NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
TAMMY LYNN ROBERTSON	:	
Appellant	:	No. 343 WDA 2026

Appeal from the PCRA Order Entered January 30, 2026
In the Court of Common Pleas of McKean County Criminal Division at No(s): CP-42-CR-0000380-2023

BEFORE: OLSON, J., NICHOLS, J., and FORD ELLIOTT, P.J.E.*

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED: November 6, 2026**

Appellant, Tammy Lynn Robertson, appeals from the order of the Court of Common Pleas of McKean County that dismissed, after an evidentiary hearing, her petition filed under the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541-9546 ("PCRA"). She challenges the PCRA court's denial of her claim alleging ineffective assistance of counsel in connection with her rejection of a guilty plea offer and the PCRA court's credibility determinations made after the evidentiary hearing. Upon review, we affirm.

John Jacobus had been in a relationship with Appellant since about 2021. ***See*** N.T. Trial, 12/16/24, 44-45. Between 5:30 p.m. and 6:00 p.m. on March 3, 2022, Jacobus arrived at Appellant's apartment in the 600 block of North Fraley Street in McKean County. ***See id.*** at 53, 68, 111. Appellant was sitting

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* Retired Senior Judge assigned to the Superior Court.

at her kitchen table, consuming alcoholic beverages (a combination of beer and wine) with Scott Sanders. ***See id.*** at 53-56, 58. Appellant's minor son was present upstairs in the apartment. ***See id.*** at 53-55. Jacobus said something about eating dinner and Appellant said that the dinner was in the oven. ***See id.*** at 55. Jacobus asked Sanders to leave the apartment, and Sanders did so after he "hem[med and] hawed around about that." ***Id.*** at 55, 59. Appellant said that she was not hungry and was not going to eat, and Jacobus proceeded to eat dinner and drink beer with Appellant. ***See id.*** at 55, 57-58. Jacobus sensed "some tension" and that Appellant "was irritated about something" as he sat at the table talking with her. ***Id.*** at 59.

On the kitchen table was a gun, but Jacobus did not see it; he suggested at trial that "there might have been some papers or something on top [of it], like mail and things like that." N.T. Trial, 12/16/24, 60. Sometime between 11:00 p.m. and 11:30 p.m., Jacobus was looking out the kitchen window, faced away from Appellant, when he heard two "click" noises and then, "bam, [he] was on the floor." ***Id.*** at 61. Jacobus had been struck by a gunshot on the left side of his neck and the bullet exited below his right scapula on the other side of his body. ***See id.*** at 62. At that point, he could no longer feel his legs. ***See id.*** at 63. Appellant put a dish towel on top of the wound and applied pressure to it. ***See id.*** at 66, 74. Multiple 911 calls were made with respect to the shooting, including one by Appellant. ***See id.*** at 66, 74.

Paramedics, including James Kenworthy, were dispatched to the scene from a station "nearly across the street" and arrived in less than a minute.

N.T. Trial, 12/16/24, 24. They found Jacobus on the floor in front of the kitchen table on his left side holding himself up with his arms with his legs behind him in an unnatural position. ***See id.*** at 24-26. Appellant was kneeling by him and holding onto his neck. ***See id.*** at 25, 28. Jacobus informed the paramedics that he could not feel his legs. ***See id.*** at 25. After evaluating Jacobus, finding a wound between Jacobus's collarbone and the back part of his neck, and discovering a bullet that fell out of his sweatshirt, the paramedics secured Jacobus to prepare him to be airlifted to a trauma center. ***See id.*** at 29-31, 63.

After arriving by ambulance to a landing zone behind Kane Community Hospital, Jacobus told Paramedic Kenway, "I can't believe she pulled the trigger," and stated that "she had the gun up to his neck" and "she said the gun was[not] loaded, and that he did[not] believe it." N.T. Trial, 12/16/24, 34-35, 40. A paramedic treating Jacobus called the police. ***See id.*** at 34-35.

Patrolman William Nichols of the Kane Borough Police Department responded to the shooting scene at 11:30 p.m. ***See*** N.T. Trial, 12/16/24, 111. Jacobus was still laying on the apartment floor at the time of Patrolman Nichols's arrival. ***See id.*** at 112. Patrolman Nichols recovered the gun, which was loaded "minus one shell." ***Id.*** at 113. At trial, he confirmed that a shell casing was located in the kitchen and that a bullet was found underneath Jacobus when the paramedics rolled Jacobus over. ***See id.*** at 113. He also confirmed at trial that gunshot residue analysis indicated that Appellant "may have recently discharged a firearm [or] was in close proximity to a firearm

when it was discharged or came into contact with [] gun residue [from] another surface object." ***Id.*** at 114.

Jacobus was airlifted to Hamot Medical Center, where he remained for four weeks. ***See*** N.T. Trial, 12/16/24, 64, 117. He was then transferred to Mercy Rehabilitation Hospital in Pittsburgh for four more weeks of treatment. ***See id.*** at 64. Approximately two weeks after Jacobus was discharged from Mercy, Appellant started coming to Jacobus's home to render care to him. ***See id.*** at 65, 74. During a police welfare check on May 27, 2022, Jacobus referenced the fact that he had Appellant at his home on the preceding day. ***See id.*** at 81-82. At trial, Jacobus testified that Appellant had given the impression that "she was concerned [about him] at the beginning, but it fizzled out real fast." ***Id.*** at 82. In another interaction with the police, Jacobus said that Appellant "had been a very big help and had been taking care" of him and that Appellant "genuinely cared about [him] and felt horrible about the [shooting] incident." ***Id.*** at 87-88. As a result of the shooting, Jacobus was partially paralyzed with no sensory feeling or motor function below his chest. ***See*** N.T. Trial, 12/16/24, 52.

On March 4, 2022, Patrolman Nichols conducted a voluntary interview of Appellant that was audio and video recorded. ***See*** N.T. Trial, 12/16/24, 116. Appellant described for the patrolman her alleged acts of "picking up the gun to take it upstairs [and] going to make sure that it was empty, and then it discharging." ***Id.*** at 126. In a follow-up interview, Appellant described "pulling the slide [of the gun] back to make sure there was not a round [in it],

[it] slipping, and the gun discharging." ***Id.*** at 127, 131. She also indicated that she thought the gun was pointed at the wall when it discharged. ***See id.*** at 131-33. Patrolman Nichols also spoke with Jacobus on three occasions: "right after the incident," at Hamot Medical Center, and finally on September 28, 2022. N.T. Trial, 12/16/24, 117, 133. Jacobus indicated in the September interview that there was no reason "for him to suggest that the incident was anything but an accident." ***Id.*** at 136. He also said that, "if [Appellant] did something wrong, she should be punished for it." ***Id.*** at 141. On May 24, 2023, Patrolman Nichols filed charges against Appellant. ***See id.*** at 119.

An expert firearm and tool mark examiner, Corporal Dale Wymer of the Pennsylvania State Police, determined that the recovered gun was a nine-millimeter-caliber Ruger semi-automatic pistol, it had a total capacity for holding seven rounds of ammunition, and six rounds were found in it. ***See*** N.T. Trial, 12/16/24, 154. He also determined that the recovered gun required an approximate weight of 5.1 pounds of force on the trigger to cause it to discharge, and that it would not discharge during a shock and drop examination. ***See id.*** at 161-63, 170. At trial, he opined that the gun would not discharge "simply [by] rack[ing it]," and that its trigger had "to be pulled in order to cause" it to discharge. ***Id.*** at 163-64.

On May 2, 2024, the trial court explained Appellant's right to proceed with a guilty plea. ***See*** "Last Day to Plea" Hearing, 5/2/24, 2-5. Appellant acknowledged her rejection of an offer for a guilty plea to recklessly endangering another person ("REAP") as a misdemeanor of the second

degree, with the application of a sentencing weapon enhancement, in exchange for a sentencing recommendation of six to fifteen months' imprisonment. ***See id.***

On December 16-17, 2024, Appellant proceeded to be tried by a jury. The Commonwealth presented testimony from four witnesses: Jacobus, Paramedic Kenway, Patrolman Nichols, and Corporal Wymer. Among its exhibits, it presented a 911-call recording and a recording of Appellant's March 4, 2022 police interview. ***See*** N.T. Trial, 12/16/24, 20-22; N.T. Trial, 12/17/24, 3-8. Appellant declined to present any testimony or evidence. ***See*** N.T. Trial, 12/17/24, 11-12. The jury found Appellant guilty of REAP.[1] ***See id.*** at 53. In a bifurcated proceeding, the trial court found Appellant guilty of a summary offense for violating a local ordinance involving the discharge of a firearm.[2] ***See id.*** at 54.

On April 8, 2025, the trial court sentenced Appellant to ten to twenty-four months' imprisonment for REAP, with a $100.00 fine for the local ordinance offense and the imposition of an order for restitution in the amount of $7,244.69. ***See*** Order (sentencing), 4/8/25, 1-2; Order (fines and court costs), 4/8/25, 1; Order (restitution), 3/24/25, 1; N.T. Sentencing Hearing, 4/8/25, 15. Appellant timely filed a post-sentence motion for reconsideration

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[1] 18 Pa.C.S. § 2705.

[2] Kane Borough Code § 134-1 ("Except in necessary defense of person and property, and except as provided in § 134-6 of this chapter, it shall be unlawful, within the Borough of Kane, for any person to use, fire or discharge any gun or other firearm."), available at https://ecode360.com/7109075.

of her sentence, which the trial court denied on April 17, 2025. ***See*** Post-Sentence Motion, 4/16/25, 1-2; Order (denial of post-sentence motion), 4/17/25, 1. Appellant did not file a direct appeal.

On August 14, 2025, Appellant timely filed a *pro se* PCRA petition. ***See*** *Pro Se* PCRA Petition, 8/14/25, 1-9. The PCRA court appointed present counsel, who filed a counseled amended PCRA petition. ***See*** Order (counsel appointment), 4/27/25, 1-2; Amended PCRA Petition, 12/1/25, 1-32.

In the counseled petition, Appellant asserted that her trial counsel caused her to reject a plea offer of "'6 to 7 months' incarceration in the county jail" by "improperly advis[ing] her regarding her sentence exposure, leading her to believe that, even if she was convicted at trial, she could not receive more time than that which had been offered by the prosecution" and thus "she had 'nothing to lose' in rejecting the offer and taking the case to trial." Amended PCRA Petition, 12/1/25, 1-2, 15. She alleged that, if not for that "improper advice, there is a reasonable probability that she would have accepted the plea as initially offered and it would have been presented to and accepted by [the trial c]ourt." ***Id.*** at 2. She alleged that this initial offer was made sometime between March 14, 2024, and May 1, 2024, and was replaced with the offer rejected in court on May 2, 2024, and she was "still not advised of her full exposure" (*i.e.*, she faced a potential maximum imprisonment term of two years for a misdemeanor of the second degree charge) at the time of the in-court rejection of the plea offer. ***See id.*** at 15 & n.5. Accordingly, she challenged the effectiveness of her trial counsel in connection with the

rejection of the alleged "6 to 7 months" plea offer and requested an evidentiary hearing. ***See id.*** at 2-3, 13-30. She attached to her amended petition signed witness certifications from trial counsel and her husband. ***See*** Intended Witness Certification (Trial Counsel), 11/25/25, 1-2; Intended Witness Certification (Husband), 11/25/25, 1-2.

The Commonwealth filed an answer to the petition, conceding the need for an evidentiary hearing. ***See*** Commonwealth's Answer, 12/30/25, 3. The PCRA court scheduled a hearing for January 30, 2026, and granted an unopposed motion to permit trial counsel to testify by two-way video conferencing. ***See*** Commonwealth Motion to Allow Witness to Appear by Video, 1/26/26, 1-2; Order (granting motion to allow witness to appear by video and scheduling hearing), 1/27/26, 1. At the evidentiary hearing, the PCRA court heard testimony from trial counsel, Appellant, and Appellant's husband (Scott Sanders).

Trial counsel testified that the offer made by the Commonwealth was for "six to fifteen months of incarceration" for a guilty plea to REAP as a misdemeanor of the second degree. N.T. PCRA Hearing, 1/30/26, 6. When asked to clarify whether that meant an agreement for a "six to seven months" sentence or a "six to fifteen months" sentence, the court interjected that the former term would be an illegal sentence because the maximum term would at least need to be double the minimum term. ***Id.*** at 8. Trial counsel agreed with the court and stated that the "six to seven standard range" term would only reflect the minimum portion of the incarceration sentence. ***Id.*** at 9. He

noted that that term was not communicated to Appellant as the maximum term she faced and that was explained to Appellant "several times." ***Id.*** at 9. He testified that he told Appellant that the standard range was "six to seven" months, the agreement was for "six to fifteen months," that the aggravated and mitigated ranges "would be plus or minus three months to the standard range," and the maximum possible sentence for a misdemeanor of the second degree was two years' imprisonment. ***Id.*** at 9-10. He noted, "[W]e had this conversation many times," including during in-person discussions and "some over the phone." ***Id.*** at 10. He also recalled that he told Appellant that the guidelines were not mandatory upon the sentencing court. ***See id.*** at 12. When asked whether he told Appellant "if she … went to trial [] she was facing prison time," trial counsel answered, "Certainly." ***Id.*** at 12.

On cross-examination, trial counsel testified that Appellant "several times rejected any plea offer that included an agreed[-]upon jail sentence[.]" N.T. PCRA Hearing, 1/30/26, 15. He elaborated that Appellant "made clear to [him] several times that she would not accept any offer that included an agreement to a jail sentence, and so [he] did not request that the plea offer be reduced to a formal written plea agreement." ***Id.*** at 15; ***see also id.*** at 17 ("She was not willing to accept an offer that included a sentence of incarceration."). Counsel agreed that Appellant "made an informed decision when rejecting the Commonwealth's plea offer." ***Id.*** at 15. The court asked trial counsel if he ever made statements to Appellant "that she should go to trial because she likely would[not] get a sentence greater than what was

offered in the plea agreement," and counsel responded, "No," explaining that "[t]here was no promise or guarantee … regarding the outcome of the trial or … what the sentence might be upon conviction." ***Id.*** at 16. He also testified that he told Appellant that the plea agreement was no longer available after the "Last Day to Plea" hearing (which occurred on May 2, 2024). ***See id.*** at 17.

On redirect examination, trial counsel explained that he advised Appellant that, if she was convicted at trial, they "could ask for a sentence that did not include incarceration," but that he "certainly did not promise her that a sentence that did not include incarceration would be imposed." N.T. PCRA Hearing, 1/30/26, 18. He also testified that he did not give her advice or an indication that he believed one outcome was more likely than another at sentencing, explaining that he does not "engage in predicting the likelihood of … outcomes," Appellant "was aware of the potential range of outcomes," and she "chose to reject the plea offer and proceed to trial." ***Id.*** at 19. He again confirmed that Appellant repeated "several times over several months that she would not be pleading to anything that included incarceration," pointing out that her stated reason for that was "mostly the care of her son." ***Id.*** at 19.

Appellant testified that "the District Attorney threw out the offer for six to seven months['] jail time" but that trial counsel told her "not to accept it yet, [be]cause he was go[ing] to try to get [her] out of it." N.T. PCRA Hearing, 1/30/26, 22. She asserted that trial counsel never told her that she "could

receive more time" if she did not accept that plea offer, or that she "could go to prison if [she] did not accept" the plea offer. ***Id.*** at 22. She denied that trial counsel ever told her that she could receive a sentence as long as two years' imprisonment if she did not accept the plea offer. ***See id.*** at 22-23. As for whether trial counsel told her about an expiration date for the Commonwealth's offer, Appellant testified, "He told me a date that it would expire but then it kept getting continued[,] so [she] didn't know when it expired after that." ***Id.*** at 23. She testified that she only learned about the expiration of the plea offer when she texted him that she "wanted to take the plea deal because [the Commonwealth] refused house arrest, and [trial counsel] ended up calling [her] right as soon as [she] sent the text and he said that the plea deal was no longer on the table." ***Id.*** at 23-24. She confirmed that no plea offer was put in writing for her. ***See id.*** at 24. She testified that her decision not to take the Commonwealth's offer was based on trial counsel telling her that she "would[not] get any longer than the time[in the] plea deal, the six to seven months," and that she "had nothing to lose so [she] might as well take it to trial." ***Id.*** at 24. She claimed that she would have taken the plea offer "[e]ven if [trial counsel] had advised [her] that he believed [that she was] going to be successful at trial." ***Id.*** at 25.

On cross-examination, Appellant agreed that she appeared in court for the "Last Day to Plea" hearing and, "at that point[, she] advised the [c]ourt that [she] wished to reject the plea deal from the Commonwealth[.]" N.T. PCRA Hearing, 1/30/26, 26. When the Commonwealth asked her if her alleged

text message to trial counsel "saying that [she] wanted to accept the plea offer" was before or after the "Last Day to Plea" hearing, she testified, "I don't know. [Be]cause I d[id not] know when the Last Day to Plea [hearing] was." ***Id.*** at 27. After the prosecutor asked her to recall appearing in court for the "Last Day to Plea" hearing, Appellant testified that her text message to trial counsel "was before [she] ever went to a hearing." ***Id.*** at 27. She agreed that she had sent the text message to trial counsel stating that she wished to accept the plea offer but that she then advised the court at the "Last Day to Plea" hearing that she wished to reject the plea offer and have the case listed for trial. ***Id.*** at 27.

On redirect examination, when Appellant was asked about the offer that she rejected at the "Last Day to Plea" hearing, she testified, "The six or seven month [offer] was expired. That's the one I wanted to accept. When I went to the hearing[,] it was six to fifteen months[.] I rejected [it]." N.T. PCRA Hearing, 1/30/26, 28. She claimed that she had not heard about that "six to fifteen months" offer prior to that hearing and that trial counsel "never told [her] that there was a six[-]to[-]fifteen[-]month offer." ***Id.*** at 28.

Appellant's husband, who married her in August 2024, testified that he "would listen when [trial counsel] would call and [Appellant and trial counsel would] have conversations." N.T. PCRA Hearing, 1/30/26, 31. As a result, he "was aware, pretty much, of all their conversations." ***Id.*** at 31. He testified that, during these conversations, there was discussion of a plea agreement that was for "six to seven months." ***Id.*** at 31. He testified that trial counsel

"did not say [that] she[would] get any more time by going to trial." ***Id.*** at 31. He testified that he did not recall trial counsel telling Appellant that she could receive up to two years of imprisonment if she was convicted or that she could go to prison if convicted. ***See id.*** at 31-32. He testified that Appellant's reason for rejecting the plea offer was because trial counsel "advised her to take it to trial because she had nothing to lose. She would[not] gain any more time than the six to seven months and [she] had a decent chance of winning." ***Id.*** at 32. He agreed that Appellant's choice not to take the plea offer "was based on her attorney's advice." ***Id.*** at 32. He denied that Appellant told him that she was unwilling to take a plea offer if she had to go to jail or that he heard her say that to trial counsel. ***See id.*** at 32.

Appellant's husband testified that there was one point when Appellant wanted to accept a plea offer. ***See*** N.T. PCRA Hearing, 1/30/26, 34. When he was asked to elaborate on those circumstances, he testified, "When she wanted to accept the plea to the six to seven months[,] she was advised not to take it[] because [trial counsel] recommended [her] to take it to trial because [she was not going to] gain any time and [] could possibly win" and thus would not "go to prison or jail at all." ***Id.*** at 36. He alleged that, when Appellant expressed that she wanted to accept the plea offer, trial counsel "phone called her directly back and said it was[not] on the table." ***Id.*** at 36.

After hearing the arguments of counsel, the PCRA court denied Appellant's ineffective assistance claim. The court noted, *inter alia*, that the testimony that trial counsel would say, "Oh[,] do[not] worry if you go to trial

… you're likely not [going to] be convicted and you w[ould not] face anything more," was incredible. N.T. PCRA Hearing, 1/30/26, 41. The judge elaborated that Appellant's version of trial counsel's advice to her did not "make sense," and made a credibility finding in favor of trial counsel's testimony, as follows:

> [T]hat's absurd in that someone would think that the [j]udge does[not] do anything. That the [j]udge does[not] sit up there to decide what the sentence would be. [I]t just doesn't make any sense. It does[not] make sense that even a brand[-]new attorney would do that. It does[not], it certainly does[not] make sense that someone with experience, [who had] worked in the [District Attorney's] Office, would indicate that. [Trial counsel] indicated he did[not] say that. [F]rom a practical matter, [it is] just extreme basic knowledge that the [j]udge sets the sentence[.] [T]o say well[,]I was[not] worried … I knew the Judge would[not] give me more. That just does[not] make any sense. [J]udge[s] are unpredictable sometimes and if you go to trial and you do[not] know. Could it be the [j]ury found the [d]efendant not guilty? Of course[,] it could[have] been. [B]ut to say, well, if I[am] found guilty[,] I know what the [j]udge will do, that doesn't make sense. … I accept [trial counsel's] testimony that … he did[not] say that[, t]hat he did[not] indicate, well, you[are] not taking the plea, … you[are] go[ing] to go to trial.

Id. at 41-42. The court found that Appellant "knowingly and voluntarily rejected" the plea offer at the "Last Day to Plea" hearing, "as reflected in the transcript" for that hearing. ***Id.*** at 42. The court also took judicial notice that it was "standard practice from the [District Attorney's] Office" that plea offers "are only open" until the "Last Day to Plea" hearing. ***Id.*** at 42. The court noted that it did not find credible "the testimony … that [Appellant] was misled or misunderstood, [or] that she thought" that she would not "get any more than what was in the plea offer." ***Id.*** at 42.

The PCRA court issued its order dismissing the PCRA petition on the same day as the evidentiary hearing. ***See*** Order (dismissing PCRA petition), 1/30/26, 1. Appellant timely filed a notice of appeal. ***See*** Notice of Appeal, 2/27/26, 1. Appellant and the PCRA court thereafter satisfied their obligations under Pennsylvania Rule of Appellate Procedure 1925. ***See*** Order (Rule 1925), 3/2/26, 1; Rule 1925(b) Statement, 3/20/26, 1-3; PCRA Court Opinion, 3/24/26, 1-8.

Appellant presents the following questions for our review:

> 1. Whether the PCRA court erred as a matter of law in concluding that Appellant's pre-trial statements that her rejection of the Commonwealth's plea offer was voluntary, knowing, and made after consultation with her attorney thereafter precluded her from bringing a claim that her attorney was ineffective in advising her regarding such plea, causing such rejection?
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> 2. Whether the PCRA [c]ourt's credibility determinations as to Appellant and trial counsel … were contradicted by the record, requiring [that] they [should] be overturned?

Appellant's Brief, 4 (suggested answers omitted).

The PCRA court's denial of Appellant's ineffectiveness claim addressing her failure to accept a guilty plea offer was two-fold. The court first concluded that the claim lacked arguable merit because the combination of trial counsel's testimony, which the court found to be credible, and the colloquy the trial court conducted at the "Last Day to Plea" hearing demonstrated that Appellant made a fully informed decision to reject the Commonwealth's plea offer:

> [W]e found [trial counsel's] testimony to be straightforward and credible. He testified that he advised [Appellant] of the maximum

> penalty of two years[’] incarceration, that he discussed the guideline ranges with [Appellant], [and] that he discussed the case and evidence and the plea offer with [Appellant] numerous times. He explained that, because [Appellant] had a minor child, she repeatedly indicated to him that she would not accept any plea that required any period of incarceration. [Trial counsel] has practiced criminal law since 2017 and he, as "a rule of thumb," never makes promises to a defendant on the outcome at trial or the sentence that the court will impose. [Trial counsel's] testimony demonstrates that [Appellant] was fully aware of the plea offer, she rejected it because she was unwilling to accept any plea offer that included any jail time, and[] this was her position up until the jury issued their guilty verdict.
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> Even without the court's colloquy to [Appellant] at the May 2, 2024 ["Last Day to Plea" hearing], we would find that [Appellant] was fully aware of the plea offer and knowingly and voluntarily rejected it. However, the colloquy resolves any doubt. During the court's colloquy of [Appellant,] she agreed that she was advised of the plea offer of 6-15 months, that she had enough time to discuss it and her options with her attorney[,] and she was knowingly and voluntarily rejecting it. It makes no sense that she would have texted her attorney before her ["Last Day to Plea" hearing] that she wanted to accept the plea offer and then appeared before the court and advised the court on [the] last day to [enter a guilty] plea that she did[not] want to [enter a guilty plea] and had had enough time to think about it. What makes more sense, and what [the court] find[s] is that, as [trial counsel] testified, [Appellant] was unwilling[,] under any circumstances[,] to accept a plea that called for any period of incarceration.
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> In the current case[,] we find that [trial counsel] did provide [Appellant] with competent advice regarding the plea offer.

PCRA Court Opinion, 3/24/26, 6-7. In the alternative, the PCRA court concluded that Appellant could not prevail on her ineffectiveness claim because she could not prove prejudice for the claim where the court accepted,

as credible, trial counsel's testimony that Appellant refused to accept any plea offer that entailed the imposition of an imprisonment sentence. ***See id.*** at 7.

In her first issue for our review, Appellant asserts that the PCRA court made an error of law by concluding that her statements during the colloquy at the "Last Day to Plea" hearing precluded her from challenging the effectiveness of her trial counsel in connection with her rejection of a plea offer. ***See*** Appellant's Brief, 16-25. In her second issue, she argues that we should overturn the credibility determinations of the PCRA court. ***See*** Appellant's Brief, 25-41. After addressing our standard of review and the controlling law applicable to consideration of Appellant's ineffective assistance of counsel claim, we will address Appellant's issues and the arguments she makes in support of them in the order in which they are raised.

Our "standard of review regarding an order denying a petition under the PCRA is whether the determination of the PCRA court is supported by the evidence of record and is free of legal error." ***Commonwealth v. Davis***, 86 A.3d 883, 887 (Pa. Super. 2014). "The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record." ***Id.*** Our scope of review is limited to the findings of the PCRA court and the evidence of record, viewed in the light most favorable to the party who prevailed before the PCRA court. ***See Commonwealth v. Hanible***, 30 A.3d 426, 438 (Pa. 2011). "We apply a *de novo* standard of review to the PCRA court's legal conclusions." ***Commonwealth v. Davis***, 326 A.3d 988, 992 (Pa. Super. 2024) (citation omitted). "Appellant has the burden to persuade this

Court that the PCRA court erred and that such error requires relief." ***Commonwealth v. Wholaver***, 177 A.3d 136, 144-45 (Pa. 2018) (internal citations omitted).

A defendant is entitled to competent advice of counsel concerning the consideration of plea offers. ***See Lafler v. Cooper***, 566 U.S. 156, 162 (2012) ("Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process."). When reviewing a claim of ineffective assistance of counsel, "[c]ounsel is presumed effective, and [the PCRA petitioner] bears the burden of proving otherwise." ***Commonwealth v. Fears***, 86 A.3d 795, 804 (Pa. 2014) (citation omitted). To prevail on an ineffectiveness claim, the PCRA petitioner must establish that:

> (1) the underlying claim has arguable merit; (2) no reasonable basis existed for counsel's actions or failure to act; and (3) [the PCRA petitioner] suffered prejudice as a result of counsel's error such that there is a reasonable probability that the result of the proceeding would have been different absent such error.

Id. (citations omitted). The "[f]ailure to prove any prong of this test will defeat an ineffectiveness claim," and "counsel cannot be deemed ineffective for failing to raise a meritless claim." ***Id.***

Moreover, a PCRA petitioner seeking relief on the basis that ineffective assistance of counsel caused the petitioner to reject a guilty plea must demonstrate the following circumstance:

> [B]ut for the ineffective advice of counsel[,] there is a reasonable probability that the plea offer would have been presented to the court (*i.e.*, that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening

> circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed.

Lafler, 566 U.S. at 164. This prejudice analysis is not considered under an "objective reasonable person standard. Instead, reviewing courts are to look to the specific facts and circumstances of the defendant." ***Commonwealth v. Rizor***, 304 A.3d 1034, 1059 (Pa. 2023) (citing ***Lafler***, 556 U.S. at 164) (footnote omitted).

"[C]ounsel has a duty to communicate plea bargains to his client, as well as to explain the advantages and disadvantages of the offer." ***Commonwealth v. Marinez***, 777 A.2d 1121, 1124 (Pa. Super. 2001). "Failure to do so may be considered ineffectiveness of counsel if the defendant is sentenced to a longer prison term than the term [s]he would have accepted under the plea bargain." ***Id.***

Appellant first claims that the PCRA court erred by "concluding that [her] pre-trial statements" in her colloquy at the "Last Day to Plea" hearing "precluded her from challenging her counsel's effectiveness in the plea-bargaining process." Appellant's Brief, 16-25 (unnecessary capitalization omitted). She addresses the PCRA court's review of the "Last Day to Plea" hearing transcript at the PCRA evidentiary hearing, and offers an edited block quote of the PCRA court's ruling at the evidentiary hearing to suggest that the PCRA court rested its review of her claim on the content of the "Last Day to Plea" colloquy:

> [T]hat's what was in court on Last Day to Plea. … [T]he Plea Agreement was read into the record. She was asked[,] have you had enough time to discuss that and your options with your attorney. She said yes. She could have had more time to talk to him then. She didn't ask for it. She said she was knowingly and voluntarily rejecting the Plea. That in and of itself is enough to deny the Motion for PCRA Relief. I would have to find that she lied to the Court on that day. That when I said, "do you need more time? Are you knowingly and voluntarily rejecting it?", that that was inaccurate. …[T]hat's enough basis to reject the assertions.

Appellant's Brief, 17 (quoting N.T. PCRA Hearing, 1/30/26, 40-41) (bracketed content and ellipses added by Appellant). She then argues that the existence of that colloquy reflecting the rejection of a plea offer does not preclude the consideration of an ineffective assistance claim that alleges that the rejection of the plea offer was based on improper advice from counsel. ***See*** Appellant's Brief, 18-25.

After our review, we conclude that, if the PCRA court rested its denial of Appellant's ineffective assistance of counsel claim only on the content of the colloquy at the "Last Day to Plea" hearing, we would agree that Appellant's claim was erroneously rejected because the colloquy did not address the substance of counsel's advice to Appellant. Instead, the colloquy only focused on whether Appellant had "enough time" to consider the "plea offer and [her] options" and whether Appellant believed that she was "knowingly and voluntarily" rejecting the offer presented. N.T. "Last Day to Plea" Hearing, 5/2/24, 4-5. The PCRA court's reasons for denying Appellant's ineffectiveness claim, however, were not based solely on the content of that colloquy.

In its proper context, the unedited quote that was conspicuously tailored by Appellant demonstrates that the PCRA court's denial was also based on the court's finding that Appellant's testimony about the substance of trial counsel's advice concerning the plea offer was incredible: "**Now, the second part of it,** that's enough basis to reject the assertions, **but even if it wasn't, I find that the testimony is incredible…**" N.T. PCRA Hearing, 1/30/26, 41 (bold portions omitted in Appellant's block quote). Additionally, the PCRA court's Rule 1925(a) opinion explicitly makes clear that the claim was denied because the court credited trial counsel's testimony reflecting that he properly advised Appellant in connection with her rejection of the Commonwealth's plea offer and, as a result, Appellant's rejection of the offer was knowing and voluntary. ***See*** PCRA Court Opinion, 3/24/26, 6 ("In contrast, we found [trial counsel's] testimony to be straightforward and credible. … [Trial counsel's] testimony demonstrates that [Appellant] was fully aware of the plea offer … [and] we would find that [Appellant] was fully aware of the plea offer and knowingly and voluntarily rejected it."); ***id.*** at 7 ("In the current case[,] we find that [trial counsel] did provide [Appellant] with competent advice regarding the plea offer.").

Here, the PCRA court properly denied Appellant's ineffective assistance of counsel claim because the testimony of trial counsel, which the PCRA court credited, revealed that counsel adequately advised Appellant by providing her with sufficient information to allow her to make an informed decision about whether she wanted to reject the Commonwealth's plea offer at the "Last Day

to Plea" hearing. Trial counsel testified that he informed Appellant of: her overall sentencing exposure, which in this case was two years' imprisonment; the possibility that she would be "facing prison time" if she unsuccessfully proceeded to trial; the trial court's general policy of not accepting a plea after the "Last Day to Plea" hearing; the nature of the evidence that would be presented against her at trial; and "the potential range of outcomes." ***See*** N.T. PCRA Hearing, 1/30/26, 9-12, 14-15, 17, 19-20. Moreover, trial counsel's testimony made clear that trial counsel did not make any promises of any particular trial or sentencing outcome that could have improperly induced Appellant to reject the Commonwealth's offer. ***See id.*** at 16 ("There was no promise or guarantee, number one, regarding the outcome of the trial or, number two, what the sentence might be upon conviction."); ***id.*** at 18 ("I certainly did not promise her that a sentence that did not include incarceration would be imposed.").

On this record, we cannot agree with Appellant that the PCRA court foreclosed her from review of her ineffectiveness claim based on the limited colloquy at the "Last Day to Plea" hearing. Because the record establishes that PCRA court denied Appellant's ineffectiveness claim based on her failure to demonstrate either arguable merit or prejudice, we deny as meritless Appellant's instant assertion that the PCRA court improperly denied her review of her ineffectiveness claim solely on the basis of the plea offer colloquy. ***See Commonwealth v. Irwin***, 2020 WL 1951688, *4 (Pa. Super. 2020) (non-precedential decision cited for persuasive value pursuant to Pa.R.A.P.

126(b)(2)) (affirming PCRA court's denial of relief where PCRA court credited trial counsel's testimony that he thoroughly advised his client regarding the circumstances of a plea offer and likelihood of success at trial and that client's mind was "pretty made up as to trial").

In her second issue, Appellant asserts that we should overturn the credibility determinations of the PCRA court because they supposedly lack support in the record. ***See*** Appellant's Brief, 25-41. After summarizing the court's credibility determinations that can be gleaned from the PCRA hearing transcript and the PCRA court's Rule 1925(a) opinion and the legal standard applicable to credibility assessments by a PCRA court, ***id.*** at 25-32, Appellant argues that: (1) "there [was] no testimony … that Appellant either claimed to have known what her sentence would be if convicted or that she had any misunderstanding that [the trial court] would be the one selecting that sentence" and, instead, she "only averred that she was unaware that the[] possible punishments *exceeded* the 6 to 15 months offered as part of the plea deal, or that she could receive as much as two years' imprisonment," ***id.*** at 33-34; (2) "there was no testimony to Appellant having any specialized legal knowledge or even any prior experience with the criminal justice system" and, on that basis, "the record … lacks support for the PCRA [c]ourt's conclusion that … [she] necessarily must have known that it was possible [that] she could receive a greater sentence than that offered under her rejected plea bargain, regardless of what her lawyer told her," ***id.*** at 35-36; (3) trial counsel's testimony demonstrated that he "unquestionably misinformed Appellant

regarding the *low* end of her sentencing exposure," *i.e.*, that he incorrectly advised her there was an applicable mitigated range recommended by the Sentencing Guidelines, ***see id.*** at 36-37; (4) the colloquy at the "Last Day to Plea" hearing did not reflect her awareness of the maximum sentencing exposure, ***see id.*** at 38-39; (5) there was "nothing in the record" to suggest that Appellant understood "the impact the length of a sentence would have upon the location of a term of incarceration," *i.e.*, that a term with a maximum period of less than twenty-four months would be served in county confinement while a maximum term of twenty-four months imprisonment would be served in state confinement, ***id.*** at 39-40; and (6) the PCRA court's rejection of her testimony alleging that she sent a text message to her attorney before the "Last Day to Plea" hearing concerning her supposed intention to accept a plea offer was not supported where "there was never any testimony … that [she] wanted to accept the offer once she learned that it called for 6 to 15 months rather than '6 to 7 months' as she believed," ***id.*** at 40-41. Upon reviewing these arguments, we find no basis to upset the PCRA court's credibility determinations.

"Where the PCRA court's determination of credibility is supported by the record, we will not disturb it on appeal." ***Marinez***, 777 A.2d at 1124. "[U]nless those determinations are not supported by the record," we are "bound by the court's credibility determinations." ***Rizor***, 304 A.3d at 1058. "The credibility determinations are to be provided great deference, and indeed, they are one of the primary reasons PCRA hearings are held in the

first place." ***Id.*** (internal quotation marks, brackets, and citations omitted). "Given that the PCRA court, as fact-finder, has the opportunity to listen to witnesses, 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." ***Id.*** (internal quotation marks and citation omitted).

Appellant's first, second, and fourth arguments in support of the instant claim are premised on a lack of record support showing that Appellant rejected the Commonwealth's plea offer with an understanding of both her maximum sentencing exposure, which entailed an exposure of up to twenty-four months' imprisonment, and that, after rejection of the plea offer, she could have received a sentence with more imprisonment than the six-to-fifteen-month offer included. Appellant's focus in these arguments is what *she* averred in her testimony rather than what trial counsel asserted in *his* testimony. ***See*** Appellant's Brief, 34 ("Appellant only ever averred that…"); ***see also id.*** at 38 ("but rather Appellant averred that…"). Our review from the denial of a PCRA petition, however, is conducted "in the light most favorable to the prevailing party, in this instance, the Commonwealth." ***Rizor***, 304 A.3d at 1058. Trial counsel's testimony, on the other hand, clearly established that Appellant rejected the Commonwealth's plea offer with an understanding of both her maximum sentencing exposure and that she faced the possibility of more imprisonment than what was included in the Commonwealth's offer. ***See*** N.T. PCRA Hearing, 1/30/26, 9-10 ("I told her that the maximum on the

misdemeanor of the second degree, as with any misdemeanor of the second degree, would be two years. [W]e had this conversation many times."); ***id.*** at 16 ("[W]e discussed several times the ranges that would apply, the maximum sentence tiers on the misdemeanor of the second degree, and that sentencing always ultimately was within Your Honor's discretion."); ***id.*** at 19 ("[Appellant] was aware of the potential range of outcomes."). Based on the record support from trial counsel's testimony, Appellant's first, second, and fourth arguments fail to state any basis for us to reject the PCRA court's credibility determinations.

Appellant's third argument proposes that we should overturn the PCRA court's credibility determinations on the basis that counsel offered incorrect advice as to an applicable mitigated range for the REAP charge that was recommended by the Sentencing Guidelines. She reasons that any incorrect advice as to "the *low* end of her sentencing exposure" undermined the credibility of trial counsel's testimony about his advice as to "the *upper* sentencing ranges applicable to her case." Appellant's Brief, 37 (emphasis in original). She points out that trial counsel's testimony included reference to the fact that counsel referred her to a mitigated sentence range of "minus" three months, ***See id.*** at 11 (N.T. PCRA Hearing, 1/30/26, 11 ("I reviewed a noted plus and minus three aggravated and mitigated range")), but concludes that "there was *no mitigated range*" because her standard guideline range was six to seven months and 204 Pa. Code § 303.13(b)(6) (7th ed., amend. 6) provides, "In no case where an enhancement is applied may the mitigated

sentence recommendation be lower than the duration of the enhancement of the standard range described in § 303.10," which itself would be six months. ***See*** Appellant's Brief, 37 (emphasis in original). She thus concludes that counsel erroneously advised her by referring to a mitigated range where the Sentencing Guidelines did not contemplate the existence of mitigated range below the applicable standard range, given the application of a weapon enhancement in this case, and suggests that incorrect advice should have compelled the PCRA court to find trial counsel's testimony about the advice on the full sentencing exposure to be incredible.

We find this argument is unpersuasive. First, the primary focus of Appellant's ineffectiveness claim was whether counsel advised her that she could be sentenced beyond a term included in the Commonwealth's plea offer and up to the twenty-four-month maximum. Whether counsel accurately characterized the mitigated range was not a material concern with respect to the claim raised. Appellant never testified that her decision to reject the plea offer was based on her belief that a mitigated-range term existed. Second, Appellant cites no law to suggest that a failure to be notified of the entire applicable Sentencing Guideline range would have implicated the voluntariness of her guilty plea decision. Under our binding precedent, Appellant needed to be aware of her maximum exposure to knowingly accept or reject the Commonwealth's offer. ***See Commonwealth v. Fowler***, 893 A.2d 758, 765 (Pa. Super. 2006) ("[T]here is no legal requirement that a defendant be aware of the guideline ranges in order to enter a valid guilty

plea. A defendant must be informed of the statutory maximum[.]"); ***see also Commonwealth v. Persinger***, 615 A.2d 1305, 1308 (Pa. 1992) ("In order to understand the consequences of his plea, it is clear that a defendant must be informed of the *maximum* punishment that might be imposed for his conduct.") (emphasis in original). Even assuming *arguendo* that counsel misinformed Appellant about the possibility of a mitigated range recommended by the Sentencing Guidelines, that incorrect advice would have no bearing on the voluntariness of her decision to enter or reject a guilty plea where the record made clear that she was correctly advised on the necessary information, *inter alia*, her maximum sentencing exposure.

In her fifth argument, Appellants points out the PCRA court's statement and question from its Rule 1925(a) opinion that, "[Trial counsel] didn't tell her that she could go to prison if she did not accept the plea," and "[H]ow could she not know that she would face prison if convicted?," and notes, however, that the plea offer only entailed county jail time as opposed to imprisonment in state prison. Appellant's Brief, 39-40 (quoting PCRA Court Opinion, 3/24/26, 5-6). She then asserts "there is once again nothing in the record which demonstrates that Appellant had some sort of specialized legal knowledge, beyond what her lawyer told her, that would allow her to understand the impact the length of a sentence would have upon the location of a term of incarceration." Appellant's Brief, 40. Appellant did not testify that she based her decision to reject the plea on the belief that she would serve any imprisonment term in county jail rather than a state correctional

institution. We thus fail to see any logical connection between counsel's alleged lack of advice and her rejection of the plea. We also fail to see how this argument should persuade us to reject the PCRA court's credibility determinations.

The PCRA court's discussion that Appellant quotes appears to be addressing Appellant's testimony at the evidentiary hearing that her decision not to take the Commonwealth's offer was based on her allegation that trial counsel told her that she "would[not] get any longer than the time[in the] plea deal, the six to seven months," and that she "had nothing to lose so [she] might as well take it to trial." N.T. PCRA Hearing, 1/30/26, 24. It was reasonable for the PCRA court to reject Appellant's testimony to that effect because trial counsel's testimony confirmed that he explained to her that her maximum sentencing exposure would be up to twenty-four months' imprisonment and that the length of the sentence that would ultimately be imposed would be left to the discretion of the trial judge. ***See*** N.T. PCRA Hearing, 1/30/26, 9-10, 16. To the extent that the court referenced whether trial counsel told her that she "could go to prison," rather than county confinement does not lead us to the conclusion that the PCRA court's credibility determinations were unsupported by the record. The court's statement only references the obvious fact that Appellant faced a possible state imprisonment sentence where the maximum permitted sentence was

twenty-four months.[3] ***See*** 42 Pa.C.S. § 9762(b)(2) (noting with some exceptions that "[m]aximum terms of two years or more but less than five years shall be committed to the Department of Corrections for confinement").

In her last argument, Appellant notes that, "while she first told [trial counsel that] she wished to accept a plea offer [and] she later rejected the plea [offer] as offered at the ["Last Day to Plea"] hearing," the PCRA court stated in its opinion, "It makes no sense that [Appellant] would have texted her attorney before her ["Last Day to Plea" hearing] that she wanted to accept the plea offer and then appear[] before the court and advise[] the court on the last day to plea that she did[not] want the plea[.]" Appellant's Brief, 40-41 (quoting PCRA Court Opinion, 3/24/26, 6-7). She asserts that the PCRA court's credibility determination finding her testimony about her desire to accept a plea offer before the "Last Day to Plea" hearing was "belied by the record" because "the record … show[ed] that [her] initial acceptance of plea offer had been premised on what she understood to be a lesser sentence than that which was presented at the time of the ["Last Day to Plea"] hearing[.]" Appellant's Brief, 41. As with the rest of her arguments, we do not find this argument persuasive because it does not review the record in the light most

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[3] Appellant otherwise fails to direct us to any binding precedent suggesting that advice concerning how a sentence's length would affect county or state confinement options was necessary for the entry of a voluntary guilty plea or the voluntary or knowing rejection of a plea offer. In the absence of further discussion of this argument by Appellant, we fail to glean how an absence of advice from counsel on that topic should encourage us to reject the PCRA court's credibility determinations.

favorable to the Commonwealth, which would include consideration of her trial counsel's testimony, which the PCRA court found to be credible.

Appellant's suggestion about the existence of an initial plea offer of only "6 to 7 months" was incredible on its face because, under Pennsylvania law, there was no option for a flat sentence of either six or seven months and a sentence of "6 to 7 months" could not comprise a legal sentence. ***See*** 42 Pa.C.S. § 9756(b)(1) ("The court shall impose a minimum sentence of confinement which shall not exceed one-half of the maximum sentence imposed."). Moreover, trial counsel testified that the "six to seven" months referenced in their plea discussions was merely a reference to the applicable standard guideline range and that was "not communicated to" Appellant as "the maximum exposure that she faced." N.T. PCRA Hearing, 1/30/26, 9. Trial counsel also testified that he explained to Appellant "the Pennsylvania Minimum/Maximum rule for a sentence." ***Id.*** at 14. In light of our review of trial counsel's testimony, we find that the PCRA court's determination that Appellant was incredible concerning her allegation about the communication of a prior plea offer for reduced incarceration, other than the one addressed at the "Last Day to Plea" hearing, was supported by the record.

Appellant's arguments in support of her second issue improperly consider the record in the light most favorable to herself based on her own testimony. Since there is support in the record based on trial counsel's testimony for the pertinent points for the resolution of Appellant's ineffective assistance claim, *i.e.*, that Appellant was correctly advised of her maximum

sentencing exposure, that the discretion for the sentence would be left to the trial court, and that Appellant was unwilling to accept any plea offer that entailed the imposition of a confinement sentence, we conclude that the PCRA court's credibility determinations are binding on this Court. ***See Rizor***, 304 A.3d at 1058. We thus affirm the order denying PCRA relief.

Order affirmed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 11/06/2026