NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
CHESTER DAVID MILLER JR.	:	
Appellant	:	No. 229 EDA 2026

Appeal from the PCRA Order Entered December 15, 2025
In the Court of Common Pleas of Monroe County Criminal Division at
No(s): CP-45-CR-0000830-2020

BEFORE: BOWES, J., OLSON, J., and McLAUGHLIN, J.

MEMORANDUM BY McLAUGHLIN, J.: **FILED NOVEMBER 17, 2026**

Chester David Miller Jr. appeals *pro se* from the order denying his first Post Conviction Relief Act ("PCRA") petition. ***See*** 42 Pa.C.S.A. §§ 9541-9546. Miller argues his trial counsel was ineffective for failing to file a pre-trial motion to suppress. We affirm.

The underlying charges against Miller "stemmed from a domestic incident in which [Miller] repeatedly struck his ex-girlfriend, [the victim], in the head with a closed fist and a large frozen hospital-grade ice pack." ***Commonwealth v. Miller***, No. 159 EDA 2023, 2024 WL 2956624, at **2 (Pa.Super. filed June 12, 2024) (unpublished mem.). Relevant here, a police corporal testified at trial that when the police arrived at the victim's and Miller's trailer home, Miller "let us into the house so we could investigate." N.T., 6/23/22, at 88. The second police officer also testified Miller "gave us consent to come in and conduct an investigation of the residence." ***Id.*** at 202.

The corporal looked around inside the trailer and took photographs. He also noticed there was one trashcan in the kitchen that was overflowing, but another trashcan that had a fresh, empty bag. ***Id.*** at 91-92. Finding this suspicious, both officers went outside and found "a garbage can that's, you know, typically what you find of maybe like a 50-gallon garbage can that a garbage service would normally pick up on garbage days." ***Id.*** at 94. The corporal did not testify to the exact location of the trashcan outside.

The corporal opened the lid and pulled out the topmost trash bag. ***Id.*** at 95-96. He noticed, "immediately right on top of the trash bag . . . there was some sort of bloody ice package that we had found inside there." ***Id.*** at 96. The police recognized the ice pack as the weapon described by the victim. ***Id.*** at 97. The Commonwealth introduced a picture of the trash bag. ***Id.*** at 94-95; Commonwealth's Ex. No. 4. The picture shows a partially opened white plastic trash bag with trash inside.

On cross-examination, trial counsel asked the corporal "if [he] asked for or received any permission to go out to the can and get it?" ***Id.*** at 106. The corporal responded, "He welcomed us into the house to investigate it." ***Id.*** Trial counsel then asked, "Your view is that included going into the outside trash can?" ***Id.*** The corporal responded, "That's correct." ***Id.***

Miller testified that he told the officers that he had given an ice pack to the victim, after she accidentally fell backwards and hit her head, and that he had since disposed of it. N.T., 6/24/22, at 15.

The jury convicted Miller of aggravated assault with a deadly weapon, aggravated assault, simple assault, harassment, recklessly endangering another person ("REAP"), and possession of an instrument of crime ("PIC").[1]

Miller filed a direct appeal. One of the issues he included in his Rule 1925(b) statement of errors complained of on appeal was whether the court "erred and abused [its] discretion by allowing testimony regarding an ice pack which was found via an illegal and unauthorized search of Miller's trash can." ***Miller***, 2024 WL 2956624, at **6 (quoting Trial Court Opinion, 3/28/23). In writing its Rule 1925(a) opinion, the trial court noted Miller waived the issue by failing to file a motion to suppress or object during trial. The court also explained that even if Miller had pursued suppression, "the evidence tended to show that [Miller] consented to the search and, in any event, had abandoned the ice pack." ***Id.*** at **7. The court further stated, "The evidence presented at trial indicated that when officers arrived at [the victim]'s residence, [Miller] welcomed them into the home to investigate"; he "told [them] he had discarded the ice pack"; and the police had found the pack "in a garbage can outside the residence." ***Id.*** Miller did not raise the issue in his brief to this Court, and we affirmed the other issues he presented on appeal.

Miller filed a timely *pro se* PCRA petition. It alleged, among other things, that trial counsel was ineffective for "fail[ing] to challenge the unreasonable search and seizure that resulted [in] collection of unwarranted articles of

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[1] 18 Pa.C.S.A. §§ 2702(a)(4), 2702(a)(1), 2701(a), 2709(a), 2705, and 907(a), respectively.

evidence[.]" Motion for Post Conviction Collateral Relief, filed 4/28/25, at 4. The court appointed counsel, who filed a petition to withdraw and a ***Turner***/***Finley*** no-merit letter.[2] The letter stated that Miller wanted to pursue a claim of ineffective assistance of trial counsel based on counsel's failure to move for suppression of the ice pack.[3] PCRA counsel wrote that in discussing this potential claim with Miller,

> [Miller] indicated that the trash can where the police did a trash pull to obtain the ice pack was located on the outside porch by the trailer. The patio is physically on the left side of the trailer near the concrete pad where they subsequently put the trash out on the roadside on garbage pickup day.

Motion to Withdraw Appearance, 9/10/25, No Merit Letter, at 1.

PCRA counsel found a suppression motion would have failed, because, according to PCRA counsel, Miller had placed the trash outside for collection. ***Id.***, No Merit Letter at 3. PCRA counsel also stated he contacted Miller's trial counsel, who told PCRA counsel he believed there had been insufficient evidence to prevail on a suppression motion, and that the case was "ultimately a he-said, she-said credibility determination made at trial." ***Id.***, No Merit Letter at 1-2.

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[2] ***See Commonwealth v. Wrecks***, 931 A.2d 717, 721 (Pa.Super. 2007) (stating counsel petitioning to withdraw from PCRA representation must submit letter explaining why petitioner's issues lack merit, pursuant to ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988), and ***Commonwealth v. Finley***, 550 A.2d 213 (Pa.Super. 1988) (*en banc*)).

[3] Miller has since abandoned the other potential issues he discussed with PCRA counsel.

The court granted PCRA counsel leave to withdraw and issued notice of its intent to dismiss Miller's petition without a hearing. ***See*** Pa.R.Crim.P. 907. The court based its decision on its "review of the record and file in this matter, including prior orders and opinions, [PCRA counsel's] No Merit Letter, and [Miller's] current filings." Order, 9/16/25, at 1. Miller filed a *pro se* response to the Rule 907 notice. ***See*** Letter of Arguable Merit, 11/18/25. He asserted that "[t]he container that the police did the trash pull was located within the curtilage of the trailer" because "the side yard of defendant[']s trailer constitutes the curtilage of the home and is subject to a reasonable expectation of privacy[.]" ***Id.*** at 5. The court denied the petition. Miller appealed.

Miller presents the following issues:

> 1) Ineffectiveness Assistance of Counsel Failure to file pre-trial motions, Failed to Challenge 4th Amendment Violation Concerning Illegal Search and Seizure, evidence Fruit of Poisonous Tree.
>
> 2) 4th Amendment Violation Illegal Search and Seizure.

Miller's Br. at 4.

Miller argues his trial counsel was ineffective for failing to move to suppress the ice pack the police recovered from his trash. Miller contends the suppression issue has merit because the police violated Article I, Section 8 of the Pennsylvania Constitution by searching his property without a warrant or any exception to the warrant requirement. Miller claims he retained a reasonable expectation of privacy in the trashcan, which he states was in the side yard of the trailer, and within the curtilage of the home. ***Id.*** at 7 (citing

Commonwealth v. Bowmaster, 101 A.3d 789, 792 (Pa.Super. 2014)). He argues the trash was not abandoned because it was not "placed for collection at curbside or roadside, where it is available to the public, animals[,] or police." ***Id.*** (citing ***California v. Greenwood***, 486 U.S. 35 (1998)). He alleges the icepack was inside "an opaque container, not in plain view of the general public or the police," and points out that the search occurred at nighttime. ***Id.***

Miller also argues that the transcripts "show no evidence that consent was given" to search the trashcan outside the trailer. ***Id.*** He points out that when the corporal was asked on cross-examination if he "asked for or received permission to go outside and search, [the corporal] answered he [(Miller)] welcomed us into the house to investigate." ***Id.*** Miller contends, "the subject of the search must be made aware of his/her rights against a warrantless search for waiver to be intelligent." ***Id.*** at 8.

Miller argues counsel's failure to move for suppression prejudiced him, because if the evidence had been suppressed, it would have resulted in a different trial outcome. ***Id.*** at 6. He also asserts trial counsel was ineffective for failing to inform him that by not raising the issue prior to trial, he would be waiving his right to raise it on appeal.[4]

"On appeal from the denial or grant of relief under the PCRA, our review is limited to determining 'whether the PCRA court's ruling is supported by the

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[4] Miller raised each of these points in his *pro se* response to the PCRA court's Rule 907 notice.

record and free of legal error.'" ***Commonwealth v. Presley***, 193 A.3d 436, 442 (Pa.Super. 2018) (citation omitted)

"Counsel is presumed to be effective." ***Commonwealth v. Midgley***, 289 A.3d 1111, 1119 (Pa.Super. 2023). A petitioner may only overcome the presumption by pleading and proving that "(1) the underlying claim is of arguable merit; (2) that counsel had no reasonable strategic basis for his or her action or inaction; and (3) but for the errors and omissions of counsel, there is a reasonable probability that the outcome of the proceedings would have been different." ***Id.*** (citation omitted).

Where a petitioner alleges counsel was ineffective for failing to file a motion to suppress, the first inquiry becomes "whether the failure to file the motion is itself objectively unreasonable, which requires a showing that the motion would be meritorious." ***Commonwealth v. Johnson***, 179 A.3d 1153, 1160 (Pa.Super. 2018). The second inquiry is whether counsel had a reasonable basis for not pursuing a suppression motion. ***Commonwealth v. Hunter***, 355 A.3d 394, 415 (Pa.Super. 2026). The third is whether, "if the evidence had been suppressed, there is a reasonable probability the verdict would have been more favorable." ***Id.*** (citation omitted). A failure to plead and prove any of these prongs is fatal to the claim. ***Midgley***, 289 A.3d at 1119.

Miller's claim fails because he has not alleged facts that, if true, would show a suppression motion would have been meritorious. "Our long-standing precedent establishes that a defendant does not have standing to contest the

search and seizure of items which he has voluntarily abandoned as the defendant has no reasonable expectation of privacy in abandoned items." ***Commonwealth v. Williams***, 342 A.3d 742, 767 (Pa.Super. 2025), *appeal denied*, 354 A.3d 472 (Pa. 2026). Placing trash out for collection is an act of abandonment. ***Id.*** at 768; ***see also Commonwealth v. Irvin***, 134 A.3d 67, 72 (Pa.Super. 2016) (finding no expectation of privacy where trashcans were placed near alleyway, consistent with where neighbors placed trash for collection, and "given the obvious public access to the location").

Even where the trash has not been placed at the curb for collection, a defendant may also abandon an item by placing it in a trash receptacle located in an area accessible to the public. ***See Commonwealth v. Bagley***, 596 A.2d 811, 817, 819 (Pa.Super. 1991) (finding no reasonable expectation of privacy in trash "in bags standing next to trash cans outside the house"); ***Commonwealth v. Perdue***, 564 A.2d 489, 493 (Pa.Super. 1989) (finding no legitimate expectation of privacy in trashcan located inside the curtilage of a parsonage, where it was publicly accessible); ***Commonwealth v. Cihylik***, 486 A.2d 987, 991 (Pa.Super. 1985) (finding no reasonable expectation of privacy in trash left in a trash pit that was "left open and accessible to anyone crossing the lot" and finding this analogous to trash left for collection).

Here, Miller asserts that he had a reasonable expectation of privacy in the trashcan because it was in the trailer's side yard, and not at the curb. But his pleadings below do not clearly identify the placement of the trashcan, such that he would have retained a reasonable expectation of privacy in its

contents. The trial transcript does not disclose the location of the trashcan or describe the trailer's yard. However, the corporal testified that the trashcan was the large type that is used for municipal trash collection. Thus, on direct appeal, although it found the issue waived, the trial court presumed the trash had been abandoned. According to the No-Merit letter, Miller told PCRA counsel that the trashcan was on the "outside porch" or "patio" of the trailer, which was "near the concrete pad" from which the trash gets collected. Motion to Withdraw Appearance, 9/10/25, No Merit Letter, at 1. It thus appears probable that the trash was outside the curtilage of the home.[5] ***See Commonwealth v. Gibbs***, 981 A.2d 274, 280 (Pa.Super. 2009) (finding concrete slab porch adjacent to trailer home was not curtilage where it was unenclosed, not gated, it abutted the sidewalk, and where there was "nothing else which would indicate that the porch was closed to members of the general public"); ***cf. Bowmaster***, 101 A.3d at 792 (finding fenced-in yard surrounding trailer home was within home's curtilage).

Regardless, even if it was inside the curtilage, Miller lacked a reasonable expectation of privacy in its contents if the can was publicly accessible. ***See Perdue***, 564 A.2d at 493. Miller bore the burden of pleading and proof, and

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[5] "Curtilage is entitled to constitutional protection from unreasonable searches and seizures as a place where the occupants have a reasonable expectation of privacy that society is prepared to accept." ***Commonwealth v. Eichler***, 133 A.3d 775, 783 (Pa.Super. 2016) (quoting ***Commonwealth v. Fickes***, 969 A.2d 1251, 1256 n.1 (Pa.Super. 2009)). "In determining what constitutes 'curtilage,' we consider 'factors that determine whether an individual reasonably may expect that an area immediately adjacent to the home will remain private.'" ***Bowmaster***, 101 A.3d at 792 (citation omitted).

he failed to allege facts that would demonstrate that the trashcan's contents were not accessible by the public.

In addition, while Miller invokes Article I, Section 8 of the Pennsylvania Constitution the Pennsylvania Constitution, he does not argue that this section provides greater protection than the Fourth Amendment of the federal Constitution as applied to the facts of his case. This Court recently rejected a claim that the Pennsylvania Constitution provides greater protection regarding "warrantless searches and seizures of trash left for collection outside the curtilage of an individual's home." ***See Commonwealth v. Williams***, 342 A.3d 742, 766 (Pa.Super. 2025), *appeal denied*, 354 A.3d 472 (Pa. 2026), *cert. denied*, No. 25-1277, 2026 WL 2976327 (U.S. filed 10/5/26).

Second, even if Miller had alleged facts that, if proven, would give rise to an objectively reasonable expectation of privacy in the contents of the trashcan, Miller has offered no facts to disprove the trial court's other conclusion: that he had surrendered any expectation of privacy by consenting to a search of the property. According to the trial transcript, the police believed that Miller's consent to search the property extended to the trashcan. Miller claims the transcript is insufficient to prove he expressly consented to the search, because the testimony was that he invited the police inside the trailer to investigate. However, Miller does not allege any facts, such as contents of the conversation he had with the police, to prove that the Commonwealth would not have been able to carry its burden at a suppression hearing to prove that Miller's consent to a search did not extend to the trashcans outside. ***See***

Commonwealth v. Valdivia, 195 A.3d 855, 868 (Pa. 2018) ("The scope of a search is controlled by the scope of consent given, which, in turn, is determined pursuant to a reasonable person standard under the circumstances at the time the exchange between the officer and the suspect occurs"). The order denying PCRA relief was supported by the record and free of legal error.

Order affirmed.

Judge Bowes and Judge Olson concur in the result.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/17/2026