at 3. An open plea, unlike a negotiated plea, contains no sentencing agreement. **See, e.g., Commonwealth v. Heaster**, 171 A.3d 268, 271 (Pa. Super. 2017) (explaining the difference between negotiated and open pleas).

More significantly, during the plea colloquy, the court expressly asked Appellant whether anyone had promised him anything in exchange for pleading guilty, and Appellant answered, "No." N.T., 10/11/22 at 11. The court subsequently accepted Appellant's plea as knowing, voluntary, and intelligent and again characterized it as an "open" plea. **Id.** at 15. Appellant is bound by the statements he made during his plea colloquy and may not now contradict those statements. **Commonwealth v. Gabra**, 336 A.3d 1052, 1057 (Pa. Super. 2025).

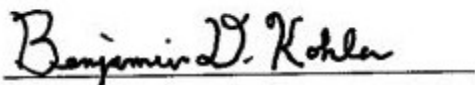
The sentencing record further confirms the absence of any sentencing agreement. At the sentencing hearing, the Commonwealth stated the

applicable guidelines for each of Appellant's convictions provided for a minimum sentence of 22 to 36 months in the standard range. N.T. Sentencing, 3/2/23, at 4-5. The Commonwealth requested that Appellant receive an aggregate sentence of 30 to 60 months of incarceration, followed by 15 years of probation. **Id.** at 6. Defense counsel sought a mitigated-range, county-length sentence, or probation, or house arrest. **Id.** at 73-87. Neither party suggested that the Commonwealth had previously agreed to an 18 to 36 month sentence. Moreover, in imposing sentence, the court expressly referred to Appellant's decision to enter an open plea as support for a lesser sentence. **Id.** at 99.

Thus, the certified record does not merely fail to support Appellant's alleged sentencing agreement; it affirmatively establishes that his plea was open and that no sentencing promise had been made. Accordingly, the underlying premise of Appellant's ineffectiveness claim lacks arguable merit. Because Appellant failed to raise a genuine issue of material fact that, if resolved in his favor, would entitle him to PCRA relief, the PCRA court did not abuse its discretion by dismissing his petition without an evidentiary hearing.

Order affirmed.

Judgment Entered.

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

Benjamin D. Kohler, Esq.
Prothonotary

Date: 9/29/2026