

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

JAMES Z. GIBSON

Appellant

: No. 2762 EDA 2025

Appeal from the PCRA Order Entered October 2, 2025
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0008149-2022

BEFORE: LAZARUS, P.J., MURRAY, J., and FORD ELLIOTT, P.J.E.*

MEMORANDUM BY MURRAY, J.:

FILED SEPTEMBER 10, 2026

James Z. Gibson (Appellant) appeals from the order dismissing, after a hearing, his timely first petition filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546. Appellant asserts the PCRA court improperly denied relief on his claims of ineffective assistance of counsel (IAC), based on his trial counsel's (1) failure to present live testimony from character witnesses on Appellant's behalf at his jury trial; and (2) unreasonably advising Appellant to waive his right to testify at trial. Additionally, Appellant's court-appointed PCRA counsel (PCRA Counsel) has filed a motion to withdraw from representation and no-merit brief pursuant to ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988), and ***Commonwealth***

* Retired Senior Judge assigned to the Superior Court.

v. Finley, 550 A.2d 213 (Pa. Super. 1988) (*en banc*). As we conclude the PCRA court properly denied relief on Appellant's IAC claims, and that PCRA Counsel has complied with **Turner/Finley**, we grant counsel's motion to withdraw and affirm the PCRA court's dismissal order.

The PCRA court summarized the relevant history underlying this appeal in its opinion accompanying the dismissal order (Memorandum Opinion):¹

[Appellant] was arrested on November 2, 2022, and charged with a number of offenses. The case proceeded to a jury trial on [one count each] of sexual assault, indecent assault without consent, and rape by forcible compulsion.² Jury selection commenced on January 30, 2024, with [Assistant Public Defender] Owen Doherty[, Esquire] ("Trial Counsel")[,] representing [Appellant]. During jury selection, [the trial] court instructed the panelists that [Appellant] had a right not to testify and the jury could not hold it against [Appellant] if he exercised that right. [The trial] court repeated that instruction after the jury was selected. N.T., 1/31/24, at 7:15-20.

[At trial, t]he Commonwealth called the complaining witness, G.J. G.J. was 72 years old at the time of trial; [Appellant] was about a year older. **Id.** at 33:1-2, 42:12-19. G.J. testified that she had met [Appellant] in 2015, when she was recovering from surgery in a rehabilitation facility. [Appellant] was one of the nursing assistants [employed at the facility] who took care of [G.J.] **Id.** at 32:2-33:17. After her discharge, [Appellant] began visiting [G.J., at her] home[,] to take care of her as she continued her recovery. [G.J. and Appellant's] relationship became intimate. **Id.** at 33:18-35:17. In April 2022, G.J. had foot surgery. She asked [Appellant] to come to her house to help her while she recovered, but told him that she would not have sex with him until her foot had healed. [Appellant] agreed. **Id.** at 35:18-41:16. [Appellant] and G.J. had this conversation more than once,

¹ The judge who authored the Memorandum Opinion, the Honorable Michelle D. Hangley, also presided over Appellant's jury trial.

² 18 Pa.C.S.A. §§ 3124.1, 3126(a)(1), 3121(a)(1).

including on the evening of May 16, 2022. **Id.** at 46:8-23. On May 17, [2022,] however, [Appellant] let himself into G.J.'s house, climbed into her bed, and pushed her legs apart. G.J., who was wearing a heavy cast on her foot, tried to fight [Appellant] off, but he overpowered her and forced his penis into her vagina. **Id.** at 41:17-49:21. After [Appellant] left, G.J. testified, she felt devastated, shocked, and betrayed. At first, she did not tell anyone what had happened, but after a week, [G.J.] confided in her daughter. At her daughter's urging, G.J. then reported the assault to the police. **Id.** at 53:8-56:8.

Trial Counsel cross-examined G.J. extensively, challenging certain inconsistencies between her current [testimony] and prior [statements she made regarding the assault], exploring whether G.J. had a motive to lie about [Appellant], and attempting to call into question the weeklong delay between the assault and G.J.'s report to the police. While Trial Counsel showed some discrepancies between G.J.'s statements on peripheral issues, G.J.'s account of the assault itself remained consistent. **Id.** at 58:6-94:22.

The Commonwealth then called G.J.'s daughter, who testified about G.J.'s relationship with [Appellant], G.J.'s depressed mood following the date of the assault, and [G.J.'s] disclosure of the assault. **Id.** at 101:6-124:10. The Commonwealth's final witnesses were a police officer and a police detective, who testified about G.J.'s report and the investigation. **Id.** at 125:10-152:4.

After the Commonwealth rested, the [trial] court instructed the jury about what a stipulation was. [N.T., 2/1/24, at 5.] Trial Counsel then presented stipulations[, including] that if Victoria Townsend, Linda Ball, and Tammy Shimley had been called to testify, each of them would have testified that she knew [Appellant] as a member of the community and that [Appellant]

enjoyed a reputation for peacefulness³ [(hereinafter, “the character witness stipulation”)]. **Id.** at 5:1-25.⁴

Out of the presence of the jury, [the trial] court colloquied [Appellant] about whether he wished to testify.⁵ [Appellant] acknowledged that he did not wish to testify, that he knew he had a right to do so, that no one had forced him into his decision, that he had discussed his decision with Trial Counsel, and that he was satisfied with Trial Counsel’s advice and services. **Id.** at 6:16-10:10. [The trial] court found that [Appellant] had knowingly, intelligently, and voluntarily waived his right to testify. **Id.** at 10:11-14. The defense rested, and the parties presented closing arguments. In his closing, Trial Counsel highlighted the importance of [Appellant’s] character evidence. **Id.** at 22:17-24:20.⁶

³ Under our Rules of Evidence, a defendant may introduce evidence of his or her character traits that are relevant to a crime charged. Pa.R.E. 404(a)(2)(A); **see also Commonwealth v. Weiss**, 606 A.2d 439, 442 (Pa. 1992) (stating that in cases “where there are only two direct witnesses involved, credibility of the witnesses is of paramount importance, and character evidence is critical to the jury’s determination of credibility.”). This Court has explained that in rape cases, admissible evidence of the defendant’s relevant character traits may include evidence of traits such as “non-violence or **peaceableness**, quietness, good moral character, chastity, and disposition to observe good order.” **Commonwealth v. Radecki**, 180 A.3d 441, 454 (Pa. Super. 2018) (citation omitted; emphasis added).

⁴ Immediately after the character witness stipulation, the trial court instructed the jury that it was to “accept what [Trial Counsel] just told you as facts on the record.” N.T., 2/1/24, at 5.

⁵ We set forth the colloquy in full *infra*, which we hereinafter refer to as “the waiver colloquy.”

⁶ In the trial court’s final instructions to the jury, it explained as follows regarding the evidentiary value of character evidence:

The law recognizes that a person of good character is not likely to commit a crime contrary to the person’s nature. Evidence of good character may, by itself, raise a reasonable doubt of guilt and may
(Footnote Continued Next Page)

Memorandum Opinion, 10/6/25, at 1-3 (footnotes added; some citations, capitalization, and paragraphing modified).

At the conclusion of trial, the jury found Appellant guilty of sexual assault and acquitted him of indecent assault. N.T., 2/2/24, at 18. Regarding the rape charge, the trial court declared a mistrial, after the jury announced that it had become deadlocked on that charge.⁷ ***Id.*** at 16-17, 21-22. The trial court deferred sentencing pending the preparation of pre-sentence investigation and mental health reports, as well as an evaluation by the Pennsylvania Sexual Offenders Assessment Board (SOAB) as to whether Appellant met the criteria for classification as a sexually violent predator (SVP). ***Id.*** at 22-23.

Sentencing occurred on August 26, 2024. Appellant was represented by new private counsel (Prior PCRA Counsel). The trial court imposed a mitigated-range sentence of 2½ to 5 years of imprisonment, followed by 3 years of probation.⁸ The court also ordered Appellant to register as a sex

require a verdict of not guilty. You must weigh and consider the evidence of good character along with other evidence in the case.

N.T., 2/1/24, at 65.

⁷ There is no indication in the record whether the Commonwealth retried Appellant regarding the rape charge.

⁸ After an evaluation of Appellant, the SOAB assessor recommended that Appellant did not meet the criteria for SVP classification. N.T., 8/26/24, at 4.

offender for his lifetime pursuant to the Sex Offender Registration and Notification Act, 42 Pa.C.S.A. §§ 9799.10-9799.41. Appellant neither filed post-sentence motions nor a direct appeal.

On September 26, 2024, Appellant timely filed the instant PCRA petition, his first, through Prior PCRA Counsel. In his petition, Appellant raised two claims of Trial Counsel's IAC and requested an evidentiary hearing. First, Appellant averred that Trial Counsel was ineffective for "[a]ffirmatively misadvising [Appellant] to not testify at trial, or, in the alternative, [] not suggest[ing] that [Appellant] should testify at trial[,] given the nature of the charges which were levied against [Appellant]." PCRA Petition, 9/26/24, ¶ 32(i). Second, Appellant asserted Trial Counsel was ineffective for failing

to produce any live character witnesses [on behalf of the defense,] despite [Trial Counsel] stressing the importance of [Appellant's] character during [Trial Counsel's] opening statement[,] and [during] closing argument, where [Trial Counsel argued] that [Appellant] could be found not guilty based on his character alone.

Id. ¶ 32(ii).

With regard to his first IAC claim, Appellant elaborated that Trial Counsel "had no reasonable basis in advising [Appellant] to not testify," where "the only factual witness for the incident [in] question for the Commonwealth was [G.J.] and no physical evidence existed to substantiate any claims made by [G.J.]" ***Id.*** ¶ 10. Appellant maintained that had he testified at trial, it "would have benefitted [his] defense" because he would have persuaded the jury that

the intercourse was consensual, and that G.J. had a motive to fabricate rape allegations against Appellant. **Id.** ¶ 12.

Regarding his second IAC claim, Appellant averred he had instructed Trial Counsel to contact five additional character witnesses, as well as two of the three individuals named in the above-described character witness stipulation,⁹ but that Trial Counsel unprofessionally (1) failed to contact any of the proposed character witnesses, **id.** ¶¶ 17-19; and (2) “made no attempt to have character witnesses provide live testimony.” **Id.** ¶ 13. According to Appellant, each of the proposed character witnesses was “known by” Trial Counsel and “available to testify” at trial on Appellant’s behalf.¹⁰ **Id.** ¶¶ 17, 24. Appellant claimed that had Trial Counsel presented live testimony from

⁹ For ease of reference, we hereinafter collectively refer to these seven proposed witnesses as the “proposed character witnesses.”

¹⁰ Notably, Appellant did not attach to his petition signed certifications from any of his proposed character witnesses, in violation of 42 Pa.C.S.A. § 9545(d)(1)(i), which provides that “[w]here a petitioner requests an evidentiary hearing, the petition shall include a certification signed by each intended witness stating the witness’s name, address, date of birth and substance of testimony and shall include any documents material to that witness’s testimony.”); **see also** Pa.R.Crim.P. 902(A)(15). Instantly, in his “Certification of Witnesses” attached to the PCRA petition, Appellant merely identified each of the proposed character witnesses by name, but failed to provide dates of birth and addresses for the majority of the proposed character witnesses. PCRA Petition, 9/26/24, Certification of Witnesses, ¶¶ 3-9. Appellant did not provide signed certifications from any of the proposed character witnesses, nor did he set forth summaries of the substance of their respective testimonies. **See** 42 Pa.C.S.A. § 9545(d)(1)(ii) (providing that where a PCRA petitioner is unable to secure an intended witness’s signed certification, the petitioner or counsel must include a signed certification setting forth, *inter alia*, the substance of the witness’s testimony).

each of the [proposed character] witnesses [at trial,] it would have benefitted [the] defense because the jury would have afforded greater weight to the witnesses' character evidence due to it being in-person rather than summaries, ... and, therefore, there is a reasonable probability that [the jury] would have rendered a more favorable verdict.

Id. ¶ 23.

On February 11, 2025, the Commonwealth filed an answer to the PCRA petition.

On May 23, 2025, the PCRA court conducted an evidentiary hearing (PCRA Hearing) on whether Trial Counsel ineffectively advised Appellant regarding his waiver of the right to testify at trial.¹¹ Prior PCRA Counsel represented Appellant at the PCRA Hearing. Trial Counsel and Appellant testified as the only witnesses.

In its Memorandum Opinion, the PCRA court competently summarized the testimony presented at the PCRA Hearing:

[Appellant] testified that he had wanted to testify at trial, but that Trial Counsel had told him not to. N.T., 5/23/25, at 7:8-8:11. [Appellant] said that he and Trial Counsel had discussed the issue [of Appellant testifying] 10 to 15 times, and every time, Trial Counsel told [Appellant] no. ***Id.*** at 14:12-15:20. [Appellant] claimed to have no understanding of why Trial Counsel told him this. ***Id.*** at 8:2-4. On cross-examination, [Appellant] claimed that he did not remember being colloquied about his decision not to testify. ***Id.*** at 17:25-23:17. On redirect examination, [Appellant] denied making the statements he made during the [waiver] colloquy. [Specifically, Appellant stated,] "Why would I refuse to testify? ... I didn't—these are—somebody wrote that. I

¹¹ The PCRA court deferred disposition of Appellant's remaining IAC claim, *i.e.*, based on Trial Counsel's failure to contact and present live trial testimony from the proposed character witnesses.

don't know who wrote it." **Id.** at 25:8-19. [Prior] PCRA Counsel also tried to elicit the testimony that [Appellant] would have given if he had testified at trial. [Appellant] testified that on the day in question, G.J. had demanded sex with [Appellant] and [Appellant] had tried to refuse. [According to Appellant, "G.J.] said I want us to have sex. I said, no. I don't want to have sex. She said why? I said, because if you and I have sex, tomorrow you're going to tell a story that I forced you to have sex. She said, why would I do that? We're talking about 15 minutes where I got convinced." **Id.** at 11:3-8. [Appellant] then had sex with [G.J.]. [Appellant further] testified that he had gone to G.J.'s house "many times" after this incident. **Id.** at 13:6-17.

* * *

The Commonwealth called Trial Counsel to the stand. He testified that during the run-up to the trial, he and [Appellant] had several in-person meetings, as well as phone calls. **Id.** at 29:6-22. [According to Trial Counsel, e]very time [that he] and [Appellant] spoke, ... Trial Counsel would at least "touch upon" [Appellant's] right to testify. **Id.** at 29:9-13. At some points, [Appellant] said that he wanted to testify. Trial Counsel [testified that he] never told [Appellant] that he could not testify. **Id.** at 29:14-20. [According to Trial Counsel, h]e consistently advised [Appellant] not to [testify], but said, "if you choose to do so, you know, we will do that. We'll put you on the stand. We'll prep you to testify." **Id.** at 29:14-30:6. [Trial] Counsel's advice not to testify was based on his assessment of how the jury would view [Appellant's] and G.J.'s respective credibility. **Id.** at 36:24-38:2. [According to Trial Counsel, Appellant] did not express a desire to testify after the Commonwealth rested, and Trial Counsel did nothing to prevent [Appellant] from testifying. **Id.** at 30:7-12.

Memorandum Opinion, 10/6/25, at 5-6 (some citations and capitalization modified).

On July 18, 2025, the PCRA court issued Pa.R.Crim.P. 907 notice (Rule 907 Notice) of its intent to dismiss, without a hearing, Appellant's remaining IAC claim related to the proposed character witnesses. Appellant did not respond to the Rule 907 Notice.

On October 2, 2025, the PCRA court dismissed Appellant's PCRA petition. Three days later, the court issued its Memorandum Opinion in support of the dismissal order. On October 14, 2025, the PCRA court permitted Prior PCRA Counsel to withdraw as counsel, and ordered the appointment of new counsel to represent Appellant for purposes of appeal. One day later, PCRA Counsel entered his appearance.

Appellant timely filed a notice of appeal, through PCRA Counsel. On November 2, 2025, the PCRA court ordered Appellant to file a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal, and he timely complied. The PCRA court subsequently issued a brief Rule 1925(a) opinion, relying upon the court's prior reasoning advanced in the Memorandum Opinion.

On February 15, 2026, PCRA Counsel filed in this Court a motion to withdraw as counsel pursuant to **Turner, supra**.¹² Two days later, PCRA Counsel filed a "**Turner/Finley** Brief."

¹² In the motion to withdraw, in addition to invoking **Turner**, PCRA Counsel erroneously indicated that he was petitioning to withdraw pursuant to **Anders v. California**, 386 U.S. 738 (1967) (detailing the procedure where counsel seeks leave to withdraw from representation on direct appeal). **See generally** Motion to Withdraw as Counsel, 2/15/26. However, the procedure set forth in **Anders** is not appropriate for requests to withdraw from PCRA representation. **See, e.g., Commonwealth v. Karanicolas**, 836 A.2d 940, 947 (Pa. Super. 2003) (stating that **Anders** briefs are procedurally inappropriate in PCRA appeals). Nevertheless, it is well settled that "because an **Anders** brief provides **greater protection** to the defendant, we may accept an **Anders** brief in lieu of a **Turner/Finley** letter." **Commonwealth** (Footnote Continued Next Page)

Prior to reaching the merits of Appellant's claims on appeal, we first address PCRA Counsel's motion to withdraw and determine whether he met the procedural requirements outlined in **Turner/Finley**. **See Commonwealth v. Knecht**, 219 A.3d 689, 691 (Pa. Super. 2019) ("When presented with a brief pursuant to **Turner/Finley**, we first determine whether the brief meets the procedural requirements of **Turner/Finley**"). This Court has explained,

[a] **Turner/Finley** brief must: (1) detail the nature and extent of counsel's review of the case; (2) list each issue the petitioner wishes to have reviewed; and (3) explain counsel's reasoning for concluding that the petitioner's issues are meritless. Counsel must also send a copy of the brief to the petitioner, along with a copy of the petition to withdraw, and inform the petitioner of the right to proceed *pro se* or to retain new counsel.

Knecht, 219 A.3d at 691 (citations omitted). If counsel satisfies the foregoing requirements, this Court must "conduct its own review of the merits of the case." **Commonwealth v. Wrecks**, 931 A.2d 717, 721 (Pa. Super. 2007). If we agree with counsel that the claims are without merit, we will allow counsel to withdraw and deny relief. **Id.**

Instantly, our review discloses that PCRA Counsel has complied with the above requirements. In the thorough **Turner/Finley** Brief, PCRA Counsel (1) set forth the issues Appellant wants this Court to review, (2) stated he has

v. Fusselman, 866 A.2d 1109, 1111 n.3 (Pa. Super. 2004) (emphasis added); **see also Karanicolas**, 836 A.2d at 947 (stating that "[s]ubstantial compliance" with requirements to withdraw will satisfy **Turner/Finley** criteria).

conducted a conscientious examination of the record, (3) determined there are no non-frivolous arguments to support Appellant's claims, and (4) explained why Appellant's claims lack merit. **See generally Turner/Finley** Brief. In his separate motion to withdraw, PCRA Counsel (1) repeated his determination that Appellant's issues are "wholly frivolous"; and (2) attached a copy of a letter he sent to Appellant informing him of counsel's motion to withdraw, providing Appellant with a copy of the **Turner/Finley** Brief, and explaining to Appellant his right to retain private counsel or proceed *pro se*, if PCRA Counsel is permitted to withdraw. Motion to Withdraw as Counsel, 2/15/26, ¶¶ 3, 5, Attachment (correspondence dated Feb. 15, 2026).

Appellant has not filed a response. In light of PCRA Counsel's substantial compliance with **Turner/Finley**, we proceed with our independent review of the record and the merits of Appellant's claims.

On behalf of Appellant, PCRA Counsel identifies the following questions for our review:

1. Whether the PCRA court erred when it dismissed the [PCRA] petition ... where Trial Counsel was ineffective for failing to call [] Appellant as a witness at trial?
2. Whether the PCRA court erred when it dismissed the petition where Trial Counsel was ineffective for failing to call five additional character witnesses?

Turner/Finley Brief at 6 (some capitalization modified).

When reviewing the dismissal of a PCRA petition, we examine "whether the PCRA court's factual findings are supported by the record and free of legal

error.” **Commonwealth v. Thomas**, 323 A.3d 611, 620 (Pa. 2024). 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 PCRA court level.” **Commonwealth v. Conforti**, 303 A.3d 715, 725 (Pa. 2023) (citations omitted). It is well settled that appellate courts “grant great deference to the PCRA court’s findings that are supported in the record.” **Commonwealth v. Kapellusch**, 323 A.3d 837, 844 (Pa. Super. 2024) (citation omitted). Appellate courts are “bound by” a PCRA court’s credibility determinations, so long as they are supported by the record. **Commonwealth v. Johnson**, 966 A.2d 523, 532 (Pa. 2009).

In order to be eligible for PCRA relief, a petitioner must plead and prove, by a preponderance of the evidence, that his conviction or sentence arose from one or more of the errors enumerated in Section 9543(a)(2) of the PCRA. **See** 42 Pa.C.S.A. § 9543(a)(2). These errors include IAC. **Id.** § 9543(a)(2)(ii). “Counsel is presumed to have rendered effective assistance.” **Commonwealth v. Washington**, 269 A.3d 1255, 1263 (Pa. Super. 2022) (*en banc*) (citation omitted). A PCRA petitioner bears the burden of proving otherwise. **Commonwealth v. Brown**, 196 A.3d 130, 150 (Pa. 2018).

In order to establish an IAC claim, a PCRA petitioner must plead and prove three prongs:

(1) the underlying claim has arguable merit; (2) no reasonable basis existed for counsel’s action or failure to act; and (3) he suffered prejudice as a result of counsel’s error, with prejudice measured by whether there is a reasonable probability the result

of the proceeding would have been different. **Commonwealth v. Chmiel**, 30 A.3d 1111, 1127 (Pa. 2011) (employing ineffective assistance of counsel test from **Commonwealth v. Pierce**, 527 A.2d 973, 975-76 (Pa. 1987)). ... Additionally, counsel cannot be deemed ineffective for failing to raise a meritless claim. Finally, because a PCRA petitioner must establish all the **Pierce** prongs to be entitled to relief, we are not required to analyze the elements of an [IAC] claim in any specific order; thus, if a claim fails under any required element, we may dismiss the claim on that basis.

Commonwealth v. Treiber, 121 A.3d 435, 445 (Pa. 2015) (footnote omitted; citations modified).

With regard to the second, reasonable basis prong of the IAC test, this Court has explained that courts

do[] not question whether there were other more logical courses of action which counsel could have pursued; rather, the court must examine whether counsel's decisions had any reasonable basis. Where matters of strategy and tactics are concerned, a finding that a chosen strategy lacked a reasonable basis is not warranted unless it can be concluded that an alternative not chosen offered a potential for success substantially greater than the course actually pursued.

Commonwealth v. Hopkins, 231 A.3d 855, 874 (Pa. Super. 2020) (citations, quotation marks, and brackets omitted).

Here, in his first issue, Appellant claims the PCRA court improperly denied relief on his IAC claim because Trial Counsel unreasonably "did not call [] Appellant to testify at the trial to indicate that [Appellant's] sexual relations with [G.J. were] consensual." **Turner/Finley** Brief at 17. Appellant contends Trial Counsel "deviated from an acceptable standard of care in defending [] Appellant, where [counsel] did not call [] Appellant to testify, as there was no other way in which to contradict [G.J.'s] testimony that she had been forced

to engage in sexual relations with him.” ***Id.*** (some punctuation modified). According to Appellant, his testimony at the PCRA Hearing that Trial Counsel “told [Appellant] not to testify at trial was credible and worthy of belief.” ***Id.*** Appellant argues that Trial Counsel lacked any reasonable basis for failing to present Appellant’s testimony at trial. ***Id.*** Further, Appellant asserts that Trial Counsel’s IAC prejudiced him. ***See id.*** at 20 (“[B]ut for [Trial C]ounsel ‘telling’ [Appellant] not to testify” at trial, Appellant “would have testified and [] it would have arguably changed the outcome of the case.”).

The Commonwealth counters that the PCRA court properly denied relief on Appellant’s instant IAC claim, as his underlying claim lacks arguable merit and “is belied by the record.” Commonwealth Brief at 7. The Commonwealth points out that Appellant participated in the waiver colloquy, on the record at trial, wherein he knowingly, intelligently, and voluntarily waived his right to testify. ***See id.*** at 7-8 (some capitalization modified); ***see also*** N.T., 2/1/24, at 7-10 (waiver colloquy). The Commonwealth further emphasizes that the PCRA court, after considering the respective testimony of Trial Counsel and Appellant at the PCRA Hearing, credited Trial Counsel’s testimony and discredited Appellant’s. Commonwealth Brief at 8-9. Additionally, the Commonwealth maintains Trial Counsel acted reasonably in advising Appellant regarding his right to testify and waiver of that right. ***Id.*** at 9.

As our Supreme Court has observed, “[t]he right of an accused to testify on his own behalf is a fundamental tenet of American jurisprudence and is

explicitly guaranteed by Article I, Section 9 of the Pennsylvania Constitution.”

Commonwealth v. Nieves, 746 A.2d 1102, 1105 (Pa. 2000). Accordingly,

[t]he decision of whether or not to testify on one’s own behalf is ultimately to be made by the defendant after full consultation with counsel. In order to sustain a claim that counsel was ineffective for failing to advise the appellant of his rights in this regard, the appellant must demonstrate either that counsel interfered with his right to testify, or that counsel gave specific advice so unreasonable as to vitiate a knowing and intelligent decision to testify on his own behalf.

Id. at 1104 (citations omitted).

As this Court has stated, “the presumption must always be against the waiver of a constitutional right, and we are bound to place the burden of proving waiver on the Commonwealth.” ***Washington***, 269 A.3d at 1263 (citation and internal quotation marks omitted). “Additionally, where a defendant voluntarily waives his right to testify after a colloquy, he generally cannot argue that trial counsel was ineffective in failing to call him to the stand.” ***Commonwealth v. Sandusky***, 203 A.3d 1033, 1075 (Pa. Super. 2019) (citation and quotation marks omitted); ***Commonwealth v. Lawson***, 762 A.2d 753, 755 (Pa. Super. 2000) (same).

Here, the record reflects that after the defense announced its intention to present no witnesses at trial, the trial court colloquied Appellant regarding his decision to refrain from testifying. The trial court initially stated,

[Appellant, Trial Counsel] has indicated that you do not wish to testify in this case. I need to ask you some questions, because you have the right to testify, and so I want to ask you questions to make sure that your decision is knowing, intelligent, and voluntary.

N.T., 2/1/24, at 6. After Appellant answered some questions regarding his background (such as confirming that he could read and write the English language and was not impaired at that time, *id.* at 6-7), the trial court conducted the following waiver colloquy:

THE COURT: **Have you and [Trial Counsel] discussed the fact you have a right to testify in this matter?**

[Appellant]: **Right.**

THE COURT: You have discussed that?

[Appellant]: Right.

THE COURT: When you say right, do you mean yes?

[Appellant]: Yes.

THE COURT: **Do you understand that you have an absolute right to testify in this trial?**

[Appellant]: **Yes.**

* * *

THE COURT: All right, [Appellant], has anyone forced or threatened you to keep you from testifying in this case?

[Appellant]: No.

THE COURT: And has anyone promised you anything or given you anything to get you to not testify?

[Appellant]: No.

THE COURT: Have you made this decision of your own free will?

[Appellant]: Yes.

THE COURT: Did you hear me instruct the jury that a defendant has no obligation to testify, and the jury is not permitted to make adverse inferences against you if you do not testify?¹³

[Appellant]: Yes.

THE COURT: At the end of the case, I will again instruct the jury about that. I will instruct the jury that you had no burden of producing evidence in this case, and they may not make adverse inferences against you based on your decision not to testify. Do you want me to give that instruction?

[Appellant]: Yes.

THE COURT: All right. Have you discussed this decision with [Trial Counsel]?

[Appellant]: Yes.

THE COURT: And **are you satisfied with [Trial Counsel's] advice and services?**

[Appellant]: **Yes.**

THE COURT: All right. [Trial] Counsel, are there further questions that you believe you should ask?

[Trial Counsel]: No, Your Honor.

THE COURT: Commonwealth?

[The prosecutor]: No, Your Honor.

THE COURT: All right, I'm satisfied that [Appellant] has made a knowing, intelligent, and voluntary waiver of his right to testify in this case.

N.T., 2/1/24, at 7-10 (emphasis and footnote added).

¹³ **See** N.T., 1/31/24, at 7 (in the trial court's opening instruction to the jury, stating that a defendant is presumed to be innocent and has the right to remain silent).

Further, in its Memorandum Opinion, after summarizing the respective testimonies of Trial Counsel and Appellant at the PCRA Hearing, the PCRA court stated that it “did not find any of [Appellant’s] testimony credible,” and “found all of Trial Counsel’s testimony credible.” Memorandum Opinion, 10/6/25, at 6. Regarding Appellant’s testimony, the PCRA court found that

[Appellant’s] story about what happened between him and G.J. was implausible; [Appellant] did not explain why he believed that G.J. would “tell a story” about him[, *i.e.*, fabricate rape accusations,] or why [Appellant] would have had sex with [G.J.] if he believed she might do that. **[Appellant] falsely insisted that he had not been colloquied about his right to testify, and gave inconsistent statements about his conversations with Trial Counsel.** Throughout his testimony, [Appellant] was argumentative and evasive.

Id. (emphasis added). The PCRA court determined that Appellant’s

decision not to testify was knowing, intelligent, and voluntary. **[Appellant] made clear, during the mid-trial [waiver] colloquy, that [Appellant] knew he had the right to testify and that no one had prevented him from doing so. [Appellant’s] attempt to back away from those statements at the PCRA Hearing was not credible. Trial Counsel, on the other hand, testified credibly and logically that he had correctly advised [Appellant] about his rights.** [The PCRA] court also concluded that Trial Counsel’s strategy was reasonable. Had [Appellant] given the obviously false testimony to the jury that he gave during the PCRA Hearing, it would not have helped his case; it would have made the jury more likely to credit G.J.’s testimony.

Id. at 6-7 (emphasis added; some capitalization and punctuation modified).

Our review of the record confirms that the PCRA court’s findings are supported by the record, and its legal conclusion is sound. In the waiver colloquy, Appellant expressly confirmed that he (1) personally made the

decision to waive his right to testify, after consultation with Trial Counsel; and (2) was satisfied with Trial Counsel's advice regarding the matter. N.T., 2/1/24, at 7-10; **see also *Commonwealth v. Hopkins***, 228 A.3d 577, 583 (Pa. Super. 2020) (stating that "a defendant is bound by the statements he makes in open court while under oath[,] and he may not later contradict the statements he made[.]" (citations and ellipses omitted)). Further, at the PCRA Hearing, Appellant confirmed that he was not "instructed to answer a certain way" by Trial Counsel in providing his answers to the waiver colloquy. N.T., 5/23/25, at 24; **see also *Lawson***, 762 A.2d at 756 ("A defendant will not be afforded relief [on an IAC claim] where he voluntarily waives the right to take the stand during a colloquy with the court, but later claims that he was prompted by counsel to ... give certain answers.").

Most significantly, the PCRA court, after considering the testimony presented at the PCRA Hearing, expressly credited Trial Counsel's testimony over that of Appellant. **See** Memorandum Opinion, 10/6/25, at 6, 7. Our review discloses that these credibility findings are supported by the record; thus, we are precluded from disturbing them. **See *Johnson, supra***. Regarding the great deference afforded to a PCRA court's credibility findings, our Supreme Court has observed that

[g]iven that the PCRA court, as fact-finder, has the opportunity to listen to witnesses, [and] to observe their demeanor and attitude, we have stated that "there is no justification for an appellate court, relying solely upon a cold record, to review the fact-finder's first-hand credibility determinations."

Commonwealth v. Rizor, 304 A.3d 1034, 1058 (Pa. 2023) (quoting **Commonwealth v. White**, 734 A.2d 374, 381 (Pa. 1999)).

Finally, we find persuasive PCRA Counsel’s argument that although G.J.’s trial testimony

was uncontradicted by the direct testimony of [] Appellant, it was nevertheless contradicted by the reputation evidence of [] Appellant’s good character for peacefulness[, *i.e.*, introduced via the character witness stipulation]. Therefore, even if [T]rial [C]ounsel’s recommendation for [] Appellant not to testify were to be faulted as having left [] Appellant with a weak defense, one cannot say that counsel left [] Appellant with no defense or that counsel did not have a reasonable basis for advising his client not to testify.

Turner/Finley Brief at 21.¹⁴ Contrary to Appellant’s claim, Trial Counsel did not lack a reasonable basis for his actions. **See Hopkins**, 231 A.3d at 874; **see also Commonwealth v. Puksar**, 951 A.2d 267, 277 (Pa. 2008) (stating that “[a] claim of ineffectiveness cannot succeed through comparing, in hindsight, the trial strategy employed with alternatives not pursued.”).

In sum, we conclude that the record supports the PCRA court’s determination that Trial Counsel’s advice was not so unreasonable as to vitiate Appellant’s knowing and intelligent decision to waive his right to testify at trial.

¹⁴ We also remind Appellant that “[t]he uncorroborated testimony of a sexual assault victim, if believed” by the fact-finder, alone, can be sufficient to sustain a sex offense conviction. **Commonwealth v. Izurieta**, 171 A.3d 803, 807 (Pa. Super. 2017) (quoting **Commonwealth v. McDonough**, 96 A.3d 1067, 1069 (Pa. Super. 2014)); **see also** 18 Pa.C.S.A. § 3106 (“The testimony of a complainant need not be corroborated in prosecutions under this chapter.”).

See Nieves, supra. Thus, PCRA Counsel is correct; Appellant's first issue lacks merit.

In his second issue, Appellant asserts the PCRA court improperly denied relief on his IAC claim based on Trial Counsel's failure to present live testimony at trial from the seven proposed character witnesses identified in his petition,¹⁵ in lieu of entering into the character witness stipulation. **See Turner/Finley** Brief at 20, 22-23. According to Appellant, "the testimony of live witnesses about his reputation for peacefulness was inadequately presented and would have been far more compelling than through [the character witness] stipulation." **Id.** at 20. Appellant claims that "[w]ith regard to the additional [proposed] character witnesses not [named in the character witness stipulation,]" live testimony from these proposed witnesses "would not have been merely cumulative," as it would have corroborated, and strengthened, the evidence the defense presented via the character witness stipulation. **Id.**

The Commonwealth counters that the PCRA court properly denied relief on Appellant's instant IAC claim, since the underlying claim lacks arguable merit and Trial Counsel acted reasonably in "[p]resenting character evidence through stipulation rather than by way of live witnesses[.]" Commonwealth's

¹⁵ As indicated *supra*, included among these seven proposed character witnesses were two of the character witnesses whom Trial Counsel identified in the character witness stipulation.

Brief at 11; **see also id.** (asserting Trial Counsel's decision in this regard "was good trial strategy.").

This Court has stated that "a lawyer who fails to use character evidence on a defendant's behalf can [] be deemed constitutionally ineffective if there is no reasonable basis for such failure." **Commonwealth v. Thuy**, 623 A.2d 327, 334 (Pa. Super. 1993) (citation omitted); **see also Commonwealth v. Buterbaugh**, 91 A.3d 1247, 1264 (Pa. Super. 2014) (*en banc*) (same). We have explained the evidentiary significance of character evidence as follows:

[E]vidence of good character is to be regarded as evidence of substantive fact[,] just as any other evidence tending to establish innocence[,] and may be considered by the jury in connection with all of the evidence presented in the case on the general issue of guilt or innocence. Evidence of good character is substantive and positive evidence, not a mere make weight to be considered in a doubtful case, and[] is an independent factor which may of itself engender reasonable doubt or produce a conclusion of innocence.

Commonwealth v. Johnson, 27 A.3d 244, 248 (Pa. Super. 2011) (citation and ellipses omitted).

Our Supreme Court has observed that "[a] defense attorney's failure to call certain witnesses does not constitute *per se* ineffectiveness." **Commonwealth v. Cox**, 983 A.2d 666, 693 (Pa. 2009). Rather, there are procedural and substantive requirements for raising an IAC claim predicated upon trial counsel's failure to present witness testimony:

First, a [PCRA petitioner] must attach to his PCRA petition "a signed certification as to each intended witness stating the witness's name, address, date of birth and substance of testimony." 42 Pa.C.S.A. § 9545(d)(1); Pa.R.Crim.P. 902(A)(15); **see also Commonwealth v. Reid**, 99 A.3d 427, 438 (Pa. 2014).

Second, a [PCRA petitioner] must establish that: “(1) the witness existed; (2) the witness was available; (3) counsel was informed or should have known of the existence of the witness; (4) the witness was prepared to cooperate and would have testified on [the petitioner]’s behalf; [and] (5) the absence of such testimony prejudiced him and denied him a fair trial.” **Reid, supra.**

Commonwealth v. McCready, 295 A.3d 292, 299 (Pa. Super. 2023) (some citations modified).

This Court has stated that

[t]o demonstrate [] prejudice, a petitioner must show how the uncalled witnesses’ testimony would have been beneficial under the circumstances of the case. 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. Matias, 63 A.3d 807, 811 (Pa. Super. 2013) (*en banc*) (citations and quotation marks omitted).

Here, in its Rule 907 Notice, the PCRA court determined that it properly denied relief on Appellant’s instant IAC claim, where

the witness certifications attached to [Appellant’s PCRA] petition did not substantially comply with the requirements of 42 Pa.C.S.A. § 9545(d)(1). The certifications included the [proposed character] witnesses’ names, but did not set forth the substance of the testimony they would have given or state whether they [were] willing or available to testify at trial. [**See** n.10, **supra.**] Furthermore, none of the [proposed character] witnesses had signed the certifications, and there was no indication of any efforts to obtain their signatures. These deficiencies alone are enough to render [the proposed character witnesses’] testimony inadmissible and to dismiss [Appellant’s associated IAC claim] without a hearing. [**See** 42 Pa.C.S.A.] § 9545(d)(1)(iii) [(providing that “[f]ailure to substantially comply with the requirements of this paragraph shall render the proposed witness’s testimony inadmissible.”)]; **see also Commonwealth v. Brown**, 161 A.3d 960, 967-68 (Pa. Super. 2017) [(holding trial

counsel was not ineffective for failing to call potential defense witnesses at trial, where the appellant did not provide the PCRA court with certifications indicating the putative witness's availability and willingness to testify on the appellant's behalf)].

[Appellant's] claim that [Trial] Counsel should have [presented live trial testimony from] the [proposed] character witnesses also fails on its merits. [Appellant] cannot demonstrate that he suffered any prejudice from [Trial] Counsel's decision not to call the [proposed] character witnesses, because their testimony would have been merely cumulative. **See Commonwealth v. Spatz**, 896 A.2d 1191, 1230 (Pa. 2006) ("[A] defendant is not prejudiced by the failure of trial counsel to pursue cumulative evidence of the defendant's background ..."); **see also Commonwealth v. Gibson**, 951 A.2d 1110, 1134 (Pa. 2008) ("[T]rial counsel will not be found ineffective for failing to call a witness whose testimony would be cumulative.") (citation omitted); **Commonwealth v. Abdul-Salaam**, 808 A.2d 558, 562 n.5 (Pa. 2001) (ineffectiveness claim fails where mitigation witnesses counsel did not call would have given cumulative testimony).

[Appellant's] allegation that [Trial] Counsel was ineffective for [not] presenting character evidence from [two of the] three witnesses [identified in the character witness] stipulation... as live witness testimony [] also ... lack[s] [] merit. When counsel introduces character evidence at trial via stipulation instead of live testimony and the jury is instructed on the proper use of stipulation evidence, it does not constitute ineffective assistance of counsel. **See Thuy**, 623 A.2d at 334 [(affirming PCRA court's denial of relief on the appellant's claim asserting his trial counsel's IAC for failing to present character witnesses at trial, and concluding that "[w]hether to use live witnesses or place before the jury appellant's good character by stipulation is nothing more than a strategic decision.").]

Rule 907 Notice, 7/18/25, at 1-2 (some capitalization, punctuation, and citations modified).

The PCRA court's factual findings are supported by the record, and we agree with its legal conclusion. Even if Appellant had properly complied with

Rule 9545(d)(1) and included signed certifications from each of the proposed character witnesses, his IAC claim nonetheless lacks merit. Appellant failed to establish any of the three prongs of the IAC test, **see Treiber, supra**, where (1) Trial Counsel presented uncontradicted evidence, from three individuals via the character witness stipulation, of Appellant's reputation in the community for peacefulness, N.T., 2/1/24, at 5; (2) Trial Counsel had a reasonable basis for strategically declining to present live character witness testimony;¹⁶ and (3) Appellant suffered no prejudice, as live testimony from the proposed character witnesses would have merely been cumulative of the character witness stipulation. **See, e.g., Spatz, supra**. Appellant's second IAC claim lacks merit.

Finally, our independent review of the record discloses no meritorious issues Appellant could have raised. **See Wrecks, supra**. Accordingly, we

¹⁶ In this regard, we find persuasive the Commonwealth's argument that

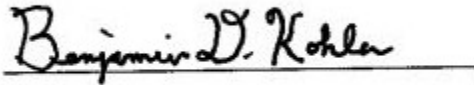
[w]hen character witnesses testify in person, there is always a chance that they will offer testimony that might be harmful to the defendant or might open the door to the prosecution bringing in damaging but otherwise inadmissible evidence regarding [the defendant]. The witnesses would also be subjected to cross-examination, which might significantly undermine their testimony of the defendant's good character. By presenting the evidence via [the character witness] stipulation, [Trial C]ounsel was able to put the helpful information before the jury without taking any of these risks.

Commonwealth's Brief at 11.

grant PCRA Counsel's motion to withdraw and affirm the PCRA court's order dismissing Appellant's first PCRA petition.

Motion to withdraw granted. 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

Date: 9/10/2026