NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
ANTHONY DENSON	:	
Appellant	:	No. 2061 EDA 2025

Appeal from the PCRA Order Entered July 16, 2025
In the Court of Common Pleas of Philadelphia County Criminal Division at No(s): CP-51-CR-0000316-2018

BEFORE: BOWES, J., OLSON, J., and STEVENS, P.J.E.*

MEMORANDUM BY BOWES, J.: **FILED NOVEMBER 25, 2026**

Anthony Denson appeals from the order dismissing his first petition filed pursuant to the Post Conviction Relief Act ("PCRA"). We affirm.

Appellant's convictions arose from the December 27, 2016 shooting death of Garfield Adams, who owned the Philadelphia house where Appellant and his girlfriend, Sherrell Wilson, lived, and where Adams's friend Louis Hill sometimes stayed. That night, a short time before the shooting, which occurred just after 10:00 p.m., Appellant sent Wilson to a nearby store and told her not to hurry back. When she returned, she observed Appellant blocking the front door with a gun in his hand while Adams was hunched over and bleeding. Appellant pointed the gun at Hill and pulled the trigger, but the

* Former Justice specially assigned to the Superior Court.

gun was empty. Hill grabbed an object, possibly a bat, struck Appellant with it, and ran out of the house. Appellant followed Hill outside with the gun still in his hand and fled on foot. Adams suffered seven gunshot wounds, including wounds to the head and back. Police recovered seven .32 caliber cartridge casings fired from a single weapon, and the six .32 caliber bullets removed from Adams's body matched the caliber of ammunition police subsequently found in the bedroom Appellant shared with Wilson.

Appellant proceeded to a jury trial, at which he neither testified nor presented an alibi defense. In closing, the prosecutor argued that the jury had not heard defense counsel claim that Appellant was not in the house when the shooting occurred. Following the trial, Appellant was convicted of first-degree murder, carrying a firearm without a license, carrying a firearm on the public streets of Philadelphia, and possession of an instrument of crime. He received the mandatory life sentence for the murder conviction, with no additional penalty on the other charges. His trial counsel filed timely post-sentence motions, which the trial court denied. The court then allowed trial counsel to withdraw and appointed new counsel for the appeal. That attorney filed a notice of appeal and a Pa.R.A.P. 1925(b) concise statement.

While the appeal was pending, Appellant retained a different attorney, Samuel C. Stretton, *Esquire*, who filed his brief in this Court. However, although Stretton argued in that brief that the evidence was insufficient to sustain Appellant's convictions, he did not seek to amend the earlier 1925(b)

statement to properly raise a sufficiency-of-the-evidence claim, and this Court concluded that his arguments challenged the weight, rather than the sufficiency of the evidence. This Court affirmed the judgment of sentence, and our Supreme Court denied allocatur.

Still represented by Attorney Stretton, Appellant timely filed a PCRA petition alleging ineffective assistance by both trial counsel the appointed appellate counsel who had filed the Rule 1925(b) statement. The PCRA court held an evidentiary hearing over several days, limited to the claim that trial counsel was ineffective for failing to investigate and call certain witnesses. It found that claim meritless. The PCRA court then issued notice pursuant to Pa.R.Crim.P. 907 of its intent to dismiss the remaining claims without a hearing.

In a *pro se* response, Appellant raised a claim that Attorney Stretton, who had briefed his direct appeal, had been ineffective, a claim Attorney Stretton could not have raised against himself in the first petition. Since Attorney Stretton was also his PCRA counsel, the court appointed new counsel to review the claim. New counsel filed a supplemental amended petition and later clarified it by a further amendment with leave of court.

The PCRA court found the supplemental claim meritless and issued a second Rule 907 notice. Appellant filed no response, so the court dismissed the claims raised in his amended and supplemental amended petitions.

Appellant then filed this timely appeal. Both the PCRA court and Appellant complied with the requirements of Pa.R.A.P. 1925.

Appellant raises three claims of ineffective assistance for our review:

> I. Whether trial counsel was ineffective for failing to call a witness at Mr. Denson's trial.
>
> II. Whether trial counsel was ineffective for failing to object during the prosecutor's summation.
>
> III. Whether appellate counsel was ineffective for failing to argue a ***Batson***[1] claim on appeal.

See Appellant's brief at 3.

The principles governing our consideration of PCRA appeals are well-settled. We review orders denying PCRA relief "to determine whether the ruling of the PCRA court is supported by the record and free of legal error. We apply a *de novo* standard of review to the PCRA court's legal conclusions." ***Commonwealth v. Pitt***, 313 A.3d 287, 293 (Pa.Super. 2024) (cleaned up). Since Appellant's issues assail the effectiveness of counsel, we consider them according to the following tenets:

> [C]ounsel is presumed to be effective, and the petitioner bears the burden of proving otherwise. To do so, he must establish the following three elements: (1) the underlying claim has arguable merit; (2) no reasonable basis existed for counsel's action or failure to act; and (3) the petitioner suffered prejudice as a result of counsel's error, with prejudice measured by whether there is a reasonable probability that the result of the proceeding would have been different. Failure to prove any of the three elements will result in dismissal of the ineffectiveness claim. Additionally,

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[1] ***Batson v. Kentucky*** 476 U.S. 79 (1986), which prevents counsel from using peremptory challenges to strike prospective jurors because of their race.

> we are not required to analyze the elements of an ineffectiveness claim in any particular order.

Id. (cleaned up). Further, no hearing is required where the court can determine from the record that any one prong cannot be met. ***See Commonwealth v. Jones***, 942 A.2d 903, 906 (Pa.Super. 2008).

Appellant first argues that trial counsel was ineffective for failing to investigate and call Corey Denson, Appellant's brother, as an alibi witness. A petitioner raising such a claim must show the following five elements: "(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." ***Commonwealth v. Sneed***, 45 A.3d 1096, 1108-09 (Pa. 2012). Prejudice requires a showing that the uncalled testimony would have been beneficial under the circumstances of the case. ***See Commonwealth v. Gibson***, 951 A.2d 1110, 1134 (Pa. 2008).

The PCRA court held an evidentiary hearing on this claim, at which Appellant, Corey, Christian Wright, trial counsel, and Appellant's mother testified. Following the hearing, the PCRA court credited trial counsel's testimony that Appellant never told him or his investigator about Corey. ***See*** PCRA Court Opinion, 11/21/25, at 9. The record supports that finding. Counsel testified that he reviewed his entire trial file before the hearing and found no reference to Corey among its leads, witness names, or investigation

notes. ***See*** N.T. PCRA Hearing, 11/1/23, at 68-74. He further explained that whenever a client raised an alibi, his practice was to have his investigator fully develop and document it, so the absence of any such documentation was consistent with his recollection that no alibi was ever disclosed. ***Id***. at 74.

Appellant contends that this finding was unreasonable because he, Corey, and their mother, Dianna Denson, all contradicted counsel, and the court did not expressly discredit Corey and Dianna. We disagree. The PCRA court was entitled to credit counsel's testimony, corroborated as it was by his file, over that of any number of opposing witnesses. ***See Commonwealth v. Jones***, 912 A.2d 268, 293 (Pa. 2006). Since the record supports the PCRA court's finding that counsel neither knew nor should have known of Corey, it properly concluded that Appellant did not establish that counsel lacked a reasonable basis for failing to call him.

Appellant's second issue is that trial counsel was ineffective in failing to object when the prosecutor allegedly commented on his decision not to testify. ***See*** Appellant's brief at 18-19. The remark in question responded to defense counsel's argument that the presence of Hill's DNA in the house pointed away from Appellant: "We know from the evidence, the DNA, there were other males in that house." N.T. Trial, 9/12/19, at 158. The prosecutor replied:

> We have Anthony Denson's DNA on a fork on a plate of food that is about half-eaten, right. We have Garfield Adams'[s] DNA on the cigarette that is inside that pineapple soda can and we have Louis Hill's DNA on that clothing and stuff on the couch. So, we know that they are all right there. You know who else knows they are all in the house? The Defense. Now the Defense doesn't have

> to prove anything to you but when the Defense gets up here and argues that somebody else did this and that somebody else is Louis Hill, based on what you have heard in this trial, you should really think about that deeply because Louis Hill clearly didn't do this, and you didn't hear Mr. Goodman saying to you even one time Anthony Denson wasn't in the house when this happened. Did you hear him say that? Nope, because he was.

Id. at 166.

A prosecutor may not comment in a manner designed to create an adverse inference from the defendant's failure to testify or suggesting that only the defendant can rebut the Commonwealth's case. ***See Commonwealth v. Wright***, 961 A.2d 119, 142 (Pa. 2008). However, the prosecutor may argue the evidence and its reasonable inferences and respond fully to defense counsel's closing. ***See Commonwealth v. Eichinger***, 108 A.3d 821, 836 (Pa. 2014).

The PCRA court found that the prosecutor's argument was a fair response to defense counsel's summation and did not comment on Appellant's right to remain silent. ***See*** PCRA Court Opinion, 11/21/25, at 14. The prosecutor's point was that Hill's DNA did not exculpate Appellant because Appellant's DNA was there too. The further observation that **defense counsel** never claimed Appellant was absent from the house addressed counsel's own summation and the state of the evidence, not Appellant's silence. Since an objection would have lacked merit, this claim fails at the first prong. ***See Commonwealth v. Sargent*** 359 A.3d 441, 448 (Pa.Super. 2026) (holding that counsel cannot be ineffective for failing to pursue a baseless or meritless claim).

Finally, Appellant argues that direct appeal counsel was ineffective for failing to challenge the denial of his objection pursuant to ***Batson***. The holding in ***Batson*** prohibits the use of peremptory strikes to exclude jurors because of race. ***Batson***, 476 U.S. at 89. Once the defendant makes a *prima facie* showing of discrimination, the prosecutor must offer a race-neutral explanation, and the trial court then decides whether the defendant has proven purposeful discrimination. ***Id.*** at 96-98. As that decision turns on the genuineness of the prosecutor's reason, it is entitled to great deference and will not be overturned unless clearly erroneous. ***See Commonwealth v. Williams***, 980 A.2d 510, 531 (Pa. 2009).

Appellant focuses on Prospective Juror Eleven, a Black man whom the Commonwealth struck, and argues that he was similarly situated to Prospective Juror Three, a non-Black juror who was seated, because both hesitated when asked whether they could be fair. The record does not bear this out. Juror Three answered simply, "Yes." N.T. Trial, 9/9/19, at 38. Juror Eleven answered, "The best I can," and, when the prosecutor sought clarification, gave further qualified responses such as "I guess I can." ***Id.*** at 51-54. Moreover, the trial court wrote "hesitant" in its notes during Juror Eleven's *voir dire* and, in ruling on the objection, observed that the prosecutor's stated reason matched its own contemporaneous assessment. ***Id.*** at 135, 139-40. That corroboration strongly supports the genuineness of the prosecutor's explanation. ***See Commonwealth v. Robinson***, 864 A.2d

460, 490 (Pa. 2004) (recognizing the significance of juror demeanor observed by the trial court).

Given the deference owed to the trial court's ruling and the record support for it, there is no reasonable probability that a ***Batson*** challenge would have succeeded on direct appeal. ***See Commonwealth v. Blakeney***, 108 A.3d 739, 750 (Pa. 2014) (explaining that a PCRA court may dismiss a petition without a hearing where there are no genuine issues of material fact, the petitioner is not entitled to relief, and no legitimate purpose would be served by further proceedings). Appellant therefore cannot show that the omitted claim was stronger than those that counsel raised or that its omission prejudiced him. ***See Davila v. Davis***, 582 U.S. 521, 533 (2017) (explaining that appellate counsel's decision not to raise a claim is not deficient performance unless that claim was plainly stronger than those actually presented to the appellate court). The PCRA court likewise concluded that the record supported its finding that the Commonwealth offered valid, race-neutral reasons for each of the challenged strikes, such that the underlying claim lacked merit. ***See*** PCRA Court Opinion, 11/21/25, at 12-13. The PCRA court properly denied relief and we affirm the order dismissing Appellant's PCRA petition.

Order affirmed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/25/2026