NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
JOHNATAN COLE	:	
Appellant	:	No. 162 EDA 2026

Appeal from the PCRA Order Entered December 24, 2025
In the Court of Common Pleas of Philadelphia County Criminal Division at No(s): CP-51-CR-0010313-2009

BEFORE: McLAUGHLIN, J., KING, J., and BECK, J.

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

Appellant, Johnatan Cole,[1] appeals from the order entered in the Philadelphia County Court of Common Pleas, which denied his petition filed under the Post-Conviction Relief Act ("PCRA").[2] We affirm.

This Court has previously set forth some of the relevant facts and procedural history of this case as follows:

> On December 10, 2008, the victim, Antonio Villacorta, was a club manager at a popular Kensington nightclub and he normally carried large sums of money on his person. The victim was getting out of his car at his girlfriend's home ... when he was approached by [Appellant]. [Appellant] was holding a 9mm handgun and said "Don't move, poppy" and shot the victim twice in the stomach. The victim was also shot in the

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[1] We note that Appellant's first name is also spelled "Johnathan" on several documents contained in the certified record. However, Appellant's brief reflects the spelling of his first name as "Johnatan."

[2] 42 Pa.C.S.A. §§ 9541-9546.

> back with the spray of a sawed off shotgun by [Appellant's] co-conspirators from across the street. The victim and [Appellant] began to physically fight on the sidewalk when the victim, who legally possessed a gun, pulled it out and shot [Appellant], wounding him ... The co-conspirators fled the scene, taking [Appellant's] gun with them.

(Trial Court Opinion, 10/17/12, at 2).

> Police arrested Appellant and charged him with attempted murder, aggravated assault, criminal conspiracy, two firearms violations, simple assault, and recklessly endangering another person. On October 6, 2011, following a three-day non-jury trial, the trial court found Appellant guilty of the above-stated offenses. On March 22, 2012, Appellant filed a "Presentence Motion for a New Trial as a Result of a Reversibly Defective Jury Waiver Colloquy and Ineffective Assistance of Counsel," which the trial court denied on May 18, 2012, following a hearing. On June 8, 2012, the court sentenced Appellant to an aggregate term of no less than thirty-three and a half nor more than sixty-seven years' incarceration.

Commonwealth v. Cole, No. 1944 EDA 2021 (Pa.Super. filed Apr. 29, 2013) (unpublished memorandum) (footnotes omitted). Appellant filed a timely notice of appeal, and on April 29, 2013, this Court affirmed the judgment of sentence. ***See id.***

Appellant timely filed a *pro se* PCRA petition on September 13, 2013, asserting that counsel was ineffective in failing to tell him that the Superior Court affirmed his judgment of sentence, and in so doing, caused Appellant to miss the deadline for filing a petition for allowance of appeal with the Pennsylvania Supreme Court. The court appointed counsel, who filed an amended petition on February 5, 2016. On August 3, 2017, the PCRA court

reinstated Appellant's right to file a petition for allowance of appeal *nunc pro tunc*. Appellant filed his petition for allowance of appeal, and our Supreme Court denied review on January 8, 2018.

On April 11, 2018, Appellant timely filed a *pro se* PCRA petition. The court appointed counsel, who filed an amended petition on July 28, 2018, asserting that Appellant's sentence was illegal based on the imposition of consecutive sentences for attempted murder and conspiracy, and claiming that trial counsel was ineffective for failing to call two exculpatory eyewitnesses, his cousins Malika McCain and Alexis McCain, who would have testified that Appellant was not involved in the shooting. On April 22, 2019, Appellant filed a supplemental petition adding a claim that trial counsel rendered ineffective assistance by incorrectly advising Appellant of the maximum sentence he faced. On July 2, 2019, Appellant filed a second supplemental PCRA petition asserting that trial counsel was ineffective for not seeking to quash the attempted murder sentence, and that direct appeal counsel was ineffective for not challenging the sufficiency of the evidence on direct appeal.

On August 24, 2020, the PCRA court granted Appellant's petition with respect to Appellant's claim that he had been improperly sentenced for two inchoate crimes, and the court ordered an evidentiary hearing as to Appellant's claim involving trial counsel's failure to call witnesses. The court did not address the remaining claims raised in the supplemental and second

supplemental petitions.

On September 12, 2022, the trial court resentenced Appellant to 20 to 40 years of incarceration for attempted murder and imposed a concurrent sentence of 3½ to 7 years' imprisonment for carrying a firearm without a license.

Appellant retained present counsel who entered his appearance on September 5, 2024. On November 4, 2024, Appellant filed a purported amended PCRA petition claiming that 1) trial counsel rendered ineffective assistance in cross examining witnesses who corroborated the Commonwealth's assertion that Appellant had a gun, 2) trial counsel was ineffective for introducing inadmissible hearsay testimony, and 3) trial counsel was ineffective for failing to appeal the sentence of 20 to 40 years for attempted murder where Appellant was not charged with the serious bodily injury version of that offense. Appellant asserted that because the PCRA court had not ever ruled on the remaining claims in the PCRA petition raised when it granted resentencing on the illegal sentence claim, his 2018 PCRA petition remained unresolved.

On November 25, 2025, the PCRA court issued notice of its intent to dismiss without a hearing per Pa.R.Crim.P. 907(1). In the notice, the PCRA court explained that Appellant's counsel "advised the court that [Appellant] is no longer pursuing an ineffective claim based on a failure to call witnesses and that the two ineffective claims raised in the amended petition are the only

remaining claims that are being pursued by [Appellant]." (Notice of Intent to Dismiss, filed 11/25/25, at 5 n.8). Appellant did not respond to the Rule 907 notice. On December 24, 2025, the court denied PCRA relief. Appellant filed a timely notice of appeal on January 6, 2026, and, pursuant to the court's order, filed a timely concise statement of errors complained of on appeal on January 27, 2026.

Appellant raises the following two issues on appeal:

> I. Whether the PCRA court erred in dismissing Appellant's claim that trial counsel was ineffective for eliciting inadmissible hearsay from Officer Ronald Fred on cross-examination: specifically, that an unknown person took Appellant's gun from the scene after the shooting, where the entire defense was that Appellant never possessed a gun, no Commonwealth witness testified to this fact on direct examination, the hearsay directly undermined the sole defense theory, and the PCRA court itself acknowledged that the cross-examination was "far from perfect" and that counsel "may have been better served" not asking the questions at issue?
>
> II. Whether the PCRA court erred in dismissing Appellant's claim that trial counsel was ineffective for eliciting inadmissible hearsay from eyewitness David Matos on cross-examination: specifically, a prior statement to police that he saw Appellant walk up to the complainant and begin shooting, where Matos's direct testimony supported the defense – and whether the cumulative prejudice of both errors requires a new trial where the combined effect was to undermine the sole defense theory and the prosecution relied on this evidence in closing argument?

(Appellant's Brief at 4).

"Our standard of review of the denial of a PCRA petition is limited to examining whether the evidence of record supports the court's determination

and whether its decision is free of legal error." ***Commonwealth v. Beatty***, 207 A.3d 957, 960-61 (Pa.Super. 2019), *appeal denied*, 655 Pa. 482, 218 A.3d 850 (2019). This Court grants great deference to the factual findings of the PCRA court if the record contains any support for those findings. ***Commonwealth v. Howard***, 249 A.3d 1229 (Pa.Super. 2021). "[W]e review the court's legal conclusions *de novo*." ***Commonwealth v. Prater***, 256 A.3d 1274, 1282 (Pa.Super. 2021).

In his issues combined, Appellant asserts that trial counsel was ineffective in his cross examination of two witnesses. Specifically, Appellant argues that counsel elicited inadmissible hearsay evidence in his cross examination of Officer Ronald Fred. Appellant asserts that the most powerful piece of evidence in support of his defense theory that the victim had confused him for another individual was that he did not have a gun. Appellant explained that neither the victim nor the eyewitness had testified that they saw anyone take Appellant's gun and get rid of it until trial counsel's cross examination of Officer Fred, which elicited hearsay testimony from the officer that someone told the officer that another individual came and took Appellant's gun and got rid of it. (***See*** Appellant's Brief at 28). Appellant insists that counsel did not have a reasonable basis for this line of questioning on cross examination, noting that even the PCRA court found it "far from perfect" and that "counsel 'may have been better served in not questioning Officer Fred about what he was told happened to Appellant's gun.'" (***Id.*** (quoting Notice of Intent to

Dismiss at 17-18)). Appellant further maintains that he was prejudiced by counsel's action because this information would not have been admitted but for counsel's cross examination that elicited it. Appellant insists that Officer Fred's testimony in this respect was the key piece of evidence that made possible the Commonwealth's theory that Appellant was the shooter.

With respect to the second witness, Mr. Matos, Appellant contends that counsel's cross-examination of Mr. Matos corroborated the Commonwealth's version of events. Appellant argues that Mr. Matos's direct testimony was consistent with the defense theory that Appellant did not have a gun because he did not mention having seen Appellant with one. However, in an attempt to impeach Mr. Matos with inconsistencies between his testimony and his statement to police, counsel read Mr. Matos's statement to police into the record. Appellant avers that this statement mirrored the victim's account of the shooting, and suggested that Appellant had a gun, which Mr. Matos had alleged he saw the victim kick away from Appellant. Appellant claims that there was no reason to try to discredit Mr. Matos because his direct testimony did not harm the defense, and by reading his statement to police into the record, counsel introduced evidence that instead supported the Commonwealth's position. Appellant insists that counsel had no reasonable basis for this cross examination of Mr. Matos and he suffered prejudice because Mr. Matos's story corroborated the Commonwealth's version of events and made it more likely that the trial court would find him guilty.

Finally, Appellant complains that even if neither error individually satisfies the prejudice prong, the cumulative effect of both errors satisfies the prejudice requirement. Appellant concludes the PCRA court erred in denying Appellant's claims of ineffective assistance of counsel on these grounds, and this Court must grant relief. We disagree.

"Counsel is presumed to have rendered effective assistance." ***Commonwealth v. Hopkins***, 231 A.3d 855, 871 (Pa.Super. 2020), *appeal denied*, 663 Pa. 418, 242 A.3d 908 (2020).

> [T]o establish a claim of ineffective assistance of counsel, a defendant must show, by a preponderance of the evidence, ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place. The burden is on the defendant to prove all three of the following prongs: (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.

Commonwealth v. Sandusky, 203 A.3d 1033, 1043 (Pa.Super. 2019), *appeal denied*, 654 Pa. 568, 216 A.3d 1029 (2019) (internal citations and quotation marks omitted).

"We need not analyze the prongs of an ineffectiveness claim in any particular order. Rather, we may discuss first any prong that an appellant cannot satisfy under the prevailing law and the applicable facts and circumstances of the case." ***Commonwealth v. Hunter***, 355 A.3d 394, 414 (Pa.Super. 2026) (quoting ***Commonwealth v. Evans***, 303 A.3d 175, 182

(Pa.Super. 2023)). "A petitioner's failure to satisfy any prong of this test is fatal to the claim." ***Commonwealth v. Snyder***, 250 A.3d 1253, 1258 (Pa.Super. 2021) (citations omitted). "As a general and practical matter, it is more difficult for a defendant to prevail on a claim litigated through the lens of counsel ineffectiveness, rather than as a preserved claim of trial court error." ***Hunter, supra*** at 414 (quoting ***Commonwealth v. Charleston***, 94 A.3d 1012, 1019 (Pa.Super. 2014)).

Our Supreme Court has explained that to satisfy the prejudice prong, a petitioner must prove

> a reasonable probability that, but for counsel's lapse, the result of the ... proceeding would have been different. [***Strickland v. Washington***, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)]. "In making this determination, a court hearing an ineffectiveness claim must consider the **totality of the evidence** before the judge or jury .... Moreover, a verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support." ***Id.*** at 695–96, 104 S.Ct. 2052[.] Ultimately, a reviewing court must question the reliability of the proceedings and ask whether "the result of the particular proceeding [was] unreliable because of a breakdown in the adversarial process that our system counts on to produce just results." ***Id.*** at 696, 104 S.Ct. 2052[.]

Commonwealth v. Lesko, 609 Pa. 128, 15 A.3d 345, 383 (2011) (emphasis in original). "A reasonable probability is a probability that is sufficient to undermine confidence in the outcome of the proceeding." ***Commonwealth v. Collins***, 598 Pa. 397, 957 A.2d 237, 244 (2008). "Such a determination necessarily requires an assessment of the trial evidence as a whole, measured along with what is proffered on collateral attack." ***Commonwealth v. Daniels***, 628 Pa. 193, 104 A.3d 267, 285 (2014).

Commonwealth v. Crispell, 648 Pa. 464, 486-87, 193 A.3d 919, 932 (2018).

Furthermore, "[w]hen the failure of individual [ineffectiveness of counsel] claims is grounded in lack of prejudice, then the cumulative prejudice from those individual claims may properly be assessed." ***Commonwealth v. Spotz***, 610 Pa. 17, 146, 18 A.3d 244, 321 (2011). ***See also Commonwealth v. R. Johnson***, 600 Pa. 329, 345, 966 A.2d 523, 532 (2009) (stating "if multiple instances of deficient performance are found, the assessment of prejudice properly may be premised upon cumulation").

Instantly, the PCRA court first determined that Appellant failed to establish that trial counsel lacked a reasonable strategic basis for his cross examination of Officer Fred and Mr. Matos. With respect to Mr. Matos the PCRA court explained:

> At trial, the Commonwealth called Mr. Matos, an eyewitness to the shooting, who testified through a Spanish interpreter. On direct examination, Mr. Matos testified that prior to the shooting, he was walking to his sister's house and saw [the victim], who is a friend of Mr. Matos's niece. Mr. Matos testified that he greeted [the victim] and then decided to go to the store to buy cigarettes. (N.T. Trial, 8/29/11 at 75). Upon returning from the store, Mr. Matos testified that he saw [the victim] standing by the side of a school, and also noticed someone coming from the schoolyard but did not pay close attention to him as he was lighting his cigarette (***Id.***) While he was lighting his cigarette, he heard gunshots and saw [the victim] fist-fighting with a bearded man whose face he could not see. (***Id.*** at 76–77, 84). Mr. Matos testified that he saw blood on [the victim's] sweater and saw [the victim] pull out his gun during the fight with this man. (***Id.*** 77–78). Mr. Matos testified that he saw a "tall" man

shoot from across the street and then run off, and did not see the tall man go over to where [the victim] was. (***Id.*** at 79). After the shooting, Mr. Matos approached [the victim] and saw that he was bleeding from the stomach.

On cross-examination, trial counsel questioned Mr. Matos with a prior written statement he provided to detectives on the evening of the shooting as follows:

> Q. Sir, I am going to go over the statement with you about some of the things you told the detectives that night, okay? I am going to read along in the first paragraph, okay?
>
> Do you remember telling the detectives on December 10, 2008, at approximately 7:10 p.m., I was in my sister's house when she asked me for a cigarette.
>
> Is that true?
>
> A. No, I didn't say that.
>
> Q. Okay.
>
> A. I was the one who went to buy the cigarettes.
>
> Q. Next sentence, I told her that I didn't have any. So I decided to go to the corner store to buy a pack before the store closed.
>
> A. Yes, that's true.
>
> Q. When I stepped outside, I saw [the victim] across the street waiting for his girlfriend. I said hi to him and continued to the store.
>
> Is that true?
>
> A. Yes.
>
> Q. As I was walking back, I kept to the sidewalk where [the victim] was standing.
>
> Is that true?

A. Yes.

Q. It was raining, so I walked next to the school so the awning could keep me dry.

True?

A. Yes.

Q. As I was approaching the end of the school, I saw a black male come out of an alley in front of me.

Correct?

A. Yes.

Q. He approached [the victim] and began shooting. I froze about 15 feet away.

Is that true?

A. Yes, 15 or 20 feet.

Q. [The victim] grabbed the black male and started fighting.

A. Yes, too strong.

Q. [The victim] was able to get his gun out and they started exchanging gunfire.

A. Yes.

Q. True?

A. Yes, that's true.

Q. I saw the black male go down; that's when the second male appeared from across the street.

Correct?

A. Yes.

> Q. He shot at least one time towards [the victim]. [The victim] shot at him and the male ran away.
>
> Right?
>
> A. Yes.
>
> Q. My sister came out of the house and told me to get out of there.
>
> A. Yes.
>
> Q. That's when I realized I was in danger and I am crossing the street
>
> Now here is a question for you. You said, I saw [the victim] kick the gun away from the black male that was on the ground.
>
> Is that true or not true?
>
> A. No.
>
> Q. It is not true; you never saw [the victim] kick the gun away from the black male on the ground?
>
> A. No, no, I didn't see that.

(N.T. Trial, 8/29/11, at 85–88).

(Notice of Intent to Dismiss at 12–13) (citation formatting provided).

The court explained that although the cross examination elicited some favorable testimony to the extent that Mr. Matos did not see the victim kick a loose gun away from Appellant, other aspects of the cross examination "suggested unfavorable facts for the defense that Mr. Matos had not previously mentioned." (***Id.***) Ultimately, the court concluded that while Appellant argues it would have been a better strategy to avoid this line of questioning in its

entirety, trial counsel's re-cross examination asked Mr. Matos to clarify and explain inconsistencies in his prior statements to police and achieved "a measure of success in re-establishing the fact that Mr. Matos only heard gunshots and saw [the victim] involved in a fight with an unidentified black man which was consistent with the defense strategy that [Appellant] never actually possessed a gun and that [the victim] shot the wrong person." (***Id.*** at 14-15).

With respect to Officer Fred, the PCRA court explained:

> At trial, the Commonwealth called Officer Fred, who testified that when he arrived at the scene of the shooting, he saw [the victim] standing in the street and [Appellant] lying on the ground. (N.T. Trial, 8/29/11, at 99). Officer Fred also testified that he observed bullet holes in vehicles, in the school window, windows shot out, blood on the street, and casing[s] everywhere. (***Id.*** at 106–107).
>
> Officer Fred testified that he saw [the victim] had been shot in the stomach and [the victim] informed the officer that he had a gun. Officer Fred saw two bullet holes in the complainant's shirt when he arrived, and then he retrieved a .40 caliber handgun from [the victim's] hip holster. (***Id.*** at 99-100, 108, 114). Officer Fred testified that [the victim] told him that "three black males had attempted to rob him and had fired upon him, and, once they fired upon him, he defended himself and returned fire." (***Id.*** at 103). Officer Fred memorialized the information that [the victim] told him in a 75-48 incident report he prepared, which was marked as Commonwealth's Exhibit C-22. (***Id.*** at 102-103). Officer Fred testified that [Appellant] was arrested based on [the victim's] statement that [Appellant] shot him. (***Id.*** at 103). Officer Fred and his partner then transported [the victim] to the hospital. (***Id.*** at 103-04).
>
> On cross-examination, trial counsel questioned Officer Fred about whether he saw a weapon near [Appellant] when he responded to the scene of the shooting, and then engaged

in an exchange about whether he was told that one of [Appellant's] co-conspirators took [Appellant's] gun from the crime scene prior to his arrival, apparently in an attempt to highlight an inconsistency in [the victim's] trial testimony:

> Q. The only weapon you recovered on the scene was the one the victim gave you; correct?
>
> A. Correct.
>
> Q. When you saw … my client laying on the street, there was no weapon near him; correct?
>
> A. Correct.
>
> Q. Were you told that one of the males took the gun from this male, allegedly?
>
> A. Correct.
>
> [Q. That was one of the three shooters took the gun from this person?
>
> A. Correct.]
>
> Q. And fled in a gray colored vehicle with tinted windows?
>
> A. Correct.
>
> Q. So if the victim in this case had come in here and testified that he saw a male shooting from across the street walk off down, walk off across the other side of the street, that would be incorrect?
>
> A. I wasn't there.

(***Id.*** at 109-110).

On re-direct examination of Officer Fred, the prosecution sought to counteract the suggestion that [the victim] had provided conflicting trial testimony on this issue, and then specifically questioned Officer Fred about the content of a

> statement he made to detectives, which was marked at trial as Exhibit C-23, in which he indicated what [the victim] told him at the crime scene about what happened to [Appellant's] gun: "[the victim] did state to me that there were three other males involved and one male took the gun from the male who was shot by [the victim] and these males fled in a gray colored vehicle with tinted windows." (***Id.*** at 116).

(Notice of Intent to Dismiss at 15–17) (citation formatting provided).

The PCRA acknowledged that trial counsel's cross examination was far from perfect, and that counsel "may have been better served in not questioning Officer Fred about what he was told happened to Appellant's gun." (***Id.*** at 17-18). Nevertheless, the court concluded that counsel's strategy had "a reasonable basis to reveal inconsistencies and impeach [the witness'] credibility." (***Id.*** at 18–19). Hence, the court found that Appellant had not established the second prong of the test for ineffectiveness.[3]

Additionally, the PCRA court concluded that Appellant failed to prove

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[3] We note that the PCRA court did not hold an evidentiary hearing in this case. Generally, an evidentiary hearing on counsel's strategy is preferred before the PCRA court decides if counsel had a reasonable basis for his actions. ***Commonwealth v. Hanible***, 612 Pa. 183, 210, 30 A.3d 426, 442 (2011), *cert. denied*, 568 U.S. 1091, 133 S.Ct. 835, 184 L.Ed.2d 662 (2013). Nevertheless, the PCRA court may assess the reasonable basis prong of the test without holding an evidentiary hearing in cases where the reasons for counsel's conduct are clear and apparent from the record. ***See id.***

Here, we need not address whether the reasons for counsel's conduct were apparent from the record because, as discussed ***infra***, we agree with the PCRA court's alternative rational for denying relief based on Appellant's failure to establish that that he was prejudiced as a result of trial counsel's alleged ineffective assistance.

that he was prejudiced by counsel's alleged ineffectiveness. Specifically, the court concluded that Appellant "has not established that counsel's ineffectiveness was of such magnitude that it could have reasonably had an adverse effect on the outcome of the proceedings or that there is a reasonable probability that, but for counsel's conduct, the outcome of the case would have been different." (Notice of Intent to Dismiss at 19). The court explained:

> [Appellant's] concern that he suffered prejudice from counsel's alleged deficient cross-examination of a kind and to an extent that undermined the truth-determining function and fundamental fairness of his trial, such that no reliable adjudication of guilt or innocence could have taken place, is much less convincing. The court confidently presumes here that [the trial court] understood the purpose of counsel's cross-examination of Mr. Matos and Officer Fred, that [it] not only "ignored" but "disregarded" any inadmissible or prejudicial hearsay testimony, and that [it] was not improperly influenced by evidence or testimony which may otherwise have been considered too prejudicial for a jury to hear.
>
> With that in mind, and viewing the record as a whole and in proper context, the court also agrees with the Commonwealth that the evidence of [Appellant's] guilt was convincing and compelling, and further finds that the possible prejudicial effect of trial counsel's alleged deficient cross-examination of Mr. Matos and Officer Fred was insignificant and paled in comparison, such that it could not have reasonably had an adverse effect on the outcome of the proceeding.
>
> At no point in these proceedings did [the victim] ever waver in his identification of [Appellant] as the person who shot him. He testified that [Appellant] approached and ordered him not to move, produced a handgun and shot him two times in the stomach at point blank range. [The victim's] testimony was, by itself, sufficient to sustain [Appellant's] conviction for attempted murder. ***Commonwealth v. K. Johnson***, 180 A.3d 474, 481 (Pa.Super. 2018) ("we hold

that the uncorroborated testimony of a single witness is sufficient to sustain a conviction for a criminal offense, so long as that testimony can address and, in fact, addresses, every element of the charged crime"). To buttress the testimony of [the victim], the Commonwealth also presented the corroborating eyewitness testimony of Mr. Matos as well as the testimony of several police witnesses, along with recovered physical evidence, including the gun used to shoot [the victim]. Accordingly, [Appellant's] claim that he sustained "actual prejudice" by trial counsel's deficient cross-examination is undermined by the substantial evidence of his guilt.

Moreover, [Appellant's] prejudice argument disregards the fact that the outcome of this case essentially turned on credibility findings of [Appellant] and the victim. [The trial court] was presented with directly competing stories and conflicting testimony about [Appellant's] role and involvement in the shootout which he was required to reconcile in order to reach a verdict.

Juxtaposed against the testimony of [the victim], [Appellant] testified on his own behalf and, although he admitted that he was in the street during the shootout with [the victim], [Appellant] testified that he was not the shooter, that he did not have a gun and that [the victim] attacked him after confusing him with the actual culprit. Specifically, [Appellant] testified that he was walking home when he heard a commotion and multiple gunshots. (N.T. Trial, 10/6/11, at 30-31, 35-36). [Appellant] decided to walk toward the area where the gunshots had come from, and was confronted by [the victim] who was holding his stomach and bleeding. (***Id.*** at 32-34, 38, 40). [Appellant] testified that [the victim] had a gun in his hand and accused [Appellant] of robbing him. (***Id.*** at 32-34, 37-40). [Appellant] testified that he wrestled with [the victim] and was shot multiple times by him. (***Id.*** at 38). [Appellant] also testified that two other men approached and held him down while [the victim] ran to look for others, and that after [the victim] left, one of the other men shot him again in the hip while he was on the ground. (***Id.*** at 47-48).

In the end, [the trial court] rejected [Appellant's] testimony and found him guilty of the attempted murder of [the

> victim], concluding that [Appellant's] story was simply not credible as it would have required him to believe that [Appellant] had deliberately walked toward the sound of gunfire, was mistakenly confronted and shot multiple times by [the victim], and then was held down by unidentified men and shot in the hip by one of them for no apparent reason.

(Notice of Intent to Dismiss at 21-23). Thus, the PCRA court concluded that Appellant failed to establish that he was prejudiced by trial counsel's alleged ineffectiveness. Because the PCRA concluded that Appellant established neither the second nor the third prong of the test for ineffective assistance of counsel, the PCRA court denied Appellant's petition.

Upon review, we conclude that the record supports the PCRA court's finding that Appellant failed to establish that he was prejudiced by trial counsel's alleged ineffectiveness.[4] ***See Crispell, supra***; ***Sandusky, supra***. Our review of the record makes clear that even if counsel had elected not to cross examine Officer Fred and Mr. Matos, the evidence at trial would have established Appellant's guilt. At trial, the victim identified Appellant as the shooter and testified that Appellant shot him. (***See*** N.T. Trial, 8/29/11, at 14-15) (stating: "When I got out of my Toyota, I was parked and I walked toward my ex-girlfriend house and I seen [Appellant] walking. He said, don't move,

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[4] Because "[a]failure to satisfy any of the three prongs of [the test] requires rejection of the claim of ineffective assistance" we need not decide whether counsel had a reasonable basis to cross examine Mr. Matos and Officer Fred. Furthermore, we note that "we may affirm the decision of the PCRA court if there is any basis on the record to support the PCRA court's action; this is so even if we rely on a different basis in our decision to affirm." ***Commonwealth v. Wiley***, 966 A.2d 1153, 1157 (Pa.Super. 2009).

poppy, and he shot me"). The victim explained that after Appellant shot him the first time, they started fighting with their fists. (***Id.*** at 19). Eventually the two separated and started shooting at one another when they were about four or five feet apart. (***Id.*** at 20). The victim testified that Appellant had a gun, but he did not see what happened to it and did not know if it was there when the police arrived. (***Id.*** at 27-28).

Appellant testified in his own defense at trial, claiming that the victim charged at him and accused Appellant of trying to rob him. (***See*** N.T. Trial, 10/6/11, at 32-33). Appellant testified that he wrestled with the victim and got shot "for no reason at all." (***Id.*** at 33). Appellant testified that, as he was lying on the ground, the victim returned with other people, one of whom shot him in the hip. (***Id.*** at 34). Appellant claims he did not have a gun that night. (***Id.*** at 35). Appellant stated that he did not know the victim and had never met him before, but Appellant suggested that his family sold drugs and that he was likely involved in drug dealing. (***Id.*** at 40-42).

The trial court, as factfinder, credited the victim's testimony and rejected the testimony of Appellant. As the PCRA court acknowledged, the testimony of the victim, itself, is sufficient to support an attempted murder conviction. ***See K. Johnson, supra***. Even without the challenged testimony elicited in the cross examination of Officer Fred and Mr. Matos, the evidence at trial established that Appellant fought with and shot the victim. Therefore, viewing the totality of the circumstances, Appellant has failed to prove

prejudice arising from counsel's alleged errors either individually or cumulatively to sustain Appellant's ineffective assistance of counsel claims. ***See Crispell, supra***; ***R. Johnson, supra***; ***K. Johnson, supra***. Accordingly, we affirm.

Order affirmed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/17/2026