NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
ERIC MONROE DAVIS	:	
Appellant	:	No. 467 EDA 2024

Appeal from the PCRA Order Entered March 2, 2022
In the Court of Common Pleas of Lehigh County Criminal Division at
No(s): CP-39-CR-0002980-2016

BEFORE: MURRAY, J., KING, J., and SULLIVAN, J.

MEMORANDUM BY KING, J.: **FILED APRIL 29, 2025**

Appellant, Eric Monroe Davis, appeals *nunc pro tunc* from the order entered in the Lehigh County Court of Common Pleas, which denied his petition filed under the Post Conviction Relief Act ("PCRA").[1] We affirm in part, vacate in part, and grant counsel's petition to withdraw.

The relevant facts and procedural history of this case are as follows. In the early morning hours of December 9, 2014, Appellant and his co-conspirator, who was only identified as "Animal," broke into Jose Carrero's residence, located in Allentown, Pennsylvania. Mr. Carrero's five-year-old daughter and Jose Morales, a guest, were also present at the residence. Appellant and Animal demanded drugs and money from Mr. Carrero and Mr.

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[1] 42 Pa.C.S.A. §§ 9541-9546.

Morales. During the confrontation, Animal fired shots at Mr. Carrero and Mr. Morales. Mr. Morales was shot in the leg, and Mr. Carrero was shot in the chest, causing his death. When police arrived on the scene, they discovered Mr. Carrero's daughter on the bed in the same room as Mr. Carrero's body.

A jury trial commenced on April 18, 2017. The Commonwealth presented evidence that police officers recovered a black knit hat from Mr. Carrero's apartment. A forensic DNA expert testified that Appellant and his girlfriend, Candice Agudio, could not be excluded as contributors to the DNA profile from the hat. Ms. Agudio testified that the hat belonged to Appellant. She stated that although she occasionally wore the hat, it was primarily worn by Appellant. Ms. Agudio further testified that at the time of the incident, she and Appellant lived together in Reading, Pennsylvania. Ms. Agudio testified that on the night of the murder, Appellant and Animal planned to commit a "lick," which she understood to mean that Appellant and Animal were planning to commit a robbery. Appellant borrowed a truck from a friend named Joe for this purpose. She did not see Appellant and Animal again until the next morning, when she saw Appellant and Animal cleaning the truck with bleach and wearing gloves. Jody Silva testified that he loaned his Jeep Grand Cherokee to Appellant on December 8, 2014. Appellant did not return the vehicle until the next afternoon. The vehicle was equipped with a GPS system, which showed that the vehicle was in Allentown at 2:10 AM on December 9, 2014.

Tai-Mare Mercado testified that on the night of the murder, Appellant drove Mr. Mercado and Animal from Reading to Allentown in a jeep that belonged to an individual named Joe. They drove to Nikita Cespedes' residence. Approximately ten to twenty minutes later, Appellant and Animal left Ms. Cespedes' residence and did not return until approximately an hour to an hour and a half later. When they returned, Appellant and Animal told Mr. Mercado that they broke into a house and Animal shot someone in the house. Thereafter, Mr. Mercado returned with Appellant and Animal to Reading in the same vehicle. Ms. Cespedes did not testify at trial.

On April 21, 2017, the jury convicted Appellant of second-degree murder, robbery, burglary, aggravated assault, conspiracy to commit third-degree murder, conspiracy to commit robbery, conspiracy to commit burglary, and conspiracy to commit aggravated assault. On June 14, 2017, the court sentenced Appellant as follows: life imprisonment without the possibility of parole for the second-degree murder conviction, 72 to 240 months' incarceration for the aggravated assault conviction, and 84 to 240 months' incarceration for the conspiracy to commit robbery conviction. The court found that the remaining conspiracy convictions merged for the purpose of sentencing and did not impose additional sentences. This Court affirmed the judgment of sentence on December 14, 2018, and our Supreme court denied Appellant's petition for allowance of appeal on June 5, 2019. ***See Commonwealth v. Davis***, 203 A.3d 317 (Pa.Super. 2018), *appeal denied*,

654 Pa. 178, 213 A.3d 1002 (2019).

On March 6, 2020, Appellant filed a timely *pro se* PCRA petition. The court appointed Robert Sletvold as counsel, who filed an amended PCRA petition on April 12, 2021, raising claims of prosecutorial misconduct and ineffective assistance of counsel for failing to call Ms. Cespedes to testify at trial. The court conducted an evidentiary hearing on March 2, 2022. Appellant testified that the affidavit of probable cause stated that Ms. Cespedes confirmed that Appellant, Animal and Mr. Mercado arrived at her residence on the night of the murder and independently confirmed Mr. Mercado's account of events. Appellant subsequently learned that Ms. Cespedes testified at the grand jury hearing and contradicted Mr. Mercado's account. At the grand jury hearing, Ms. Cespedes testified that she only spoke with Mr. Mercado on the phone on the night of the murder. She further stated that Mr. Mercado, Appellant and Animal did not come to her residence that night.

Kathryn Smith, Appellant's trial counsel, testified that she spoke on the phone with Mr. Mercado and Ms. Cespedes prior to the preliminary hearing. They stated to Attorney Smith that they were forced to testify at the grand jury proceeding by the Commonwealth. Ms. Cespedes indicated that she did not want to be involved in the case any further, stating specifically that they would not be able to find her. At the time of this conversation, based on her review of the criminal complaint, Attorney Smith believed that Ms. Cespedes testified in alignment with Mr. Mercado's account of events at the grand jury

hearing.

On March 31, 2017, Attorney Smith filed a motion seeking disclosure of the grand jury testimony and she received a copy of the grand jury transcript. At this point, Attorney Smith learned for the first time that Ms. Cespedes testified that Appellant, Mr. Mercado and Animal did not come to her house on the night of the murder. Immediately thereafter, Attorney Smith asked her investigator to find Ms. Cespedes but he was unable to locate her. Attorney Smith further learned that there were active warrants for Ms. Cespedes in Lehigh County and Ms. Cespedes was a fugitive at the time.

Attorney Smith also spoke with the prosecutor who informed her that police detectives spoke with Ms. Cespedes after her grand jury testimony because they felt that she had not been honest. During this subsequent conversation, Ms. Cespedes confirmed Mr. Mercado's account of events but stated that she did not want to testify in this case and would try her best to not be available to testify. Based on this information, Attorney Smith was concerned that even if Ms. Cespedes was found, Ms. Cespedes would be an unpredictable witness who might provide testimony that was harmful to Appellant's case. Attorney Smith believed that the best available option for Appellant's case was to seek to admit the grand jury testimony at trial. As such, Attorney Smith moved to introduce Ms. Cespedes' grand jury testimony at trial, but the court ultimately denied the motion.

Attorney Sletvold, PCRA counsel, represented to the court that he

attempted to locate Ms. Cespedes prior to the PCRA hearing but was unable to find her. He further stated that he was not pursuing the prosecutorial misconduct claim raised in the amended PCRA petition. The court denied Appellant's PCRA petition on March 2, 2022. Appellant filed a notice of appeal *nunc pro tunc* on February 9, 2024.[2] On February 15, 2024, the court ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b), and Appellant timely complied on March 7, 2024. On June 7, 2024, counsel filed a petition for leave to withdraw as counsel with this Court, together with a ***Turner***/***Finley***[3] "no-merit" brief.

Preliminarily, before counsel can withdraw representation under the PCRA, the law requires counsel to satisfy the mandates of ***Turner***/***Finley***. ***Commonwealth v. Karanicolas***, 836 A.2d 940, 947 (Pa.Super. 2003).

> ***Turner***/***Finley*** counsel must review the case zealously. ***Turner***/***Finley*** counsel must then submit a "no-merit" letter to the [PCRA] court, or brief on appeal to this Court,

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[2] On July 18, 2022, Appellant filed a *pro se* PCRA petition alleging that Attorney Sletvold failed to file a requested appeal. The court appointed counsel. On March 15, 2023, the court granted Appellant's PCRA petition and reinstated Appellant's right to file a notice of appeal *nunc pro tunc* from the denial of his first PCRA petition. Appellant filed a notice of appeal on April 14, 2023. This Court dismissed the appeal because Appellant's counsel failed to file a Pa.R.A.P. 1925(b) concise statement. On August 1, 2023, Appellant filed another *pro se* PCRA petition, alleging that his second PCRA counsel was ineffective for failing to file a concise statement. The court appointed counsel. On January 11, 2024, the court granted the PCRA petition and once again reinstated Appellant's right to file a notice of appeal *nunc pro tunc* from the denial of his first PCRA petition.

[3] ***Commonwealth v. Turner***, 518 Pa. 491, 544 A.2d 927 (1988); ***Commonwealth v. Finley***, 550 A.2d 213 (Pa.Super. 1988) (*en banc*)

> detailing the nature and extent of counsel's diligent review of the case, listing the issues which the petitioner wants to have reviewed, explaining why and how those issues lack merit, and requesting permission to withdraw.

Commonwealth v. Wrecks, 931 A.2d 717, 721 (Pa.Super. 2007). Additionally, counsel must contemporaneously serve on the appellant copies of the "no-merit" letter or brief, the petition to withdraw, and a letter advising the appellant that he has the immediate right to file a brief in this Court *pro se* or with new privately-retained counsel. ***Commonwealth v. Muzzy***, 141 A.3d 509 (Pa.Super. 2016). "Substantial compliance with these requirements will satisfy the criteria." ***Karanicolas, supra*** at 947.

Instantly, appellate counsel submitted a ***Turner***/***Finley*** brief on appeal and a petition to withdraw as counsel. Both the brief and counsel's petition to withdraw demonstrate he has made a conscientious examination of the record in this case and determined the appeal is wholly frivolous. Counsel notified Appellant of his rights and furnished Appellant with a copy of the petition and the brief prepared for this appeal. Thus, counsel has substantially complied with the technical requirements of ***Turner***/***Finley***. ***Karanicolas, supra*** at 947. Accordingly, we proceed with our independent assessment. ***See Turner, supra*** at 494-95, 544 A.2d at 928-29 (stating appellate court must conduct independent analysis and agree with counsel that appeal is frivolous).

Counsel raises the following issues on Appellant's behalf:

> Appellant believes and therefore avers that the [PCRA] court

> erred in failing to find trial counsel was ineffective for not properly investigating and calling witness Nikita Faith Cespedes at trial.
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> Appellant believes and therefore avers that Attorney Sletvold was ineffective for failing to litigate Appellant's prosecutorial misconduct claims Appellant filed in his *pro se* PCRA petition.
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> Appellant believes and therefore avers that Attorney Sletvold was ineffective for failing to call [Detective Damian] Murray and [Detective Erik] Landis to question them on false statements they made in Appellant's affidavit of probable cause at Appellant's PCRA hearing.
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> Appellant believes and therefore avers that Attorney Sletvold was ineffective for failing to develop claims of layering of ineffective assistance of counsel upon [Appellant's] request pursuant to ***Commonwealth v. McGill***, 574 Pa. 574, 832 A.2d 1014 (2003).
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> Appellant believes and therefore avers that Attorney Sletvold was ineffective for failing to develop a claim in violation of Criminal Procedure Rule 576, when the Clerk of Courts of Lehigh County, failed to file and docket three correspondence letters to trial counsel, Katheryn R. Smith, requesting her to investigate all witness[es] mentioned on [Appellant's] affidavit of probable cause, when amending [Appellant's] PCRA.
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> Appellant believes and therefore avers that Attorney Sletvold was ineffective for failing to develop cumulative effect claims of errors, when amending [Appellant's] PCRA.

(***Turner***/***Finley*** Brief at 2) (unpaginated).

Additionally, Appellant raises the following issues *pro se*:

> Appellant is averring that Attorney Sletvold was ineffective in failing to develop claims in violation to imposing non-mandatory fine during sentencing when [Appellant] was known to the court to be indigent.

> Appellant is averring that Attorney Sletvold was ineffective for failing to develop claims in violation of 18 Pa.C.S.A. § 903(c), when [Appellant] was found guilty of [second] degree murder, conspiracy to commit third degree murder for the death of the victim Jose Carrero and also a number of other conspiracies.

(Appellant's *Pro se* Brief at 3-4) (unpaginated) (reordered for purpose of disposition).

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. Conway***, 14 A.3d 101 (Pa.Super. 2011), *appeal denied*, 612 Pa. 687, 29 A.3d 795 (2011). This Court grants great deference to the findings of the PCRA court if the record contains any support for those findings. ***Commonwealth v. Boyd***, 923 A.2d 513 (Pa.Super. 2007), *appeal denied*, 593 Pa. 754, 932 A.2d 74 (2007). We do not give the same deference, however, to the court's legal conclusions. ***Commonwealth v. Ford***, 44 A.3d 1190 (Pa.Super. 2012). Traditionally, credibility issues are resolved by the trier of fact who had the opportunity to observe the witnesses' demeanor. ***Commonwealth v. Abu-Jamal***, 553 Pa. 485, 720 A.2d 79 (1998), *cert. denied*, 528 U.S. 810, 120 S.Ct. 41, 145 L.Ed.2d 38 (1999). "A PCRA court passes on witness credibility at PCRA hearings, and its credibility determinations should be provided great deference by reviewing courts." ***Commonwealth v. R. Johnson***, 600 Pa. 329, 356-357, 966 A.2d 523, 539 (2009).

Pennsylvania law presumes counsel has rendered effective assistance.

Commonwealth v. Williams, 597 Pa. 109, 950 A.2d 294 (2008). When asserting a claim of ineffective assistance of counsel, the petitioner is required to demonstrate: (1) the underlying claim is of arguable merit; (2) counsel had no reasonable strategic basis for his 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. Kimball***, 555 Pa. 299, 724 A.2d 326 (1999). The failure to satisfy any prong of the test for ineffectiveness will cause the claim to fail. ***Williams, supra***.

"The threshold inquiry in ineffectiveness claims is whether the issue/argument/tactic which counsel has foregone and which forms the basis for the assertion of ineffectiveness is of arguable merit…" ***Commonwealth v. Pierce***, 537 Pa. 514, 524, 645 A.2d 189, 194 (1994). "Counsel cannot be found ineffective for failing to pursue a baseless or meritless claim." ***Commonwealth v. Poplawski***, 852 A.2d 323, 327 (Pa.Super. 2004). "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. If we conclude that the particular course chosen by counsel had some reasonable basis, our inquiry ceases and counsel's assistance is deemed effective." ***Pierce, supra*** at 524, 645 A.2d at 194-95 (internal citations omitted).

> Prejudice is established when [an appellant] demonstrates that counsel's chosen course of action had an adverse effect on the outcome of the proceedings. The [appellant] must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a

> probability sufficient to undermine confidence in the outcome. In [***Kimball, supra***], we held that a "criminal [appellant] alleging prejudice must show that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable."

Commonwealth v. Chambers, 570 Pa. 3, 21-22, 807 A.2d 872, 883 (2002) (some internal citations and quotation marks omitted).

In the first issue raised by counsel on Appellant's behalf, Appellant contends that his trial counsel, Attorney Smith, provided ineffective assistance of counsel by failing to call Ms. Cespedes to testify at his trial. Appellant argues that Attorney Smith had no reasonable basis for failing to call Ms. Cespedes because Ms. Cespedes' testimony at the grand jury proceedings challenged the credibility of Mr. Mercado's testimony. Appellant concludes that he was prejudiced by Attorney Smith's failure and the court erred in finding Attorney Smith effective. We disagree.

For claims of ineffectiveness based upon counsel's failure to call a witness:

> A defense attorney's failure to call certain witnesses does not constitute *per se* ineffectiveness. In establishing whether defense counsel was ineffective for failing to call witnesses, a defendant must prove the witnesses existed, the witnesses were ready and willing to testify, and the absence of the witnesses' testimony prejudiced petitioner and denied him a fair trial.

Commonwealth v. Cox, 603 Pa. 223, 267-68, 983 A.2d 666, 693 (2009) (internal citations omitted). A petitioner "must show how the uncalled witnesses' testimony would have been beneficial under the circumstances of

the case." ***Commonwealth v. Gibson***, 597 Pa. 402, 441, 951 A.2d 1110, 1134 (2008).

Instantly, the court concluded that Appellant failed to establish that Ms. Cespedes was available and willing to testify, and that Attorney Smith did not have a reasonable basis for failing to call Ms. Cespedes to testify. ***See Cox, supra***; ***Pierce, supra***. The record supports the court's conclusion. ***See Boyd, supra***. Attorney Smith testified at the PCRA hearing that she spoke with Ms. Cespedes prior to the preliminary hearing and Ms. Cespedes indicated that she did not want to be involved in Appellant's case any further. Attorney Smith further testified that she asked her investigator to locate Ms. Cespedes prior to trial and he was unable to locate her, finding that Ms. Cespedes was a fugitive at the time. Additionally, Attorney Smith stated that she was made aware that after testifying at the grand jury proceedings, Ms. Cespedes made statements to the detectives that corroborated Mr. Mercado's testimony. Based on this information, Attorney Smith was wary that Ms. Cespedes would prove to be an unpredictable witness who might provide detrimental testimony at Appellant's trial.

The court further determined that Appellant was not prejudiced because Ms. Cespedes' proffered testimony would not have changed the outcome of his trial. ***See Chambers, supra***. Even if Ms. Cespedes testified exactly as she did at the grand jury proceeding, her testimony would only refute whether Appellant arrived at her house, which was not consequential to the charges

against Appellant. She did not have any knowledge about the incidents that took place at Mr. Carrero's residence. To the extent that her testimony would have challenged the credibility of Mr. Mercado's testimony, the Commonwealth presented significant independent evidence corroborating Mr. Mercado's testimony, including Ms. Agudio's testimony, Mr. Sliva's testimony, and DNA and GPS evidence placing Appellant at or near Mr. Carrero's residence. On this record, we discern no error in the court's conclusion that Appellant failed to establish that Attorney Smith provided ineffective assistance of counsel by failing to call Ms. Cespedes as a witness. ***See Conway, supra***.

The other five issues raised by counsel on Appellant's behalf concern claims that Appellant's first PCRA counsel, Attorney Sletvold, provided ineffective assistance by failing to raise certain issues in his amended PCRA petition. Specifically, Appellant contends that Attorney Sletvold provided ineffective assistance by abandoning the prosecutorial misconduct claim at the PCRA hearing because the Commonwealth committed misconduct by presenting false and misleading statements in the affidavit of probable cause.[4] Appellant further asserts that Attorney Sletvold was ineffective for failing to

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[4] In the ***Turner***/***Finley*** brief, appellate counsel states that Appellant's prosecutorial misconduct claim was based on the Commonwealth's failure to provide Appellant with the transcript from the grand jury hearing at an earlier point. Counsel concludes that this claim has no arguable merit. In his *pro se* Brief, Appellant asserts that counsel misunderstood the basis of his prosecutorial misconduct claim and asserts the basis discussed herein.

call Detective Murray and Detective Landis, the affiants who signed the affidavit of probable cause, to testify at the PCRA hearing to question the veracity of the assertions in the affidavit of probable cause. Additionally, Appellant claims that Attorney Sletvold was ineffective for failing to assert and develop a claim that the trial court violated Rule 576 of the Pennsylvania Rules of Criminal Procedure by failing to file and docket three letters Appellant sent to Attorney Smith. Appellant further argues that Attorney Sletvold was ineffective for failing to properly develop his argument by layering his claims of ineffective assistance and asserting cumulative prejudice. We disagree.

Here, Appellant did not raise his underlying claims that the Commonwealth committed misconduct, or that the court violated Rule 576, before the trial court. Therefore, these claims are waived for purposes of the PCRA. ***See*** 42 Pa.C.S.A. § 9544(b) (stating issue is deemed waived under PCRA "if the petitioner could have raised it but failed to do so before trial, at trial, during unitary review, on appeal or in a prior state postconviction proceeding"). ***See also Commonwealth v. Sasse***, 921 A.2d 1229, 1238 (Pa.Super. 2007), *appeal denied*, 595 Pa. 706, 938 A.2d 1052 (2007) (reiterating that "[i]n order to preserve a claim of prosecutorial misconduct for appeal, a defendant must make an objection and move for a mistrial"). Thus, Attorney Sletvold cannot be ineffective for failing to raise these claims in the amended PCRA petition because they would have been waived. ***See Poplawski, supra***.

To the extent Appellant is claiming that Attorney Sletvold should have raised claims that Attorney Smith provided ineffective assistance of counsel by failing to raise these issues before the trial court, we agree with appellate counsel and the PCRA court that Appellant would not have been entitled to relief on these claims. Regarding the prosecutorial misconduct claim, Appellant asserts that the Commonwealth falsely averred in the affidavit of probable cause that Ms. Cespedes independently confirmed Mr. Mercado's statements. Appellant further claims that Detectives Murray and Landis should have been called to testify at the PCRA hearing to demonstrate that this assertion in the affidavit of probable cause was false. Nevertheless, as previously discussed, Ms. Cespedes' statements confirming or denying Mr. Mercado's statements only peripherally impacted the factual basis supporting Appellant's affidavit of probable cause and his subsequent convictions. The affidavit of probable cause included significant independent support that Appellant committed the offenses alleged, including statements provided by Mr. Morales, Ms. Agudio, and Mr. Silva, as well as GPS and DNA evidence. ***See Commonwealth v. James***, 620 Pa. 465, 478, 69 A.3d 180, 188 (2013) (explaining that defendant is only entitled to hearing on truthfulness of factual averments in affidavit of probable cause if defendant makes substantial preliminary showing that affiant knowingly and intentionally, or with reckless disregard for the truth, included false statement in affidavit **and** remainder of affidavit's content is insufficient to establish probable cause). Therefore,

Appellant cannot demonstrate that he suffered prejudice to succeed on a layered claim of ineffectiveness on these grounds. ***See Chambers, supra***.

Regarding Appellant's underlying claim that the court violated Rule 576, Appellant testified at the PCRA hearing that he sent multiple letters to the clerk of courts, intended for Attorney Smith, which requested that Attorney Smith investigate Ms. Cespedes, and the other witnesses listed in the affidavit of probable cause.[5] Appellant further testified that Attorney Smith subsequently met with him, gave him a copy of the letters that he sent, and informed him that she received them. (***See*** N.T. PCRA Hearing, 3/2/22, at 17). As Attorney Smith received the letters that were intended for her, Appellant was not prejudiced by the court's alleged violation, Attorney Smith's

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[5] Rule 576 provides in relevant part:

> **Rule 576. Filing and Service by Parties**
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> **(a) Filing.**
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> * * *
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> (4) In any case in which a defendant is represented by an attorney, if the defendant submits for filing a written motion, notice, or document that has not been signed by the defendant's attorney, the clerk of courts shall accept it for filing, time stamp it with the date of receipt and make a docket entry reflecting the date of receipt, and place the document in the criminal case file. A copy of the time stamped document shall be forwarded to the defendant's attorney and the attorney for the Commonwealth within 10 days of receipt.
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> * * *

Pa.R.Crim.P. 576 (a)(4).

failure to object to the alleged violation, or Attorney Sletvold's failure to raise the claim in his amended PCRA petition. ***See Chambers, supra***.

We further agree that there is no merit to Appellant's claim that Attorney Sletvold failed to properly layer claims of ineffective assistance of counsel. Aside from the claims discussed above, Appellant fails to explain what other claims of ineffective assistance Attorney Sletvold could have layered with respect to direct appeal and/or trial counsel's ineffectiveness.[6] Additionally, Appellant's claim that Attorney Sletvold was ineffective for failing to argue cumulative prejudice lacks merit, where Appellant has failed to set forth a specific, reasoned, and legally and factually supported argument. ***See Commonwealth v. Hutchinson***, 611 Pa. 280, 351, 25 A.3d 277, 318-19 (2011) (stating: "Where a claimant has failed to prove prejudice as the result of any individual errors, he cannot prevail on a cumulative effect claim unless he demonstrates how the particular cumulation requires a different analysis"; thus, appellant who pleads cumulative prejudice must set forth specific, reasoned, and legally and factually supported argument for such claim; bald averment of cumulative prejudice is insufficient) Accordingly, Appellant is not entitled to relief on any of the issues appellate counsel raised on his behalf.

In the first issue raised by Appellant in his *pro se* brief, Appellant argues

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[6] Appellant cites to ***Commonwealth v. McGill***, 574 Pa. 574, 832 A.2d 1014 (2003) to support his claim. ***McGill*** generally sets forth the proper manner to assert a layered ineffective assistance of counsel claim and does not otherwise support any specific claim in Appellant's case.

that Attorney Sletvold provided ineffective assistance by failing to challenge the legality of Appellant's sentence. Appellant claims that the court illegally imposed non-mandatory fines during sentencing when the evidence demonstrates that Appellant was indigent and did not have the ability to pay. Appellant concludes that Attorney Sletvold was ineffective for failing to raise and develop this claim in his amended PCRA petition. We disagree.

"The court shall not sentence a defendant to pay a fine unless it appears of record that: (1) the defendant is or will be able to pay the fine; and (2) the fine will not prevent the defendant from making restitution or reparation to the victim of the crime." 42 Pa.C.S.A. § 9726(c). However, Section 9726(c) does not apply when a defendant is ordered to pay the mandatory costs of prosecution. ***See Commonwealth v. Ford***, 655 Pa. 255, 259-60, 217 A.3d 824, 826-27 (2019). "While the trial courts are explicitly required by statute to consider the defendant's ability to pay prior to ordering fines, there is no comparable statutory mandate for the imposition of costs." ***Commonwealth v. Lopez***, ___ Pa. ___, 280 A.3d 887, 908-09 (2022).

Here, our review of the record confirms that the court did not impose any fines on Appellant. The court ordered Appellant to pay the costs of prosecution and restitution but there were no additional non-mandatory fines imposed on any of Appellant's convictions. As such, there is no arguable merit to Appellant's claim, and Attorney Sletvold cannot be deemed ineffective for failing to raise it. ***See Pierce, supra***; ***Poplawski, supra***.

In the second issue Appellant raises *pro se*, Appellant avers Attorney Sletvold was ineffective for failing to raise an illegal sentencing claim related to his multiple conspiracy convictions. Appellant asserts that the evidence at trial established that there was only one conspiratorial relationship between Appellant and Animal and all the offenses were committed as a result of this one agreement. Appellant contends that he was convicted of multiple counts of conspiracy in violation of 18 Pa.C.S.A. § 903(c). Appellant concludes that the court illegally sentenced him on multiple counts of conspiracy and Attorney Sletvold was ineffective for failing to raise this claim in his amended PCRA petition. We agree that Appellant is entitled to some relief on this claim.

"If a person conspires to commit a number of crimes, he is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship." 18 Pa.C.S.A. § 903(c). In order for a defendant to be convicted of separate counts of conspiracy, "there must be separate agreements, or separate conspiratorial relationships, to support each conviction." ***Commonwealth v. Rivera***, 238 A.3d 482, 503 (Pa.Super. 2020), *appeal denied*, 666 Pa. 97, 250 A.3d 1158 (2021) (citation omitted).

> The factors most commonly considered in a totality of the circumstances analysis of the single vs. multiple conspiracies issue ... are: the number of overt acts in common; the overlap of personnel; the time period during which the alleged acts took place; the similarity in methods of operation; the locations in which the alleged acts took place; the extent to which the purported conspiracies share a common objective; and, the degree to which

> interdependence is needed for the overall operation to succeed.

Id. (quoting ***Commonwealth v. Davis***, 704 A.2d 650, 654 (Pa.Super. 1997), *appeal denied*, 553 Pa. 704, 719 A.2d 744 (1998) (holding that when there is only evidence of one agreement, appellant cannot be punished separately for each conspiracy because multiple sentences are explicitly precluded by statute)).

"If no statutory authorization exists for a particular sentence, that sentence is illegal and subject to correction. An illegal sentence must be vacated." ***Commonwealth v. Infante***, 63 A.3d 358, 363 (Pa.Super. 2013) (citation omitted). ***See also Commonwealth v. Barnes***, 871 A.2d 812, 821 n.6 (Pa.Super. 2005) (noting this Court may *sua sponte* address propriety of multiple conspiracy convictions where there is single conspiracy because violation of Section 903(c) results in illegal sentence). "If this Court determines that a sentence must be corrected, we are empowered to either amend the sentence directly or to remand the case to the trial court for resentencing." ***Commonwealth v. Lekka***, 210 A.3d 343, 358 (Pa.Super. 2019).

Instantly, the evidence at trial established that Appellant entered into an agreement with Animal to steal drugs and money from Mr. Carrero by force (robbery). In furtherance of this goal, Appellant and Animal broke into Mr. Carrero's residence (burglary) and shot Mr. Carrero and Mr. Morales while committing the robbery (homicide and aggravated assault). As such,

Appellant engaged in only one conspiratorial agreement which encompassed all of the offenses that Appellant committed. Accordingly, Appellant is guilty of only one conspiracy conviction (conspiracy to commit robbery) pursuant to Section 903(c), and we are constrained to vacate Appellant's convictions for conspiracy to commit burglary, conspiracy to commit third-degree murder, and conspiracy to commit aggravated assault. ***See Rivera, supra*** (vacating convictions and sentences *sua sponte* for conspiracy to commit burglary and second-degree murder because offenses were result of one agreement between appellant and his co-conspirator to rob victim). ***See also Commonwealth v. McClelland***, No. 1191 WDA 2021 (Pa.Super. filed March 30, 2024) (unpublished memorandum), *appeal denied*, ___ Pa. ___, 305 A.3d 545 (2023) (vacating convictions and sentences *sua sponte* for multiple conspiracy convictions in violation of Section 903(c) where appellant alleged PCRA counsel was ineffective for failing to raise claim).[7]

Nevertheless, we need not remand for resentencing as the court only sentenced Appellant on the conspiracy to commit robbery conviction, finding that the remaining convictions for conspiracy merged for purposes of sentencing. ***See Commonwealth v. Henderson***, 938 A.2d 1063 (Pa.Super. 2007), *appeal denied*, 598 Pa. 746, 954 A.2d 575 (2008) (holding that remand for resentencing is not necessary when this Court vacates portion of judgment

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[7] ***See*** Pa.R.A.P. 126(b) (stating we may rely on unpublished decisions of this Court filed after May 1, 2019 for their persuasive value).

of sentence and aggregate sentence remains identical).

Our independent review of the record does not reveal any additional, non-frivolous issues preserved on appeal. ***See Turner, supra***. Accordingly, we vacate Appellant's convictions for conspiracy to commit burglary, conspiracy to commit third-degree murder and conspiracy to commit aggravated assault; and affirm Appellant's judgment of sentence in all other respects.

Judgment of sentence affirmed in part and vacated in part. Petition to withdraw is granted. Jurisdiction is relinquished.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 4/29/2025