**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37**

| | | |
|---|---|---|
| COMMONWEALTH OF PENNSYLVANIA | : | IN THE SUPERIOR COURT OF PENNSYLVANIA |
| v. | : | |
| MARQUIS LAMONT THOMAS | : | |
| Appellant | : | No. 256 EDA 2026 |

Appeal from the PCRA Order Entered November 25, 2025
In the Court of Common Pleas of Montgomery County Criminal Division
at No(s): CP-46-CR-0004273-2019

BEFORE: LAZARUS, P.J., PANELLA, P.J.E., and STEVENS, P.J.E.*

MEMORANDUM BY PANELLA, P.J.E.: **FILED NOVEMBER 25, 2026**

Marquis Lamont Thomas appeals *pro se* from the order dismissing his first, timely Post-Conviction Relief Act ("PCRA")[1] petition without a hearing. Thomas asserts the court erred in allowing PCRA counsel to withdraw, as there are claims of arguable merit that necessitated an evidentiary hearing. After careful review, we affirm.

The PCRA court set forth the relevant factual and procedural history:

> As an abbreviated background, [Thomas's] convictions arose from the October 2016 death of his girlfriend's four-year-old daughter, K.B., and the abuse of his girlfriend's then eight-year-old son, D.B., in 2018. On September 15, 2018, D.B. was admitted to Children's Hospital of Philadelphia ("CHOP") because D.B. woke up with subconjunctival hemorrhages in both of his eyes, whereby the whites of his eyes were filled with blood, and there was a

---

* Former Justice specially assigned to the Superior Court.

[1] 42 Pa.C.S.A. §§ 9541-9546.

bruise under one of his eyes in association with that bleeding. D.B. was admitted to CHOP upon referral for evaluation because his sister, K.B. had presented with similar symptoms a couple years earlier that were not as severe as D.B.'s, and she passed away shortly thereafter.

During trial, Cindy Christian, M.D., a professor at the Pearlman School of Medicine at the University of Pennsylvania and a pediatrician at CHOP, was accepted as an expert witness in general pediatrics and child abuse pediatrics. She testified that when D.B. was admitted to the hospital on September 15, 2018, the CHOP child protection team learned that K.B. had died suddenly in her sleep about a month and a half after she had been seen by the child protection team in 2016 and had an undetermined cause of death. Upon learning this, the team requested a copy of K.B.'s autopsy report and was shocked that the cause of death was undetermined because of all the severe injuries to K.B. that were recorded in the report. Dr. Christian opined that such injuries were the result of trauma, not CPR [as previously thought].

After this information came to light, the Montgomery County District Attorney's Office asked Dr. Christian to review investigative and medical materials related to K.B.'s and D.B.'s injuries. Based on her review, Dr. Christian opined that the injuries sustained by K.B. in September 2016 "were the result of child physical abuse," and "her death was a result of severe inflicted trauma and physical abuse." As to the injuries to D.B. that were documented at CHOP in September 2018, Dr. Christian opined that those also "were the result of child physical abuse."

Dr. Christian provided her analysis and conclusions regarding K.B.'s various injuries. Dr. Christian opined that the constellation of injuries that K.B. had are not the injuries seen in active children who have accidental trauma, and notably, subconjunctival hemorrhages are very unusual. Dr. Christian noted that K.B. had "pretty significant subconjunctival bleeding," which can result, from among other things, Valsalva trauma, a "kind of trauma that can pop blood vessels from very significant increased pressure." Dr. Christian explained that this pressure can come from strangulation or severe chest compressions. Dr. Christian also clarified that pressure "can occasionally come from severe coughing or vomiting," however, not to the extent of what was seen in K.B.

Dr. Christian then provided her analysis and conclusions regarding D.B.'s injuries. Dr. Christian testified that D.B. woke up with severe subconjunctival hemorrhages in both of his eyes, with a large bruise under his right lower eyelid. Dr. Christian noted that D.B. had vomited a couple of times after arriving at the hospital, thus, the subconjunctival hemorrhages predated his vomiting. Dr. Christian stated that "the entirety of the whites of D.B.'s eyes were completely bloody," and that the bleeding in D. B.'s "eyes was so severe that there was concern that" one of D.B.'s eyeballs was ruptured. Dr. Christian had never seen subconjunctival hemorrhages that were this severe.

Dr. Christian went on the explain that D.B. had a complete and thorough medical evaluation by various doctors and medical specialists that resulted in no findings of a medical disease to explain the bleeding in D.B.'s eyes. Dr. Christian opined that the cause of such severe subconjunctival hemorrhages was "severe Valsalva consistent with some kind of severe compression or strangulation or asphyxiation."

Dr. Christian clarified that "asphyxiation means lack of oxygen to the body" and "if you cut off someone's oxygen, that's generally called asphyxiation." She elaborated as to how there are various ways in which asphyxiation can happen, including strangulation and putting someone in a chokehold. Dr. Christian also explained that because the brain is the most important organ in the body, when a person is suffering from asphyxiation/low oxygen, the body starts to shift blood from less important parts of the body to the brain in order to bring more oxygen to the brain.

Furthermore, Dr. Christian noted that the eventual disclosures that D.B. made about being abused were consistent with his injuries, specifically, that he could not breathe and he was held in a chokehold.

On the second day of trial, the Commonwealth presented the testimony of D.B., who at that time was 11 years old. D.B. testified that [Thomas] would most times hurt him at night, when his mother and his other sister, K.T., were sleeping. D.B. further testified that to hurt him, [Thomas] would push him over so he would be face down on the couch and then put him in a chokehold position. It would hurt, and D.B. would be unable to breathe. D.B.

explained that this would make him feel a lot of pressure in his head, and he would pass out.

After testifying about the other things that [Thomas] would do to hurt him, D.B. testified about what happened the night before his September 15, 2018 visit to CHOP. D.B. stated that while his mom was asleep, [Thomas] "made it so that D.B. couldn't breathe" by putting his arm around D.B.'s neck and putting D.B. facedown on the couch. D.B. described that this made his body feel "super hot," it made him feel very tired, and his head hurt badly. The next thing D.B. remembered was waking up in his bed, with pain in his head and pain and redness in his eyes. He went to use the bathroom and went back to bed because his eyes were hurting. The next morning, when [Thomas] woke up D.B., he saw D.B.'s eyes were red and called D.B.'s mom. [Thomas] told D.B. not to say anything, which D.B. understood [Thomas] to be referring to what happened the night before. Because D.B. did not know what would happen, and he was nervous, he did not disclose the abuse while he was at the hospital.

At the conclusion of the four-day trial, the jury found [Thomas] guilty of [one count of] first-degree murder, [two counts of] aggravated assault, simple assault—under age of 12, [and] endangering the welfare of a child—course of conduct, [and a single count of] strangulation—family/household member[.] Sentencing was held immediately thereafter, where a term of life imprisonment was imposed for the charge of first-degree murder, with the sentences for all other charges running concurrently.

A timely post-sentence motion was filed on November 8, 2021,[a] and was denied on November 9, 2021. A notice of appeal followed on December 9, 2021. On February 21, 2023, the Pennsylvania Superior Court affirmed [Thomas's] judgment of sentence. Among [Thomas's] claims on appeal … was his complaint that D.B. disclosed during his trial testimony that he had "passed out" as a result of [Thomas's] abuse, which was not previously shared with [Thomas]. [***See***] ***Commonwealth v. Thomas***, [] 17 EDA 2022, 2023 WL 2137368, at *3 (Pa. Super. [filed] Feb. 21, 2023) [(unpublished memorandum)]. In its decision, the Superior Court adopted [the trial court's] reasoning as its own, and found that any discovery violation here did not impact [Thomas's] cross-examination of the Commonwealth's expert regarding the mechanics of strangulation, and that such testimony was within

the context of what was described in all materials previously provided to the defense.

> [a] We note that because the 10th day after the imposition of sentence was Sunday, November 7, 2021, the deadline to file a post-sentence motion fell on Monday, November 8, 2021. ***See*** 1 Pa.C.S.A. § 1908 (providing that the calculation of time periods omits weekends and holidays when the last day of the period is a weekend or holiday).

[After requesting leave to file a petition for allowance of appeal *nunc pro tunc*, our Pennsylvania Supreme Court granted that request on February 21, 2024.] [Thomas] subsequently filed a petition for allowance of appeal with the Pennsylvania Supreme Court on March 7, 2024, and it was denied on August 19, 2024. On October 3, 2024, [Thomas] filed a *pro se* PCRA petition, which was dismissed without prejudice on October 16, 2024, because it was premature.

On December 3, 2024, [Thomas] filed [] his *pro se* PCRA petition, and because it was his first PCRA petition, counsel was appointed on December 13, 2024. PCRA counsel filed a petition to withdraw on March 5, 2025, representing that he sent [Thomas] a copy of the petition to withdraw and a no-merit letter in accordance with ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988) and ***Commonwealth v. Finley***, 550 A.2d 231 (Pa. Super. 1988) [(*en banc*)].[b] On March 24, 2025, [the PCRA court] entered a Rule 907 notice of dismissal order, granting PCRA counsel leave to withdraw. On April 17, 2025,[c] [Thomas] filed a response to the notice of dismissal, requesting an extension to respond and claiming that PCRA counsel never provided him with a copy of PCRA counsel's no-merit letter and petition to withdraw.

> [b] We note that because PCRA counsel's March 5, 2025, no-merit letter did not appear on the Montgomery County Court of Common Pleas docket with PCRA counsel's March 5, 2025 petition to withdraw, the no-merit letter was filed on the docket on March 28, 2025. PCRA counsel subsequently provided proof of service to [Thomas] of the March 5, 2025 no-merit letter and petition to withdraw as exhibits to his July 24, 2025 supplemental no-merit letter.

> [c] We note for purposes of the prisoner mailbox rule, that [Thomas's] response was postmarked on April 11, 2025, rendering it timely.

On May 7, 2025, [the PCRA court] granted [Thomas] an additional 20 days to file a response, and out of an abundance of caution, attached a copy of PCRA counsel's no-merit letter and petition to withdraw. On June 6, 2025,[d] [Thomas] filed his subsequent response to [the PCRA court's] March 24, 2025, notice of dismissal. In this response, he claimed that PCRA counsel provided ineffective assistance due to an alleged failure to develop and raise in an amended PCRA petition ineffective assistance of trial counsel claims regarding [Thomas's] decision not to testify at trial and [his] rejection of a plea offer. He also raised an ineffective assistance of trial counsel claim related to D.B. stating during this testimony at trial that he would "pass out."

> [d] We note for purposes of the prisoner mailbox rule, that [Thomas's] response was postmarked on May 25, 2025, rendering it timely.

On June 25, 2025, [the PCRA court] entered an order vacating its March 24, 2025 order and re-appointing PCRA counsel to address the following issues based upon the evidence of record: (1) whether trial counsel was ineffective in allegedly advising [Thomas] not to testify at trial, and (2) whether trial counsel was ineffective in allegedly advising [Thomas] to reject a plea offer. On July 24, 2025, PCRA counsel filed a supplemental no-merit letter addressing the claims made by [Thomas] in his June 6, 2025 response.

On July 31, 2025, [the PCRA court] entered an order directing PCRA counsel to further address the issues set forth in his supplemental no-merit letter relying solely on evidence of record. On September 25, 2025, PCRA counsel filed a second supplemental no-merit letter, and on October 1, 2025, [the PCRA court] entered a Rule 907 dismissal notice order. On October 24, 2025,[e] [Thomas] filed a response to the October 1, 2025 notice of dismissal, raising similar arguments to those in his June 6, 2025 Rule 907 response. After reviewing [Thomas's] October 24, 2025,[f] and after [the PCRA court's] independent review of the record, and for all the reasons set forth in the PCRA counsel's no-merit letter, [the PCRA court] determined that [Thomas's] PCRA

> petition as devoid of merit, and that no purpose would be served by any further proceedings. On November 25, 2025, [the PCRA court] entered a final order dismissing [Thomas's] PCRA petition without a hearing.
>
> > [e] We note for purposes of the prisoner mailbox rule, that [Thomas's] response was postmarked on October 21, 2025, rendering it timely.
> >
> > [f] [Thomas] noted in his 1925(b) statement that [the PCRA court] erroneously stated that it received no response from him to the October 1, 2025 dismissal notice. [The PCRA court] acknowledge[s] that this was a typo. [The PCRA court] received [Thomas's] October 24, 2025 response.
>
> [Thomas] subsequently filed a timely *pro se* notice of appeal … on December 26, 2025.[g]
>
> > [g] December 25, 2025 was a holiday, therefore, the deadline to file an appeal fell on Friday, December 26, 2025. ***See*** 1 Pa.C.S.A. § 1908 (providing that the calculation of time periods omits weekends and holidays when the last day of the period is a weekend or holiday).

PCRA Court Opinion, 3/17/26, at 2-9 (citations, record citations, unnecessary capitalization, and brackets omitted).[2]

The PCRA court ordered Thomas to file a Rule 1925(b) statement on January 5, 2026. ***See*** Pa.R.A.P. 1925(b). Because the order was returned to the courthouse as undeliverable, the PCRA court entered a subsequent order on January 9, 2026, giving Thomas a new 21-day period in which to comply

---

[2] We commend Judge William R. Carpenter of the Montgomery County Court of Common Pleas for providing us with a detailed and comprehensive summary of the factual and procedural history of this case. As will be explained further, Judge Carpenter's legal analysis of the issues herein was exceptional.

with the January 5, 2026 order. On February 11, 2026, the court received Thomas's 12-page Rule 1925(b) statement. Thomas placed this statement in the mail on January 29, 2026, making it timely under the prisoner mailbox rule. Thereafter, on March 17, 2026, the PCRA court authored its Rule 1925(a) opinion. ***See*** Pa.R.A.P. 1925(a).

Before we can address the merits of Thomas's issues raised on appeal, we must address whether any claims have been preserved for our review. The PCRA court noted that Thomas's 12-page Rule 1925(b) statement made it "difficult to meaningfully address the claims" he raised and suggested the issues may be waived. PCRA Court Opinion, 3/17/26, at 10-11.

We recognize that Thomas is proceeding *pro se*, however, *pro se* status does not provide Thomas the ability to cloak himself from violations of our rules.

> Although this Court is willing to liberally construe materials filed by a *pro se* litigant, *pro se* status confers no special benefit upon the appellant. To the contrary, any person choosing to represent himself in a legal proceeding must, to a reasonable extent, assume that his lack of expertise and legal training will be his undoing. Accordingly, *pro se* litigants must comply with the procedural rules set forth in the Pennsylvania Rules of Court; if there are considerable defects, we will be unable to perform appellate review.

***Commonwealth v. Vurimindi***, 200 A.3d 1031, 1037-38 (Pa. Super. 2018) (quotation marks and citations omitted).

Rule 1925(b)(4) provides that an appellant shall include "only those errors that [he] intends to assert[,]" and those errors must be "concisely

identif[ied,]" and "should not be redundant or provide lengthy explanations[.]" Pa.R.A.P. 1925(b)(4)(i), (ii), (iv). This Court has explained that this means "the statement must be concise and coherent [so] as to permit the trial court to understand the specific issues being raised on appeal." ***Vurimindi***, 200 A.3d at 1038 (citation and internal quotation marks omitted).

Here, Thomas's statement is anything but concise and coherent. However, the PCRA court addressed the three issues Thomas now raises on appeal. ***See*** PCRA Court Opinion, 3/17/26, at 14-20. As such, we decline to find waiver on this basis. ***See Vurimindi***, 200 A.3d at 1039 (noting that not all lengthy Rule 1925(b) statements require dismissal of the appeal).

Thomas raises three issue for our review. ***See*** Appellant's Brief, at x.[3] First, he asserts trial counsel was ineffective in his advice to Thomas regarding his right to testify on his own behalf. Second, he claims trial counsel was ineffective for advising him to reject a plea offer. Finally, he submits trial counsel was ineffective for failing to raise a ***Brady v. Maryland***, 373 U.S. 83 (1963) violation regarding D.B.'s testimony that Thomas choked him until he passed out.

We begin with our well-established standard of review:

---

[3] We note Thomas's questions presented seem to layer his claims of ineffective assistance of counsel by arguing PCRA counsel was ineffective for failing to raise trial counsel's ineffectiveness. However, Thomas's argument section only argues trial counsel's ineffectiveness. As these three claims of trial counsel's ineffectiveness were raised below, we need not address Thomas's layered claims.

> 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. This Court grants great deference to the factual findings of the PCRA court if the record contains any support for those findings. We review the court's legal conclusions *de novo*.

***Commonwealth v. Sargent***, 359 A.3d 441, 447 (Pa. Super. 2026) (quotation marks and citations omitted).

Further, we note a "PCRA court need not hold an evidentiary hearing if it can determine from the record that no genuine issues of material fact exist." ***Commonwealth v. Anderson***, 327 A.3d 273, 280-81 (Pa. Super. 2024) (citation and internal quotation marks omitted).

All of Thomas's claims argue counsel was ineffective, we therefore provide the standards surrounding an ineffective assistance of counsel claim:

> Counsel is presumed to have rendered effective assistance.
>
> > To 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.
>
> The threshold inquiry in ineffectiveness claims is whether the issue/argument/tactic which counsel had foregone and which forms the basis for the assertion of ineffectiveness is of arguable

> merit. Counsel cannot be found ineffective for failing to pursue a baseless or meritless claim.
>
> Once this threshold is met we apply the reasonable basis test to determine whether counsel's chosen course was designed to effectuate his client's interests.
>
> > The test for deciding whether counsel had a reasonable basis for his action or inaction is whether no competent counsel would have chosen that action or inaction, or, the alternative, not chosen, offered a significantly greater potential chance of success. Counsel's decisions will be considered reasonable if they effectuated his client's interests. We do not employ a hindsight analysis in comparing trial counsel's actions with other efforts he may have taken.
>
> To show prejudice, the petitioner must demonstrate that there is a reasonable probability that, but for counsel's allegedly unprofessional conduct, the result of the proceedings would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.
>
> ***
>
> To succeed on an allegation of counsel's ineffectiveness, a post-conviction petitioner must, at a minimum, present argumentation relative to each … prong of the ineffectiveness standard. An undeveloped argument, which fails to meaningfully discuss and apply the standard governing the review of ineffectiveness claims, simply does not satisfy the petitioner's burden of establishing that he is entitled to relief.

***Id.*** at 447-48 (quotation marks, brackets, ellipses, and citations omitted).

We must note that Thomas fails to provide argument on all three elements of ineffective assistance of counsel as to his three claims. We could affirm on this basis alone. ***See id.*** However, our independent review reflects

the claims, even if properly pleaded, would lack merit. We therefore proceed to the merits of Thomas's issues.

In his first claim, Thomas argues trial court was ineffective for "unreasonably advising him not to testify at trial on his own behalf[.]" Appellant's Brief, at 1. Thomas claims trial counsel advised him not to testify but had never consulted with him regarding his right to testify in the first place, thereby interfering with his right to testify. ***See id.*** at 6. Thomas contends the case here "turned primarily on the credibility of the victim[,]" which made it all the more imperative for him to testify in his own defense. ***Id.***

The Commonwealth submits that the court conducted a thorough colloquy with Thomas prior to his decision not to testify. ***See*** Appellee's Brief, at 25. The colloquy was conducted in two parts. ***See id.*** at 26-28. The first was done on the second day of trial when the court informed Thomas of his right to testify and advised him that it would want his answer about whether he is testifying first thing the next day. ***See*** N.T. Trial, 10/26/21, at 238; Appellee's Brief, at 27. The next day, Thomas told the court that he conferred with his counsel regarding his right to testify and decided not to testify. ***See*** N.T. Trial, 10/27/21, at 4; Appellee's Brief, at 27-28. As such, the Commonwealth submits the PCRA correctly denied relief on this claim because Thomas consulted with counsel and it was his decision not to testify. ***See*** Appellee's Brief, at 28-29. We agree.

The PCRA court held:

> [The trial court] provided [Thomas] the benefit of a colloquy during trial in order to confirm that [Thomas] conferred with counsel about his right to testify and that [Thomas] made his own personal decision to waive such right. [Thomas] contradicts these representations that he made to the court by claiming in his June 6, 2025 Rule 907 response that he informed "trial counsel that he strongly wanted and needed to testify at trial" because "the Commonwealth's case hinged entirely upon the credibility of the victims," however, trial counsel allegedly told [Thomas] that because [he] had not made any inculpatory statements to law enforcement, trial counsel did not want [him] to testify. [Thomas] further contradicts himself by also asserting in his June 6, 2025 Rule 907 response that trial counsel never consulted with him with regard to testifying at trial.
>
> Based on the record, [Thomas's] claim of ineffective assistance of trial counsel falls flat. If [Thomas] wanted to testify in his trial, [the trial court] informed him of that right on day two of trial, which allowed him time to confer with trial counsel before providing his decision on day three of the trial. Moreover, contrary to [Thomas's] assertion, the Commonwealth's case did not hinge entirely on the credibility of the victims because one of the two victims, K.B., was dead, and thus could not provide testimony. Furthermore, the Commonwealth presented medical evidence, extensive expert testimony regarding the injuries suffered by the victims, and other witness testimony at trial. Additionally, the statement that [Thomas] claimed trial counsel made is not "specific advice so unreasonable as to vitiate a knowing and intelligent decision to testify," and [Thomas] did not claim that trial counsel interfered with this right. In light of the foregoing, this claim was found to be without merit, warranting dismissal.

PCRA Court Opinion, 3/17/26, at 16-17 (unnecessary capitalization omitted).

The record supports the PCRA court's decision on this issue. This Court has held:

> the 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.
>
> 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) (citations, brackets, and quotation marks omitted).

On October 26, 2021, the trial court started colloquying Thomas regarding his right to testify in his own defense:

> The Court: Sir, tomorrow morning you're going to have to tell me whether you've decided to testify or not. You're going to be asked that first thing in the morning.
>
> What you need to know is that every defendant has a right to testify in a criminal case, and it's entirely your decision. [Trial counsel is] not going to tell you, you have to do this or you have to do that, he's going to give you advice. He's an experienced criminal defense lawyer, and you should listen to him, but, finally, the bottom line is it's your decision, not his. Is that clear enough?
>
> The Defendant: Yes, sir.

N.T. Trial, 10/26/21, at 238 (unnecessary capitalization omitted).

On October 27, 2021, the following exchange occurred:

> The Court: Good morning. So I'll ask the defendant, as I told you yesterday, I'd be asking you if you were going to testify. Has that decision been made?
>
> The Defendant: Yes, I made my decision.
>
> The Court: Are you going to testify in this case?
>
> The Defendant: No, I am not.

The Court: And you conferred with [trial counsel] on that issue?

The Defendant: Yes, sir.

The Court: But you made your own personal decision, right?

The Defendant: Yes, I made my own personal decision.

The Court: So you're not going to testify?

The Defendant: I'm not going to testify.

N.T. Trial, 10/27/21, at 4 (unnecessary capitalization omitted).

Thomas voluntarily waived his right to testify after being informed it was his decision. Furthermore, he admitted that he consulted with his counsel regarding that decision but made the decision himself. Thomas cannot now claim that counsel did not consult with him or interfered with his right to testify. ***See Commonwealth v. Hopkins***, 228 A.3d 577, 583 (Pa. Super. 2020) (holding a defendant is bound by the statements he makes in open court while under oath and he cannot later contradict those statements). We find the record wholly supports the PCRA court's decision finding counsel did not render ineffective assistance on this matter.

In his second issue, Thomas claims trial counsel was ineffective in advising him not to take a plea offer because their expert witness, Dr. Laura Waters, was going to testify that Thomas did not cause the injuries to K.B., but instead those injuries were caused during resuscitation efforts. ***See*** Appellant's Brief, at 9-10. Thomas submits that he was unaware that Dr.

Waters was not going to testify at trial when he rejected the plea offer based upon counsel's advice. ***See id.*** at 10.

The Commonwealth points to a letter sent to Thomas from trial counsel on October 23, 2021, that advised him of the plea offer. ***See*** Appellee's Brief, at 30. That letter reminded Thomas of the sentence he would face if convicted of first-degree murder but made no recommendation regarding whether to take the offer. ***See id.*** This letter further indicated that trial counsel was willing to discuss further negotiations with the Commonwealth on Thomas's behalf if he so requested. ***See id.*** at 30-31. Notably, this letter was sent to Thomas after a hearing in which trial counsel requested a continuance, informing the court of Dr. Waters' inability to testify at trial. ***See id.*** at 31-32 (quoting PCRA Court Opinion, 3/17/26, at 17-18). Thomas was present for that hearing. ***See id.*** As such, Thomas's claims are without merit as he was aware when he rejected the plea offer that no expert witness would be testifying on his behalf. ***See id.***

The PCRA court held:

> Regarding [Thomas's] rejection of a plea offer, [Thomas] asserts that trial counsel advised him to reject the offer based on the anticipated testimony of the defense's expert witness, Dr. Laura Waters. PCRA counsel submitted with his supplemental no-merit letters, a copy of the October 23, 2021 letter from trial counsel to [Thomas], confirming [Thomas's] conversations with trial counsel regarding the plea offer. In this letter, trial counsel noted the term of incarceration that was offered and how he and [Thomas] discussed the consequences of being convicted of first-degree murder. Trial counsel also noted that if [Thomas] had any further questions regarding the plea offer, or if [Thomas] wanted trial

> counsel to reengage the District Attorney's office in plea negotiations, [Thomas] should not hesitate to contact him.
>
> Furthermore, based on [the court's] independent review of the record, we observe that there was a hearing for pre-trial motions held on October 21, 2021, where the parties presented arguments regarding, among other things, trial counsel's motion for a continuance due to Dr. Waters no longer being able to testify. [Thomas] was present at this hearing, and therefore, was aware that [the trial court] denied trial counsel's motion for continuance.
>
> Seeing that the letter confirming trial counsel's discussions with [Thomas] about the plea offer was dated subsequent to the hearing for pre-trial motions, the record belies [Thomas's] claim that he rejected the plea offer due to trial counsel allegedly advising [Thomas] to do so in reliance on Dr. Water[s'] anticipated testimony. Instead, the record indicates that [Thomas] rejected the plea offer despite Dr. Water[s] being unavailable to testify at trial. Therefore, the foregoing circumstances render this claim of ineffective assistance of trial counsel to also be without merit, justifying dismissal.

PCRA Court Opinion, 3/17/26, at 17-18 (record citations omitted).

Notably, Thomas does not dispute he received the letter nor does he claim he was not present at the hearing. He merely claims counsel should have told him about Dr. Waters' unavailability sooner, as counsel knew about her unavailability weeks prior to the hearing. ***See*** Appellant's Brief, at 12. We find the record supports the PCRA court's decision finding counsel was not ineffective on this basis. This claim does not entitle Thomas to relief.

Finally, Thomas argues trial counsel was ineffective for failing to object "when the prosecutor suppressed favorable evidence[.]" Appellant's Brief, at 15 (unnecessary capitalization omitted). Although admitting that counsel did object and sought a mistrial, Thomas asserts this was insufficient and counsel

should have argued the Commonwealth violated ***Brady***. ***See id.*** at 17. The evidence Thomas believes violated ***Brady*** was D.B.'s statement that Thomas choked him until he "passed out." ***Id.*** at 15.

The Commonwealth submits that it did not commit any discovery violation nor did it run afoul of ***Brady***. ***See*** Appellee's Brief, at 33-36. The Commonwealth notes that this Court considered a similar claim of an alleged discovery violation during Thomas's direct appeal and submits the PCRA court's decision must be upheld. ***See id.***

The PCRA court stated:

> [The PCRA court] concluded that on its face, this claim is meritless because D.B.'s statement [was] not one that [was] favorable to [Thomas]. Furthermore, though [Thomas] claimed that this was crucial impeachment evidence, he provided no explanation as to how this statement constituted impeachment evidence that would have been favorable to the defense in order to meet the requirements of a ***Brady*** claim.
>
> Instead, this claim appeared to be an attempt to raise an issue that has already been litigated on appeal. The record shows that regardless of the label given to this issue concerning D.B.'s testimony, trial counsel raised such issue with [the trial court] by moving for mistrial; [the trial court] found that such statement did not materially impact the defense's ability to cross-examine the Commonwealth's expert witness on the impact of strangulation, and such statement was within the context of what was described in the materials that were provided to the defense; and the Superior Court adopted [the trial court's] reasoning in its February 21, 2023 decision, affirming [Thomas's judgment of sentence]. Considering the foregoing circumstances, the record indicates that this ineffective assistance of trial counsel claim is patently devoid of merit[.]

PCRA Court Opinion, 3/17/26, at 19-20 (citation omitted). The record supports the PCRA court's determination.

> To succeed on a ***Brady*** claim, a defendant must show that: (1) the evidence at issue was favorable to the accused either because it is exculpatory or because it impeaches; (2) the evidence was suppressed by the prosecution, either willfully or inadvertently; and (3) prejudice ensued. The defendant carries the burden to prove, by reference to the record, that evidence was withheld or suppressed by the prosecution. Additionally, the evidence at issue must have been material evidence that deprived the defendant of a fair trial. Favorable evidence is material, and constitutional error results from its suppression by the government, if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.
>
> The Pennsylvania Supreme Court has further explained that
>
> > ***Brady*** does not require the disclosure of information that is not exculpatory but might merely form the groundwork for possible arguments or defenses, nor does ***Brady*** require the prosecution to disclose every fruitless lead considered during a criminal investigation. The duty to disclose is limited to information in the possession of the government bringing the prosecution, and the duty does extend to exculpatory evidence in the files of police agencies bringing the prosecution. ***Brady*** is not violated when the appellant knew or, with reasonable diligence, could have uncovered the evidence in question, or when the evidence was available to the defense from other sources.

***Sandusky***, 203 A.3d at 1061-62 (quotation marks, citations, and brackets omitted).

Thomas does not explain how the testimony that D.B. passed out while Thomas choked him is favorable to his defense. This evidence is inculpatory and we fail to see how it would qualify as impeachment evidence. Furthermore, as noted by the PCRA court, defense counsel was provided evidence in discovery that Thomas "repeatedly asphyxiated D.B." Affidavit of

Probable Cause, 6/28/19, at 3 (pagination added for ease of reference). Asphyxiation is defined by Meriam-Webster as "deprivation of oxygen that can result in unconsciousness and often death." Merriam-Webster Dictionary, Asphyxiation. Clearly, then, Thomas was provided discovery that included sufficient information that it was highly likely that D.B. "passed out" or lost consciousness during the times Thomas choked him. We therefore find that the PCRA court did not err in denying relief on this claim, as Thomas failed to establish the underlying merit of his claim of a ***Brady*** violation.

Finding no merit to Thomas's claims, we affirm the order dismissing his PCRA petition.

Order affirmed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/25/2026