APPENDIX A

BLD-096

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **21-3139**

LEONARD CHASE, JR., Appellant

VS.

SUPERINTENDENT ALBION SCI, ET AL

(M.D. Pa. Civ. No. 4-18-cv-00101)

Present: MCKEE, GREENAWAY, JR. and PORTER, Circuit Judges

Submitted is Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1) in the above-captioned case.

Respectfully,

Clerk

ORDER

The request for a certificate of appealability is denied. For substantially the same reasons stated by the Magistrate Judge and adopted by the District Court, jurists of reason would not debate the District Court's decision to deny Appellant's claims. See Slack v. McDaniel, 529 U.S. 473, 484 (2000). In particular, jurists of reason would agree, without debate, that the robbery charges were not multiplicitous, United States v. Stanfa, 685 F.2d 85, 87 (3d Cir. 1982); United States v. Tann, 577 F.3d 533, 536 (3d Cir. 2009); Commonwealth v. Gillard, 850 A.2d 1273, 1276 (Pa. Super. Ct. 2004); Commonwealth v. Rozplochi, 561 A.2d 25, 28-29 (Pa. Super Ct. 1989), and that the convictions were supported by sufficient evidence, see Jackson v. Virginia, 443 U.S. 307, 319 (1979); see also Commonwealth v. Ouch, 199 A.3d 918, 924 (Pa. Super. Ct. 2018); Commonwealth v. Thomas, 546 A.2d 116, 119 (Pa. Super. Ct. 1988).

By the Court,

s/Joseph A. Greenaway, Jr.
Circuit Judge

Dated: October 6,2022
Sb/cc: Leonard Chase, Jr.
All Counsel of Record

A True Copy:
Patricia S. Dodszuweit, Clerk
Certified Order Issued in Lieu of Mandate

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PATRICIA S. DODSZUWEIT
CLERK

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RE: Leonard Chase, Jr. v. Superintendent Albion SCI, et al
Case Number: 21-3139
District Court Case Number: 4-18-cv-00101

ENTRY OF JUDGMENT

Today, **October 06, 2022** the Court issued a case dispositive order in the above-captioned matter which serves as this Court's judgment. Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:
14 days after entry of judgment.
45 days after entry of judgment in a civil case if the United States is a party.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

LEONARD CHASE, JR.,	No. 4:18-CV-00101
Petitioner,	(Chief Judge Brann)
v.	(Magistrate Judge Carlson)
SCI ALBION, *et al.*,	
Respondents.	

ORDER

OCTOBER 29, 2021

Leonard Chase, Jr., a Pennsylvania state prisoner, filed this 28 U.S.C. § 2254 petition seeking to vacate his convictions and sentence based upon constitutional violations that allegedly occurred during his trial.[1] In September 2021, Magistrate Judge Martin C. Carlson issued a Report and Recommendation recommending that this Court deny the petition, as Chase's claims are either procedurally defaulted or otherwise without merit.[2] Chase filed timely objections to this Report and Recommendation; those objections primarily relate to Chase's contention that he was improperly convicted of numerous counts of robbery.[3]

"If a party objects timely to a magistrate judge's report and recommendation, the district court must 'make a de novo determination of those portions of the report

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1 Doc. 1.
2 Doc. 17.
3 Doc. 18.

or specified proposed findings or recommendations to which objection is made.'"[4] Regardless of whether timely objections are made, district courts may accept, reject, or modify—in whole or in part—the magistrate judge's findings or recommendations.[5] After reviewing the record, the Court finds no error in Magistrate Judge Carlson's conclusion that Chase's claims are either procedurally defaulted or without merit. Accordingly, **IT IS HEREBY ORDERED** that:

1. Magistrate Judge Martin C. Carlson's Report and Recommendation (Doc. 17) is **ADOPTED**;
2. Chase's 28 U.S.C. § 2254 petition (Doc. 1) is **DENIED**;
3. The Court declines to issue certificate of appealability;[6] and
4. The Clerk of Court is directed to **CLOSE** this case.

BY THE COURT:

s/ Matthew W. Brann
Matthew W. Brann
Chief United States District Judge

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4 *Equal Emp't Opportunity Comm'n v. City of Long Branch*, 866 F.3d 93, 99 (3d Cir. 2017) (quoting 28 U.S.C. § 636(b)(1)).

5 28 U.S.C. § 636(b)(1); Local Rule 72.31.

6 *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (setting forth legal standard).

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

LEONARD CHASE, JR.,	:	**Civil No. 4:18-CV-101**
	:	
Petitioner,	:	**(Chief Judge Brann)**
	:	
v.	:	**(Magistrate Judge Carlson)**
	:	
SUPT., STATE CORRECTIONAL INSTITUTION AT ALBION, et al.	:	
	:	
Respondents.	:	

REPORT AND RECOMMENDATION

I. Introduction

This case began with the armed robbery of a Wine and Spirits store in East York. On April 24, 2010, two men entered the Wine and Spirits store, faces covered with bandannas and guns drawn, instructing the people present in the store to "fuckin hit the ground." Thereafter, the two men approached numerous employees and stole money from the cash register and a safe in the store's office. An eyewitness saw the two men exit the store and approach a vehicle that was parked behind the store. He then saw the same vehicle and began following it while on the phone with the 9-1-1 operator, providing details on where the car was located. Officers with Springettsbury Township Police Department located the vehicle, which "took off," at which point the officers engaged in a pursuit. When the car spun out of control and stopped, officers located the petitioner, Leonard Chase, in the driver's seat, his

co-defendant Travis Bryant in the passenger seat, and a third individual, Troy Thomas, in the back seat.

Chase and Bryant were searched, and over $600 in cash was recovered, some of which was still in coin wrappers. Chase was charged with robbery and criminal conspiracy. In April of 2011, a jury found Chase guilty of five counts of robbery and one count of criminal conspiracy to commit robbery. On June 27, 2011, the trial court sentenced Chase to seven to 14 years' imprisonment on each of the robbery charges, to run consecutive, and six to 12 years' imprisonment on the conspiracy charge, to run concurrent with the robbery. This resulting in an aggregate sentence of 35 to 70 years' imprisonment.

The evidence connecting Chase to the robbery was clear and compelling. While no eyewitnesses directly linked Chase to the crime, when the high-speed pursuit ended, Chase was pulled from the driver's seat of the vehicle wearing a tan or sand-colored hooded sweatshirt similar to the attire of one of the robbers. A total of $312.56, some of which was in coin wrappers, was found on his person. His co-defendant, Thomas, was removed from the passenger seat and had $326 on his person and $42.50 in a black coat with a fur hood that was on the passenger seat. Some of the money in the coat was also in coin wrappers.

The money recovered from Chase and Thomas was within two dollars of the amount reported stolen from the Wine and Spirits store. Two bandanas were

recovered in the vehicle, one of which had Chase's DNA on it, the other of which had Thomas' DNA on it. Their outfits also matched the descriptions of the robbers from the employees and customers in the store at the time and two handguns were also recovered from the vehicle—one on the driver's seat where Chase was sitting and one in the center console area between the driver and passenger seats.

Due to the fact that Chase was charged with several individual counts of robbery as they applied to different employees and customers in the store at the time the robbery occurred, the jury was specially instructed on the robbery counts. Instructed in this fashion the jury convicted Chase of these separate counts.

Chase now challenges his state convictions, arguing that there was insufficient evidence to sustain a conviction on all five robbery counts; challenging the special jury instruction; arguing that the search of the vehicle was unreasonable and unconstitutional; challenging the trial judge's application of the deadly weapon enhancement; challenging the computation of his prior record score and the deadly weapon enhancement; arguing that he was improperly convicted on all five counts of robbery stemming from one act of theft; arguing that his trial counsel was ineffective in numerous ways; arguing that the trial court improperly interpreted the robbery statute, turning the robbery of one store into five; and alleging prosecutorial misconduct because the Commonwealth allowed an office to testify in contradiction with the police reports. However, we find these arguments to be without merit, and

for the following reasons, we recommend that this petition for habeas corpus be denied.

II. Statement of Facts and of the Case

The factual background of the instant petition was aptly summarized by the Pennsylvania Superior Court in its decision denying Chase's direct appeal:

> Chase's convictions stem from the robbery of a Wine & Spirits store, located in East York, Pennsylvania, at approximately 10:00 p.m. on April 24, 2010. We summarize the trial testimony as follows: On that night, Chase and Travis Lamont Bryant, his co-defendant, entered the liquor store through the front door, both brandished a gun, and told store employees and patrons to "Fuckin[']hit the ground." The two men then approached two employees, Petra Meckley and Kelli Herman, who were on the ground by the first register. One of the men, later determined to be Bryant, put a gun to the temple of Meckley's head and told her to "Open the fuckin[']cash register now, bitch." Meckley stated she had difficulty opening the register because she was unable to see it. Bryant then pulled Herman to press the open key for the register. After Herman hit the key, Bryant pushed her to the floor. He took the money, including bills and coins, out of the register and shoved it in his pocket.
>
> While this activity was going on, the other perpetrator, subsequently determined to be Chase, had gone into the store's office where Dave Smith, a store employee, was working. Chase said to Smith, "Give me the money." Chase then pointed a gun at Smith's face and tried to open the main door to the safe. When Smith could not open the door, Chase grabbed Smith and shoved him against a stereo. Smith eventually opened the door and Chase removed all the money from the safe, including bills and rolled coins. When Chase brought Smith out of the office, Smith observed Bryant taking money out of the first cash register.
>
> Other witnesses testified about the robbery, making the following observations: BJ Milliken, another employee at the store, was working on the night of the robbery. She testified she heard a commotion coming

from the front of the store and as she walked towards the area. Milliken saw an individual, wearing a pumpkin-colored hoodie, in the office and customers laying on the floor. She then turned around, walked to the back of the store, and crouched behind a stack of boxes. She stated she did not encounter either of the perpetrators face-to-face. She also did not see them with guns, and they did not say anything to her.

Sabrina Robinson, a clerk at the liquor store, stated that she was working on the night in question. She was located approximately 15 to 20 feet from the first register. As she was working, she observed the one individual, Chase, in the office. She stated that she did not see the other individual, Bryant. She saw Chase had a gun up in the air and she then froze. She testified that he was wearing a hoodie and had on a black mask. She stated "she went to go run in the back to hit the emergency button, but as soon as I went to go run up the rum aisle, which was the next aisle over, that's when we were told to get down." She said that she then got down on the ground, grabbed her cell phone, and called 9-1-1. On cross-examination, she stated that neither robber specifically approached her or threatened her.

Stefanie Santana, a customer, testified that she was present in the liquor store at the time of the robbery. She was at one of the registers when the two males came in with guns. She testified that the men "were dark-skinned and they had hoodies and bandanas." She stated that she "backed up from the register" and then "dropped down." She testified that the two perpetrators told them "to come down and to get on the ground." She stated she heard the one male "that was by the safe, he was screaming at the lady and asking her to open the safe. If not he would blow her brains out." She testified that the two men did not take anything from her person and did not say anything directly to her.

Stephanie Hernandez went to the store with Santana and Santana's two cousins. She testified that right before the store closed, she was at one of the registers when "two gentlemen walked in the store with guns and was telling—screaming, telling everybody, 'Relax, calm down, nobody's going to get hurt[.]'" She observed that one had a yellow hoodie on and the other male wore a black hoodie with fur around it. She said the man with the black jacket wore a bandana over his face. She stated she then started ducking and running towards the back of the store where she saw an exit. She said that she set off the emergency

button when she tried to go through the exit but the door was locked and the alarm went off. She then went towards another door, which opened, and she ran into a nearby building, hid, and called 9-1-1. As she hid, she saw the getaway vehicle, a long light-colored Lincoln car, flee from behind the liquor store. On cross-examination, she testified the men did not threaten her directly and nothing was taken from her person.

Richard Shirey, the general manager of the store, also testified at the trial. He had accessed and authenticated surveillance video regarding the robbery. He testified that $679.51 was taken from the store on the night of the incident.

Donte Pittman testified that he went to the liquor store with his cousin and his cousin's friend on the night of the robbery. While his cousin went into the store, Pittman parked the vehicle, facing the door. He then saw two men come from the back of the building and run into the store with guns. He called 9-1-1 and while speaking to the operator, he saw the men emerge from the store and go in the direction they came from. As they moved on foot, he started following them in his car. As Pittman drove past, he observed only one car parked in the back, a white Lincoln with a blue cloth top. Looking in his rearview mirror, he testified that he did not see anyone enter the car but heard the door close and the car "zoomed off." Pittman then went to the front of the store to pick up his cousin and saw the getaway car again at a nearby intersection. He started to follow the car again onto one of the streets. At some point, he noticed there were police officers behind him and stopped his vehicle. As the officers drove by, Pittman pointed in the direction that the getaway car went.

Springettsbury Township Police Officer Thomas A. Wales was on duty on the night of the robbery. While on patrol, Officer Wales received notification that a robbery had taken place at the liquor store and that "the suspects were to be in a white Lincoln with a blue top with a Maryland registration." Within one minute of receiving this information, he saw a vehicle that matched the description. The officer testified that he activated his red lights and initially, the car looked like it was going to pull over to the right side of the road but then the car "took off." Officer Wales continued to pursue the vehicle until it spun out of control and he stopped it. The officer stated that Chase was sitting

> in the driver's seat and Bryant was in front passenger seat of the vehicle. After handcuffing Chase, Officer Wales searched his person and found $312.56 in his left pants pocket, some of which was still in coin wrappers. He also saw a black .45 caliber handgun laying on the driver's seat of the vehicle. Black gloves, a ski mask, and a black bandana were found on the front passenger side floorboard, as well as another set of black gloves and a beanie hat on the driver's side seat. A second bandana was found in the left-front coat packet of a tan or sand-colored hoodie that was pulled off Chase.
>
> Chase was charged with six counts of robbery and one count of criminal conspiracy to commit robbery. With respect to the robbery charges, there included specific counts against employee, Smith, (count one); employee, Meckley (count two); employee, Herman (count three); employee, Robinson (count four); employee, Milliken (also, count four); customer, Hernandez (count five); customer, Santana (also, count five), as well as other "patron(s), customer(s) and/or other non-employee individual(s) inside Wine & Spirits, not referenced in other counts" (count six). A jury trial was held on April 4, 2011 through April 7, 2011. At the conclusion of the Commonwealth's case, defense counsel moved for a directed verdict on counts four, five, and six of the indictment. The trial court dismissed count four, with respect to Milliken, and count six. The jury convicted Chase of the remaining robbery offenses and conspiracy.
>
> On June 27, 2011, the trial court conducted a sentencing hearing. At the end of the hearing, the trial court sentenced Chase to an aggregate term of 35 to 70 years' imprisonment.

(Doc. 15-1, at 370-76) (internal citations omitted).

Following his conviction and sentence, Chase filed a post-sentence motion asserting the following arguments: (1) there was insufficient evidence to support his convictions; (2) the verdict was against the weight of the evidence; (3) the court erred by denying his objection to its special jury instruction for robbery; and (4) his sentence was excessive. (Id., at 376-77). The trial court denied Chase's motion and

he appealed to the Pennsylvania Superior Court, which affirmed his judgment of sentence on December 20, 2012. (Id., at 369-91). Chase then filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court, which was denied on October 23, 2013. (Id., at 395).

Thereafter, Chase filed a petition pursuant to Pennsylvania's Post Conviction Relief Act ("PCRA"), 42 Pa. Cons. Stat. § 9542, *et seq.*, alleging the following: (1) the Commonwealth's evidence was insufficient to support his conviction; (2) the court gave an invalid jury instruction; (3) the initial search and seizure by police was constitutionally invalid; (4) the court erred in imposing a mandatory minimum sentence and incorrectly applied the deadly weapons enhancement; (5) the sentencing court incorrectly computed his prior record score ("PRS"); (6) the jury's verdict on multiple counts was constitutionally invalid; (7) his trial counsel was ineffective; and (8) his constitutional rights had been violated. (Id., at 568-69). After an unexplained delay of over four years, Chase's appointed PCRA counsel filed a Petition to Withdraw as Counsel along with a no merit. (Id., at 569). Several months later, the PCRA court issued a notice of its intent to dismiss his petition without a hearing as meritless and granted his counsel's motion to withdraw. (Id., at 398-406). Since Chase did not file a response to the court's notice, the PCRA court dismissed his petition on June 19, 2019. (Id., at 408). On April 8, 2020, the Superior Court affirmed the PCRA court's decision (Id., at 567-80) and Chase's Petition for

Allowance of Appeal was denied by the Supreme Court on November 19, 2020. (Id., at 584).

Chase initially filed the instant habeas corpus petition on January 12, 2018, during the lengthy time period in which his PCRA Petition was pending, arguing that the 37-month delay constituted inordinate delay by the state, thereby rendering the state remedy effectively unavailable. (Docs. 1, 1-1). On December 26, 2018, an order was issued staying Chase's petition, given the outstanding posture of his PCRA petition. (Doc. 10). On December 22, 2020, approximately one month after his Petition for Allowance of Appeal was denied in November of 2020, this court lifted the stay and ordered the Commonwealth to respond to Chase's habeas corpus petition. (Doc. 12).

This petition alleges nine grounds for relief. Chase first contends that there was insufficient evidence to sustain his conviction on five counts of robbery. He further contends that the trial court judge gave an invalid jury instruction, that the search of the vehicle constituted an unreasonable search and seizure, that the deadly weapon enhancement was improperly applied, that the deadly weapon enhancement and an incorrect computation of his prior record score resulted in an inappropriate sentence, that he was convicted on multiplicity, that his counsel was ineffective, and that the court improperly interpreted the robbery statute. Lastly, he argues that there was prosecutorial misconduct relating to some of the testimony presented at trial.

After a review of the record under the deferential standards commanded by law, we find Chase's claims to be without merit. Accordingly, these claims do not warrant habeas relief, and we recommend that Chase's petition be denied.

III. Discussion

A. State Prisoner Habeas Relief–The Legal Standard.

(1) Substantive Standards

In order to obtain federal habeas corpus relief, a state prisoner seeking to invoke the power of this Court to issue a writ of habeas corpus must satisfy the standards prescribed by 28 U.S.C. § 2254, which provides in part as follows:

> (a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.
>
> (b) (1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—
>
> (A) the applicant has exhausted the remedies available in the courts of the State;
>
> .....
>
> (2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

28 U.S.C. § 2254(a) and (b).

As this statutory text implies, state prisoners must meet exacting substantive and procedural benchmarks in order to obtain habeas corpus relief. At the outset, a

petition must satisfy exacting substantive standards to warrant relief. Federal courts may "entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). By limiting habeas relief to state conduct which violates "the Constitution or laws or treaties of the United States," § 2254 places a high threshold on the courts. Typically, habeas relief will only be granted to state prisoners in those instances where the conduct of state proceedings led to a "fundamental defect which inherently results in a complete miscarriage of justice" or was completely inconsistent with rudimentary demands of fair procedure. See e.g., Reed v. Farley, 512 U.S. 339, 354 (1994). Thus, claimed violations of state law, standing alone, will not entitle a petitioner to § 2254 relief, absent a showing that those violations are so great as to be of a constitutional dimension. See Priester v. Vaughan, 382 F.3d 394, 401–02 (3d Cir. 2004).

(2) Deference Owed to State Courts

These same principles which inform the standard of review in habeas petitions and limit habeas relief to errors of a constitutional dimension also call upon federal courts to give an appropriate degree of deference to the factual findings and legal rulings made by the state courts in the course of state criminal proceedings. There are two critical components to this deference mandated by 28 U.S.C. § 2254.

First, with respect to legal rulings by state courts, under § 2254(d), habeas relief is not available to a petitioner for any claim that has been adjudicated on its merits in the state courts unless it can be shown that the decision was either: (1) "contrary to" or involved an unreasonable application of clearly established case law; see 28 U.S.C. § 2254(d)(l); or (2) was "based upon an unreasonable determination of the facts," see 28 U.S.C. § 2254(d)(2). Applying this deferential standard of review, federal courts frequently decline invitations by habeas petitioners to substitute their legal judgments for the considered views of the state trial and appellate courts. See Rice v. Collins, 546 U.S. 333, 338–39 (2006); see also Warren v. Kyler, 422 F.3d 132, 139–40 (3d Cir. 2006); Gattis v. Snyder, 278 F.3d 222, 228 (3d Cir. 2002).

In addition, § 2254(e) provides that the determination of a factual issue by a state court is presumed to be correct unless the petitioner can show by clear and convincing evidence that this factual finding was erroneous. See 28 U.S.C. § 2254(e)(1). This presumption in favor of the correctness of state court factual findings has been extended to a host of factual findings made in the course of criminal proceedings. See, e.g., Maggio v. Fulford, 462 U.S. 111, 117 (1983) (per curiam); Demosthenes v. Baal, 495 U.S. 731, 734–35 (1990). This principle applies to state court factual findings made both by the trial court and state appellate courts. Rolan v. Vaughn, 445 F.3d 671 (3d Cir.2006). Thus, we may not re-assess credibility

determinations made by the state courts, and we must give equal deference to both the explicit and implicit factual findings made by the state courts. Weeks v. Snyder, 219 F.3d 245, 258 (3d Cir. 2000). Accordingly, in a case such as this, where a state court judgment rests upon factual findings, it is well-settled that:

> A state court decision based on a factual determination, ..., will not be overturned on factual grounds unless it was objectively unreasonable in light of the evidence presented in the state proceeding. Miller–El v. Cockrell, 537 U.S. 322, 123 S. Ct. 1029, 154 L.Ed.2d 931 (2003). We must presume that the state court's determination of factual issues was correct, and the petitioner bears the burden of rebutting this presumption by clear and convincing evidence. 28 U.S.C. § 2254(e)(1); Campbell v. Vaughn, 209 F.3d 280, 285 (3d Cir.2000).

Rico v. Leftridge–Byrd, 340 F.3d 178, 181 (3d Cir. 2003). Applying this standard of review, federal courts may only grant habeas relief whenever "[o]ur reading of the PCRA court records convinces us that the Superior Court made an unreasonable finding of fact." Rolan, 445 F.3d at 681.

(3) Ineffective Assistance of Counsel Claims

These general principles apply with particular force to habeas petitions that are grounded in claims of ineffective assistance of counsel. It is undisputed that the Sixth Amendment to the United States Constitution guarantees the right of every criminal defendant to effective assistance of counsel. Under federal law, a collateral attack of a sentence based upon a claim of ineffective assistance of counsel must meet a two-part test established by the Supreme Court in order to survive. Specifically, to prevail on a claim of ineffective assistance of counsel, a petitioner

must establish that: (1) the performance of counsel fell below an objective standard of reasonableness; and (2) that, but for counsel's errors, the result of the underlying proceeding would have been different. Strickland v. Washington, 466 U.S. 668, 687-88, 691-92 (1984). A petitioner must satisfy both of the Strickland prongs in order to maintain a claim of ineffective counsel. George v. Sively, 254 F.3d 438, 443 (3d Cir. 2001).

At the outset, Strickland requires a petitioner to "establish first that counsel's performance was deficient." Jermyn v. Horn, 266 F.3d 257, 282 (3d Cir. 2001). This threshold showing requires a petitioner to demonstrate that counsel made errors "so serious" that counsel was not functioning as guaranteed under the Sixth Amendment. Id. Additionally, the petitioner must demonstrate that counsel's representation fell below an objective standard of reasonableness under prevailing professional norms. Id. However, in making this assessment "[t]here is a 'strong presumption' that counsel's performance was reasonable." Id. (quoting Berryman v. Morton, 100 F.3d 1089, 1094 (3d Cir. 1996)).

But a mere showing of deficiencies by counsel is not sufficient to secure habeas relief. Under the second Strickland prong, a petitioner also "must demonstrate that he was prejudiced by counsel's errors." Id. This prejudice requirement compels the petitioner to show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have

been different." Id. A "reasonable probability" is defined as "a probability sufficient to undermine confidence in the outcome." Id.

Thus, as set forth in Strickland, a petitioner claiming that his criminal defense counsel was constitutionally ineffective must show that his lawyer's "representation fell below an objective standard of reasonableness." Strickland, 466 U.S. at 688. "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Thomas v. Varner, 428 F.3d 491, 499 (3d Cir. 2005) (quoting Strickland, 466 U.S. at 689). The petitioner must then prove prejudice arising from counsel's failings. "Furthermore, in considering whether a petitioner suffered prejudice, '[t]he effect of counsel's inadequate performance must be evaluated in light of the totality of the evidence at trial: a verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support.'" Rolan, 445 F.3d at 682 (quoting Strickland, 466 U.S. at 696) (internal quotations omitted).

Although sometimes couched in different language, the standard for evaluating claims of ineffectiveness under Pennsylvania law is substantively consistent with the standard set forth in Strickland. See Commonwealth v. Pierce, 527 A.2d 973, 976–77 (Pa.1987); see also Werts v. Vaugh, 228 F.3d 178, 203 (3d

Cir.2000) ("[A] state court decision that applied the Pennsylvania [ineffective assistance of counsel] test did not apply a rule of law that contradicted Strickland and thus was not 'contrary to' established Supreme Court precedent"). Accordingly, a federal court reviewing a claim of ineffectiveness of counsel brought in a petition under 28 U.S.C. § 2254 may grant federal habeas relief if the petitioner can show that the state court's adjudication of his claim was an "unreasonable application" of Strickland. Billinger v. Cameron, 2010 U.S. Dist. LEXIS 63759, at *11, 2010 WL 2632286 (W.D. Pa. May 13, 2010). In order to prevail against this standard, a petitioner must show that the state court's decision "cannot reasonably be justified under existing Supreme Court precedent." Hackett v. Price, 381 F.3d 281, 287 (3d Cir. 2004); see also Waddington v. Sarausad, 555 U.S. 179, 190 (2009) (where the state court's application of federal law is challenged, "the state court's decision must be shown to be not only erroneous, but objectively unreasonable.") (internal citations and quotations omitted).

This additional hurdle is added to the petitioner's substantive burden under Strickland. As the Supreme Court has observed a "doubly deferential judicial review that applies to a Strickland claim evaluated under the § 2254(d)(1) standard." Knowles v. Mirzayance, 556 U.S. 111, 123 (2009); see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) (noting that the review of ineffectiveness claims is "doubly deferential when it is conducted through the lens of federal habeas"). This doubly

deferential standard of review applies with particular force to strategic judgment like those thrust upon counsel in the instant case. In this regard, the Court has held that:

> "The proper measure of attorney performance remains simply reasonableness under prevailing professional norms." Id., at 688, 104 S. Ct. 2052. "Judicial scrutiny of counsel's performance must be highly deferential," and "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Id., at 689, 104 S. Ct. 2052. "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable." Id., at 690, 104 S. Ct. 2052.

Knowles v. Mirzayance, 556 U.S. 111, 124, 129 S. Ct. 1411, 1420, 173 L. Ed. 2d 251 (2009). The deference which is owed to these strategic choices by trial counsel is great.

> Therefore, in evaluating the first prong of the Strickland test, courts "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.' " Id. The presumption can be rebutted by showing "that the conduct was not, in fact, part of a strategy or by showing that the strategy employed was unsound." Thomas v. Varner, 428 F.3d 491, 499-500 (3d Cir.2005) (footnote omitted).

Lewis v. Horn, 581 F.3d 92, 113 (3d Cir. 2009).

(4) Procedural Benchmarks – Exhaustion and Procedural Default

a. Exhaustion of State Remedies

State prisoners seeking relief under section 2254 must also satisfy specific procedural standards. Among these procedural prerequisites is a requirement that

1992); Santana v. Fenton, 685 F.2d 71, 73-74 (3d Cir. 1982). A petitioner cannot avoid this responsibility merely by suggesting that he is unlikely to succeed in obtaining state relief, since it is well settled that a claim of "likely futility on the merits does not excuse failure to exhaust a claim in state court." Parker v. Kelchner, 429 F.3d 58, 63 (3d Cir. 2005).

Although this exhaustion requirement compels petitioners to have previously given the state courts a fair "opportunity to apply controlling legal principles to the facts bearing upon [the petitioner's] constitutional claim," Picard v. Connor, 404 U.S. 270, 276 (1971), this requirement is to be applied in a commonsense fashion. Thus, the exhaustion requirement is met when a petitioner submits the gist of his federal complaint to the state courts for consideration, without the necessity that the petitioner engage in some "talismanic" recitation of specific constitutional clams. Evans, 959 F.2d at 1230-33. Similarly, a petitioner meets his obligation by fairly presenting a claim to state courts, even if the state courts decline to address that claim. Dye v. Hofbauer, 546 U.S. 1 (2005) (per curiam); Johnson v. Pinchak, 392 F.3d 551, 556 (3d Cir. 2004).

b. Procedural Default

A necessary corollary of this exhaustion requirement is the procedural default doctrine, which applies in habeas corpus cases. Certain habeas claims, while not exhausted in state court, may also be incapable of exhaustion in the state legal system

the petitioner "has exhausted the remedies available in the courts of the State" before seeking relief in federal court. 28 U.S.C. § 2254(b). In instances where a state prisoner has failed to exhaust the legal remedies available to him in the state courts, federal courts typically will refuse to entertain a petition for habeas corpus. Whitney v. Horn, 280 F.3d 240, 250 (3d Cir. 2002).

This statutory exhaustion requirement is rooted in principles of comity and reflects the fundamental idea that the state should be given the initial opportunity to pass upon and correct alleged violations of the petitioner's constitutional rights. O'Sullivan v. Boerckel, 526 U.S. 838, 844 (1999). The Supreme Court has explained that "a rigorously enforced total exhaustion rule" is necessary in our dual system of government to prevent a federal district court from upsetting a state court decision without first providing the state courts the opportunity to correct a constitutional violation. Rose v. Lundy, 455 U.S. 509, 518 (1982). Requiring exhaustion of claims in state court also promotes the important goal of ensuring that a complete factual record is created to aid a federal court in its review of § 2254 petitions. Walker v. Vaughn, 53 F.3d 609, 614 (3d Cir. 1995). A petitioner seeking to invoke the writ of habeas corpus, therefore, bears the burden of showing that all of the claims alleged have been "fairly presented" to the state courts, and the claims brought in federal court must be the "substantial equivalent" of those presented to the state courts. Evans v. Court of Common Pleas, 959 F.2d 1227, 1231 (3d Cir.

by the time a petitioner files a federal habeas petition because state procedural rules bar further review of the claim. In such instances:

> In order for a claim to be exhausted, it must be "fairly presented" to the state courts "by invoking one complete round of the State's established appellate review process." O'Sullivan v. Boerckel, 526 U.S. 838, 844-45, 119 S. Ct. 1728, 144 L.Ed.2d 1 (1999). If a claim has not been fairly presented to the state courts and it is still possible for the claim to be raised in the state courts, the claim is unexhausted . . . .
>
> If a claim has not been fairly presented to the state courts but state law clearly forecloses review, exhaustion is excused, but the doctrine of procedural default may come into play. A procedural default occurs when a prisoner's federal claim is barred from consideration in the state courts by an "independent and adequate" state procedural rule. Federal courts may not consider the merits of a procedurally defaulted claim unless the default and actual "prejudice" as a result of the alleged violation of the federal law or unless the applicant demonstrates that failure to consider the claim will result in a fundamental "miscarriage of justice." Coleman v. Thompson, 501 U.S. 722, 750, 111 S. Ct. 2546, 115 L.Ed.2d 640 (1991).

Carpenter v. Vaughn, 296 F.3d 138, 146 (3d Cir. 2002).

"[A] federal court will ordinarily not entertain a procedurally defaulted constitutional claim in a petition for habeas corpus '[o]ut of respect for finality, comity, and the orderly administration of justice.' This is a reflection of the rule that 'federal courts will not disturb state court judgments based on adequate and independent state law procedural ground.'" Hubbard v. Pinchak, 378 F.3d 333, 338 (3d Cir. 2004) (citations omitted). Given these concerns of comity, the exceptions

to the procedural default rule, while well recognized, are narrowly defined. Thus, for purposes of excusing a procedural default of a state prisoner seeking federal habeas relief, "[t]he Supreme Court has delineated what constitutes 'cause' for the procedural default: the petitioner must 'show that some objective factor external to the defense impeded counsel's efforts to comply with the State's procedural rule.'" Werts v. Vaughn, 228 F.3d 178, 192-93 (3d Cir. 2000) (citations omitted). Similarly, when examining the second component of this "cause and prejudice" exception to the procedural default rule, it is clear that:

> With regard to the prejudice requirement, the habeas petitioner must prove "'not merely that the errors at ... trial created the possibility of prejudice, but that they worked to his actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions.'" This standard essentially requires the petitioner to show he was denied "fundamental fairness" at trial. In the context of an ineffective assistance claim, we have stated that prejudice occurs where "there is a reasonable probability that, but for counsel's deficient performance, the result of the proceeding would have been different."

Id., at 193 (citations omitted). Likewise, the "miscarriage of justice" exception to this procedural bar rule is also narrowly tailored and requires a credible assertion of actual innocence to justify a petitioner's failure to comply with state procedural rules. Hubbard, 378 F.3d at 338.

Procedural bar claims typically arise in one of two factual contexts. First, in many instances, the procedural bar doctrine is asserted because an express state court

ruling in prior litigation denying consideration of a habeas petitioner's state claims on some state procedural ground. In such a situation, courts have held that:

> A habeas claim has been procedurally defaulted when "a state court declined to address a prisoner's federal claims because the prisoner had failed to meet a state procedural requirement." Coleman v. Thompson, 501 U.S. 722, 730, 111 S. Ct. 2546, 115 L.Ed.2d 640 (1991). For a federal habeas claim to be barred by procedural default, however, the state rule must have been announced prior to its application in the petitioner's case and must have been "firmly established and regularly followed." Ford v. Georgia, 498 U.S. 411, 423-24, 111 S. Ct. 850, 112 L.Ed.2d 935 (1991). Whether the rule was firmly established and regularly followed is determined as of the date the default occurred, not the date the state court relied on it, Doctor v. Walters, 96 F.3d 675, 684 (3d Cir. 1996), because a petitioner is entitled to notice of how to present a claim in state court, Ford, 498 U.S. at 423-424, 111 S. Ct. 850, 112 L.Ed.2d 935.

Taylor v. Horn, 504 F.3d 416, 427-28 (3d Cir. 2007).

In other instances, the procedural default arises, not because of an express state court ruling, but as a consequence of a tactical choice by a habeas petitioner, who elects to waive or forego a claim in the course of his state proceedings, and thus fails to fully exhaust the claim within the time limits prescribed by state statute or procedural rules. In such instances, the petitioner's tactical choices in state court litigation also yield procedural defaults and waivers of claims federally. See, e.g., Johnson v. Pinchak, 392 F.3d 551 (3d Cir. 2004) (procedural default where petitioner failed to timely pursue state claim); Hull v. Freeman, 991 F.2d 86 (3d Cir. 1993) (same). Accordingly, a petitioner's strategic choices in state court waiving or

abandoning state claims may act as a procedural bar to federal consideration of his claims, unless the petitioner can show either "cause and prejudice" or demonstrate a "fundamental miscarriage of justice."

It is against these legal benchmarks that we assess the instant habeas petition.

B. This Petition Should Be Denied.

As we have stated, Chase's petition raises nine grounds for relief. We will discuss the merits of each of these claims in turn.

1. Sufficiency of Evidence

At the outset, we note that to the extent that Chase's claim assails the sufficiency of the evidence in this case, a petitioner faces an exacting burden of proof in advancing such a claim. As we have observed:

> In Jackson v. Virginia, the United States Supreme Court held that "in a challenge to a state criminal conviction brought under 28 U.S.C. § 2254 ... the applicant is entitled to habeas corpus relief if it is found that upon the record evidence adduced at trial no rational trier of fact could have found proof of guilt beyond a reasonable doubt." 443 U.S. 307, 324 (1979). Furthermore, when a petitioner argues about the sufficiency of the evidence in the context of a federal habeas petition, the petitioner would only be entitled to relief if the state courts' decisions regarding the sufficiency of the evidence presented at trial was "an unreasonable application of ... clearly established Federal law," 28 U.S.C. § 2254(d)(1), or if the state court's application of that law itself is "objectively unreasonable," Williams v. Taylor, 529 U.S. 362, 409 (2000); see also McDaniel v. Brown, 558 U.S. 120, 132-33 (2010). Moreover, the rule announced in Jackson "requires a reviewing court to review the evidence 'in the light most favorable to the prosecution.' " Id. (quoting Jackson, 443 U.S. at 319). What this means is that a reviewing court "faced with a record of historical facts that supports conflicting inferences must presume – even if it does not affirmatively

> appear in the record – that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution." Id., at 133 (quoting Jackson, 443 U.S. at 326).

Hawk v. Overmyer, No. 3:16-CV-135, 2019 WL 1187356, at *5 (M.D. Pa. Jan. 17, 2019), report and recommendation adopted sub nom. Hawk v. Overmeyer, No. 3:16-CV-135, 2019 WL 1163830 (M.D. Pa. Mar. 13, 2019). Judged by this deferential standard, we conclude, as the state courts have concluded, that there was ample evidence to convict Chase. On this score, Chase's argument appears to be centered around his belief that since only one establishment—the Wine & Spirits store—was robbed, he should have only been convicted of one count of robbery. This contention is based on a fundamental misunderstanding of Pennsylvania's robbery statute and we find this argument to be without merit.

Chase's argument here is twofold: first, that he did not directly threaten or intentionally put each victim in fear of immediate serious bodily injury. On this score, he concedes that this element was proven as to victim #1 (David Smith), but maintains that there were no threats to the remaining five victims, despite the testimony that he and his co-defendant entered the store waving guns and shouted "[f]uckin[']] hit the ground." Furthermore, there is unrefuted testimony that as to victims #2 (Petra Meckley) and #3 (Kelli Herman), one of the robbers approached the women, told Meckley to "open the fuckin[']] cash register now, bitch," and grabbed her by the neck and shoved her face into the register when she was unable

to do so. The man then grabbed Kelli and pushed her by the neck to the register to get her to open it. We are therefore completely unconvinced by Chase's assertion that he neither threatened nor placed Meckley and Herman in fear of immediate serious bodily injury. Quite the contrary, the undisputed facts describe an episode fraught with peril for the victims of this robbery. As to the remaining three victims: two customers and an employee who was stocking shelves, as the Superior Court noted in Chase's direct appeal, these victims "would have clearly placed themselves in imminent danger of being shot by Chase or Bryan if they had refused to follow the robbers' orders to get down on the ground. One can reasonably infer that Chase's and Bryant's general threats included those women." (Doc. 15-1, at 383). We agree.

Chase's second argument here is that there was no theft of personal property from any of the victims, and there was therefore insufficient evidence to convict him on multiple counts. As this is closely tied to the second ground for relief in Chase's petition, we will address it below.

2. Jury Instruction

The second ground for relief Chase raises relates to the jury instruction the court gave on the robbery charges. He asserts that the supplemental jury instruction that was given violated his 14th Amendment rights. The trial court gave the standard jury instruction for robbery, and also provided the following supplemental jury instruction:

> If you find beyond a reasonable doubt that the Defendant, Leonard Chase, Jr., during the course of committing a theft, threatened more than one person with, or intentionally put more than one person in fear of immediate serious bodily injury, then you should find the Defendant guilty of Robbery for each of those persons, regardless of whether those persons personally possessed or had a personal protected interest in the property stolen, which in this case was the cash from the Wine & Spirits store.

(Doc. 10-1, at 247). Chase's argument relies on his erroneous belief that the Commonwealth was required to prove that the defendant(s) in a robbery case took money or property from each individual victim. Pennsylvania case law, however, says the exact opposite. See Commonwealth v. Rozplochi, 561 A.2d (Pa. Super. 1989) (holding that the state legislature intended for separate penalties for threatening more than one victim during the course of one robbery); see also Commonwealth v. Gillard, 850 A.2d 1273 (Pa. Super. 2004) (relying on Rozplochi and concluding that the evidence was sufficient to convict defendant of multiple counts of robbery where the defendant waved a gun in front of a bar employee and four patrons then took money from the cash register at the bar). In fact, the supplemental jury instruction given at Chase's trial was entirely in accordance with Pennsylvania case law, specifically Gillard and Rozplochi.

Because it is well settled under Pennsylvania law that threatening more than one victim during the course of a robbery is sufficient for a defendant to be found guilty of multiple counts of robbery, even if nothing is stolen from each individual victim, we are unable to find that the jury instruction was improper or that it violated

Chase's constitutional rights. Simply put, Chase is not constitutionally entitled to some sort of group rate sentencing reduction because he chose to menace multiple victims.

The jury instruction did not, as Chase argues, relieve the Commonwealth of its burden of proving every element of the burglary charge. Pennsylvania's burglary statute only requires that the defendant threaten or place someone in fear *in the course of committing a theft.* See 18 Pa.C.S. § 3701(a)(1)(ii) (emphasis added). The statute does not require proof of a theft from each victim individually or a theft of personal property from each victim. Accordingly, this argument, which is grounded upon a misapprehension regarding Pennsylvania law, fails.

3. Unreasonable Search and Seizure

Chase's third argument is that the warrantless search of his vehicle was unreasonable in violation of the Fourth and Fourteenth Amendments. At the outset, it is well settled that a petitioner must present his claims to the state courts for a full round of appellate review, meaning to both the Pennsylvania Superior Court and the Pennsylvania Supreme Court. See O'Sullivan v. Boerckel, 526 U.S. 838, 844-45 (1999) (finding that a petitioner properly exhausts claims in state court "by invoking one complete round of the State's established appellate review process"); Lines v. Larkin, 208 F.3d 153, 160 (3d Cir. 2000) ("Petitioners who have not fairly presented their claims to the highest state court have failed to exhaust those claims"); Evans v.

Court of Common Pleas, Delaware Cnty., Pa., 959 F.2d 1227, 1230 (3d Cir. 1992) ("A claim must be presented not only to the trial court but also the state's intermediate court as well as to its supreme court"); Blasi v. Atty. Gen. of Pa., 30 F. Supp. 2d 481, 486 (M.D. Pa. 1998) ("The exhaustion doctrine requires the defendant to present the issue to any intermediate state appellate court, if applicable, and to the state's supreme court").

This basic exhaustion requirement is fatal to Chase's unreasonable search and seizure claim. Chase did not raise this issue prior to or during his trial, nor did he raise this issue on direct appeal. He raised the issue for the first time in his PCRA petition. The PCRA court concluded that this claim had been waived, as it was not raised on direct appeal. Indeed, a review of the petitioner's § 1925(b) statement indicates that he failed to include this claim on appeal to the Superior Court. (Doc. 15-1, at 333-35). Therefore, this claim has not been properly exhausted, and is now procedurally defaulted, as Chase is no longer able to raise the claim in state court. Further, Chase does not assert any "cause" or "prejudice" that would excuse this procedural default. Thus, this claim does not afford Chase any relief.

However, even if we found excuse for Chase's procedural default, this claim is without merit. As the PCRA court noted in its Rule 907 Notice,

> The initial search of the vehicle was made incident to the arrest of [Chase] and his co-defendant. Cf. Com. v. Smith, 452 Pa. 1, 304 A.2d 456 (1973). Thereafter, the vehicle was impounded at the police statement, and a search warrant was applied for and obtained prior to a

> more thorough search of the vehicle. (Application for Search Warrant and Authorization; Affidavit of Probable Cause). In addition, given the totality of the circumstances, the Officers had probable cause and exigent circumstances which made a warrantless search of the vehicle permissible. Given the foregoing, Defendant is not entitled to PCRA relief on this issue.

(Doc. 15-1, at 399-400). We agree. The testimony of one of the arresting officers is that after a high-speed pursuit, Chase, his co-defendant, and the third individual were all removed from the vehicle and handcuffed. When Chase was removed from the vehicle and searched, the officer found $312.56, some of which was still in coin wrappers. (Doc. 15-1, at 149). Furthermore, the officer saw a black handgun laying on the drier's seat that "would have been probably under Mr. Chase's right leg." (Id.) There is ample evidence to demonstrate that the search of the vehicle at that time was not unreasonable, including clothing matching the description of the robbers, money recovered from the suspects, some of which was in coin wrappers, and a handgun in plain view. Moreover, the record indicates that when the car was later impounded, a search warrant was obtained to search the vehicle further.

Finally, we note that under settled Fourth Amendment principles, this warrantless vehicle search was justified incident to Chase's arrest; Arizona v. Gant, 566 U.S. 332 (2009), based upon probable cause to believe that Chase had committed the robbery; Chambers v. Maroney, 399 U.S. 42 (1970), and as an inventory search of an impounded vehicle. South Dakota v. Opperman, 428 U.S. 364 (1976)

Simply put, there is nothing about this vehicle search that offends Fourth Amendment principles. Thus, we are faced with a claim that is unexhausted, procedurally defaulted, and without merit.

4. Application of the Deadly Weapon Enhancement

Chase next asserts that the judge's evaluation and application of the Deadly Weapon Enhancement was unconstitutional by arguing that such an enhancement is an "element" that must be submitted to the jury, not the judge, to decide. In doing so, Chase invokes the holding in Alleyne v. United States, 570 U.S. 99 (2013), where the Supreme Court held that, except for the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory minimum must be submitted to a jury and proven beyond a reasonable doubt. Alleyne, 570 U.S. at 103. It is, however, well established in Pennsylvania that the application of the deadly weapon enhancement does not implicate Alleyne. See Commonwealth v. Buterbaugh, 91 A.3d 1247, 1270 n.10 (Pa. Super. 2014) (holding that the imposition of sentencing enhancement does not implicate Alleyne); see also Commonwealth v. Shull, 148 A.3d 820, 830, n.6 (Pa. Super. 2016) (same).

Lastly, we note that Chase relies, in his brief, upon a gun sentencing enhancement statute—42 Pa.C.S.§ 9712.1—to bolster his argument. However, as aptly noted by the Superior Court in his PCRA appeal:

> [Chase's] reliance on Alleyne and reference to 42 Pa.C.S. § 9712.1 in support of his illegal sentence claim are misplaced. First, the trial court

> did not impose on [Chase] a mandatory minimum sentence. Second, Section 9712.1 pertained to certain drug offenses committed with firearms. Instantly, the jury convicted [Chase] of Robbery, which is not a drug offense. Last, the deadly weapon enhancement imposed on [Chase's] sentence is not a mandatory minimum sentence; rather, it merely raises the recommended sentence under the sentencing guidelines.

(Doc. 15-1, at 579). Therefore, we find that Chase's argument on this score is unavailable and he is not entitled to habeas corpus relief on this basis.

5. Computation of Prior Record Score and Deadly Weapon Enhancement

Next, Chase contends that the prior record score should have only been applied to the offense with the highest offense gravity score and that it should have been zero for the remaining offenses. Additionally, he asserts that the deadly weapon enhancement should have only applied to one charge because all of the charges were part of the same transaction. Again, we note that Chase failed to raise these arguments on direct appeal and the claim is therefore unexhausted and is now procedurally defaulted.

We agree with the Superior Court, which examined the issue on Chase's PCRA appeal, that "[a]lthough [Chase] attempts to argue that the court's alleged error violated his due process rights, in fact, this issue implicated the discretionary aspects of his sentence." (Doc 15-1, at 575). The Superior Court has repeatedly held that challenges to the calculation of sentencing guideline ranges or miscalculation of prior record scores constitute challenges to the discretionary aspects of a sentence.

See Commonwealth v. Keiper, 887 A.2d 317 (Pa. Super. 2005); see also Commonwealth v. Sanchez, 848 A.2d 977 (Pa. Super. 2004).

On direct appeal, Chase did raise an issue relating to the discretionary aspects of his sentence, but the issues he raised related to his being sentenced at the top of the guideline range, that the sentences for each charge were run consecutively, and that the court failed to consider two mitigating factors.

The specific issues relating to the discretionary aspects of his sentence that he now attempts to raise were not presented prior to or during his trial, or on direct appeal. He raised them for the first time in his PCRA petition and the PCRA court properly concluded that the issues had been waived. Therefore, these claims are unexhausted and because he can no longer raise them in state court, they are procedurally defaulted. Chase does not assert any "cause" or "prejudice" that would excuse this procedural default. Thus, these claims also do not afford Chase any relief.

Even if we found excuse for Chase's procedural default, these claims are without merit. Chase's argument improperly relies on the 3rd Edition of the Sentencing Guidelines and corresponding case law. At the time Chase was sentenced, the 6th Edition Revised Sentencing Guidelines were in place. Those sentencing guidelines do not contain the language upon which Chase bases his argument. Thus, we are again faced with a claim that is unexhausted, procedurally defaulted, and without merit.

6. Multiplicity/Double Jeopardy

Next, Chase asserts that he was given multiple punishments for the same offense, resulting in double jeopardy or "multiplicity." The basis for Chase's argument on this score is closely related to the first two issues he raised—the sufficiency of evidence to convict him on five counts of robbery and the special jury instruction. In fact, in Chase's PCRA appeal, the Pennsylvania Superior Court indicated that this issue was unsuccessfully raised on direct appeal "within the context of his challenge to the court's jury instruction." (Doc. 15-1, at 574).

There are several aspects to a true Double Jeopardy inquiry. First, there is a legal component to this analysis:

> The Double Jeopardy Clause of the Fifth Amendment prescribes that "[n]o person shall be ... subject for the same offence to be twice put in jeopardy of life or limb," U.S. Const. amend. V, and it "protects not only against a second trial for the same offense, but also against multiple punishments for the same offense," Whalen v. United States, 445 U.S. 684, 688, 100 S. Ct. 1432, 63 L.Ed.2d 715 (1980) (internal quotation marks omitted). To assess whether two crimes constitute the "same offense" for double jeopardy purposes, we employ the test established by the Supreme Court in Blockburger v. United States, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932). That is, "where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." Id. at 304, 52 S. Ct. 180. If this test yields "only one" offense, "cumulative sentences are not permitted, unless elsewhere specially authorized by Congress." Whalen, 445 U.S. at 693, 100 S. Ct. 1432.

Wilkerson v. Superintendent Fayette SCI, 871 F.3d 221, 229–30 (3d Cir. 2017).

Second, there is also a factual aspect to this assessment. Thus, Double Jeopardy principles are not offended by the prosecution of "distinct and separate [acts] at different times" as separate offenses, provided the statute treats each act as a distinct violation. Blockburger v. United States, 284 U.S. at 301. Thus, with respect to offenders who are charged with committing multiple criminal acts, it has been held that: "When the accused commits multiple acts, merger is not proper as defendants are not entitled to a 'volume discount' for their crimes." Downward v. Overmyer, No. CV 13-6742, 2015 WL 10568891, at *7 (E.D. Pa. Aug. 27, 2015), report and recommendation adopted, No. CV 13-6742, 2016 WL 1241882 (E.D. Pa. Mar. 30, 2016).

Viewing Chase's claim through this analytical lens, we have little difficulty concluding that Chase was properly convicted of five separate counts of robbery since he and his co-conspirators menaced multiple victims. As discussed above, pursuant to Pennsylvania case law and legislative intent, it is not improper for a defendant to be convicted of multiple counts of robbery when multiple victims are threatened in the course of a single theft being committed. Chase was not being punished multiple times for the same crime; rather, he was punished for committing different crimes. Each threat to an individual victim during the course of the theft of the Wine & Spirits store constituted a separate count of robbery. There was sufficient

evidence to convict Chase of each count. Therefore, this claim is also without merit and Chase is not entitled to relief.

7. Ineffective Assistance of Counsel

In total, Chase asserts six claims against his trial counsel, arguing that he rendered ineffective assistance during Chase's trial. His arguments are as follows: (1) counsel failed to take depositions from the Commonwealth's key witnesses in preparation for trial; (2) counsel failed to conduct an investigation into the third individual in the car the night of the robbery; (3) counsel failed to assert Alleyne; (4) counsel failed to argue the incorrect computation of his prior record score and the application of the deadly weapon enhancement; (5) counsel failed to assert and preserve an objection to the unreasonable search and seizure; (6) counsel failed to assert and preserve an objection to the multiplicity/double jeopardy issue.

The first four of these claims were presented to the PCRA court and the Superior Court on appeal. A review of the record reveals that both courts adequately addressed the claims in denying Chase's request for relief. Therefore, given the deference that must be afforded to the state court's determinations, we conclude that none of these claims entitle Chase to relief. As to the fifth and six issues—relating to the search of Chase's vehicle and double jeopardy—we find that they are unexhausted, as Chase failed to raise them in his PCRA petition. However, even if

he had raised them, in our view, none of his six claims meet the Strickland standard for ineffective assistance and thus do not warrant habeas relief.

a. Failure to Take Depositions of Key Witnesses

In the instant habeas corpus petition, Chase "argues that his defense counsel's incompetent performance were [sic] inadequate, due to the fact that defense counsel failed to acquire depositions from Commonwealth's key witnesses in preparation for trial." This sentence, however, is all that Chase offers on this score. As we have observed, in order to be successful on these claims, Chase must establish that: (1) the performance of counsel fell below an objective standard of reasonableness; and (2) that, but for counsel's errors, the result of the underlying proceeding would have been different. Strickland, 466 U.S.at 687-88, 691-92. A petitioner must satisfy both of the Strickland prongs in order to maintain a claim of ineffective counsel. George, 254 F.2d at 443. "Furthermore, in considering whether a petitioner suffered prejudice, '[t]he effect of counsels' inadequate performance must be evaluated in light of the totality of the evidence at trial: a verdict or conclusion only weakly support by the record is more likely to have been affected by errors than one with overwhelming record support." Rolan, 445 F.3d at 682 (quoting Strickland, 466 U.S. at 696) (internal quotations omitted).

When evaluating a claim of ineffective assistance of counsel for failure to investigate or identify witnesses:

> In Pennsylvania, to prevail on a claim of ineffective assistance of trial counsel for failure to call a witness, the appellant must show:
>
> > (1) that the witness existed; (2) that the witness was available; (3) that counsel was informed of the existence of the witness or should have known of the witness's existence; (4) that the witness was prepared to cooperate and would have testified on appellant's behalf; and (5) that the absence of the testimony prejudiced appellant.
>
> Commonwealth. v. Fulton, 830 A.2d 567, 572 (Pa. 2003) (citations omitted).
>
> Although this standard is not identical to the Strickland standard, the Third Circuit has held that "the Pennsylvania test is not contrary to the test set forth in Strickland." Moore v. DiGuglielmo, 489 Fed.App'x. 618, 626 (3d Cir. 2012) ("The five requirements set forth by the Pennsylvania Supreme Court would necessarily need to be shown to prevail under Strickland on a claim of this nature.")
>
> Stewart v. Ferguson, No. CV 3:17-0893, 2021 WL 465411, at *6 (M.D. Pa. Feb. 9, 2021). While Chase specifically complains of his counsel's failure to take depositions, he would still have to satisfy this basic threshold requirement relating to the witness or witnesses he claims his trial counsel did not depose, as some sort of investigation into the witnesses would be required prior to deposing them. However, Chase has failed to provide the identity of these witnesses, demonstrate that they were able to be deposed, or indicate what their deposition testimony would have been. Given the deferential standard that applies to these ineffective assistance of counsel claims, we cannot conclude that the state courts' determination was unreasonable application of Strickland or based on an unreasonable determination

of the facts. Rather, Chase's failure to provide any information supporting his contention effectively tied the courts' hands, as he provided nothing to establish either Strickland prong.

b. Failure to Investigate the Third Individual in the Car

Next, Chase attack his trial counsel's failure to investigate the third individual in the car the night of his arrest, asserting that an investigation would have helped the defense prove that it was reasonably likely the third occupant in the car was one of the two robbers. Again, Chase's argument fails to demonstrate any prejudice, as he provides nothing more than this one-sentence boilerplate allegation that does not satisfy his burden in proving that his counsel was ineffective.

Furthermore, as discussed above in Chase's sufficiency of evidence argument, the jury, the trial court, and the Superior Court found that there was sufficient evidence, despite the presence of a third person in the vehicle, to find that Chase and his co-defendant were the two people engaged in the robbery of the Wine & Spirits store. Therefore, even if Chase had satisfied the first prong of the Strickland test, having failed to demonstrate prejudice to satisfy the second prong, he is not entitled to relief on this claim.

c. Remaining Ineffective Assistance Claims

Chase's remaining four claims of ineffective assistance of counsel warrant only brief consideration. We have already evaluated his claims regarding the

application of Alleyne, incorrect computation of his prior record score and the application of the deadly weapon enhancement, the search of his vehicle and seizure of evidence, as well as the double jeopardy issue and determined that they have no merit. Since we have found that none of these matters independently warrant federal habeas corpus relief, it cannot be said that the failure of trial counsel to raise these issues rises to the level of ineffective assistance of counsel since "counsel cannot be ineffective for failing to pursue meritless claims or objections." McDaniels v. Thompson, 2011 WL 6942907, at *9. Accordingly, these remaining claims also do not warrant habeas relief.

8. Interpretation of the Robbery Statute

Next, Chase argues that the trial court incorrectly interpreted the robbery statute by allowing him to be convicted for several counts of robbery when only one establishment was robbed. On this score, Chase presents nothing beyond what was presented for his sufficiency of the evidence and double jeopardy arguments. In essence Chase invites us to ignore settled law, and re-write the Pennsylvania robbery statute in a fashion that allows him to threaten multiple victims in the course of a robbery without any adverse consequences. We should decline this invitation which is manifestly without merit. Therefore, we find it unnecessary to further address these arguments. Chase is not entitled to habeas relief on this basis.

9. Prosecutorial Misconduct

Lastly, Chase argues that the prosecutor at his trial committed misconduct by allowing Officer Leer to testify. We note that once again, Chase has failed to present this claim to the state courts for a full round of appellate review, which is fatal to his claim. Chase did not raise this issue prior to or during the trial, nor did he raise this issue on direct appeal. In fact, this issue was raised for the first time in Chase's PCRA Petition. The PCRA court concluded that this claim had been waived, as it was not raised on direct appeal. Therefore, this claim has not been properly exhausted, and is now procedurally defaulted, as Chase is no longer able to raise the claim in state court. Further, Chase does not assert any "cause" or "prejudice" that would excuse this procedural default. Thus, this claim does not afford Chase any relief.

Even if we found excuse for Chase's procedural default, this claim is without merit. A "state may not knowingly use false evidence, including false testimony, to obtain a tainted conviction." See Napue v. Illinois, 360 U.S. 264, 269 (1959). It is "fundamentally unfair to the accused where 'the prosecution knew, or should have known, of the perjury.'" See Lambert v. Blackwell, 387 F.3d 210, 242 (3d Cir. 2004) (quoting United States v. Agurs, 427 U.S. 97, 103 (1976)). "The same is true when the [G]overnment, although not soliciting false evidence, allows it to go uncorrected when it appears at trial." United States v. Biberfeld, 957 F.2d 98, 102 (3d Cir. 1992).

"[T]he conviction must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury." Lambert, 387 F.3d at 242 (quoting Biberfeld, 957 F.2d at 102). Moreover, to establish prosecutorial misconduct, a habeas petition must establish: "(1) [the Government's witness] committed perjury; (2) the [G]overnment knew or should have known of his perjury; (3) the testimony went uncorrected; and (3) there is any reasonable likelihood that the false testimony could have affected the verdict." See United States v. John-Baptiste, 747 F.3d 186, 210 (3d Cir. 2014) (citing Lambert, 387 F.3d at 242). Furthermore, it is well established that "[d]iscrepancy is enough to prove perjury." Lambert, 387 F.3d at 249. "There are many reasons testimony may be inconsistent; perjury is only one possible reason. As we have explained above, in order to sustain a claim of constitutional error [the petitioner] must show that [the witness] actually perjured himself and the government knew or should have known of his perjury." Id.

The first part of Chase's argument of prosecutorial misconduct is that Officer Leer's testimony about the location of the handgun constituted perjury and it was misconduct on the part of the prosecutor to allow him to testify in contradiction with Officer Wales' testimony about the location of the handgun. However, as the PCRA court noted in its Rule 907 Notice,

> Even if it is not waived, the testimony is not inconsistent. Officer Leer testified that "the gun was found between the two driver's seats, the

> fold-down arm rests, in between them, individual arm rests, and the gun was found in between them, inverted as you saw in the picture, between those two arm rests on the floor, as if somebody had reached back and stuck it underneath." (N.T., 4/5/11, page 282). According to Defendant, Officer Wales testified that the second gun was located on the backseat/console area. They both seem to be saying the same thing, just using different words to do it. Even if it were inconsistent, inconsistent testimony does not amount to perjury and/or prosecutorial misconduct. Moreover, "[i]n instances where there is conflicting testimony, it is for the jury to determine the weight to be given the testimony. The credibility of a witness is a question for the factfinder." Commonwealth v. Puksar, 559 Pa. 358, 366, 740 A.2d 219, 224 (1999)(citation omitted).

(Doc. 15-1, at 404). Next, Chase discusses Officer Leer's testimony that the third suspect had on a black leather jacket with no hood and alleges that the dash cam footage showed him to be wearing a black hoodie. Again, however, the PCRA court noted that even if it were true, conflicting testimony does not equate to perjury or prosecutorial misconduct and the jury determines the credibility of witnesses and their testimony. Lastly, Chase notes that one of the victims, Sabrina Robinson, described one of the perpetrators of the robbery as wearing a black hoodie. However, a review of her testimony reveals that she was unable to recall the color of the hoodie entirely. Thus, Chase has alleged minor inconsistencies, but no actual perjury on the part of the witnesses or any knowledge of perjury on the part of the prosecutor. Therefore, we are unable to find that there was prosecutorial misconduct here and this claim does not afford Chase habeas relief.

In closing, this is not a case in Chase's current legal dilemma is a result of incompetent counsel or constitutionally prejudicial and erroneous trial court rulings. Instead, Chase's present incarceration is a direct result of strong evidence linking him to the robbery of the Wine and Spirits store, during which numerous victims were individually threatened.

IV. Recommendation

Accordingly, for the foregoing reasons, IT IS HEREBY RECOMMENDED that the petition for a writ of habeas corpus in this case be DENIED, and that a certificate of appealability should not issue.

The petitioner is further placed on notice that pursuant to Local Rule 72.3:

> Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Submitted this 8th day of September, 2021.

/s/ Martin C. Carlson
Martin C. Carlson
United States Magistrate Judge

APPENDIX C

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

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
LEONARD CHASE, JR.	:	
Appellant	:	No. 1122 MDA 2019

Appeal from the PCRA Order Entered June 19, 2019
In the Court of Common Pleas of York County Criminal Division at No(s): CP-67-CR-0003518-2010

BEFORE: STABILE, J., DUBOW, J., and PELLEGRINI, J.*

MEMORANDUM BY DUBOW, J.: **FILED APRIL 08, 2020**

Appellant, Leonard Chase, Jr., appeals from the June 19, 2019 Order entered in the York County Court of Common Pleas dismissing his first Petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S §§ 9541-46, as meritless. After careful review, we affirm.

The relevant facts and procedural history are as follows. On April 7, 2011, a jury convicted Appellant of five counts of Robbery and one count of Criminal Conspiracy to Commit Robbery.[1] The court sentenced Appellant to an aggregate term of 35 to 70 years' incarceration, comprised of five consecutive terms of 7 to 14 years' incarceration for each of his Robbery

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* Retired Senior Judge assigned to the Superior Court.

[1] 18 Pa.C.S §§ 3701(a)(1)(ii) and 903(a)(1), respectively. The court tried Appellant with his co-defendant, Travis Lamont Bryant.

convictions, and a concurrent term of 6 to 12 years' incarceration for his Criminal Conspiracy conviction.[2] Appellant filed Post-Sentence Motions, which the trial court denied on October 24, 2011.

Appellant filed a direct appeal challenging the sufficiency and weight of the evidence, a jury instruction, and the discretionary aspects of his sentence. This Court affirmed Appellant's Judgment of Sentence on December 20, 2012. ***See Commonwealth v. Chase***, No. 2064 MDA 2011 (Pa. Super. filed Dec. 20, 2012) (unpublished memorandum). On October 23, 2013, the Pennsylvania Supreme Court denied Appellant's Petition for Allowance of Appeal. ***See Commonwealth v. Chase***, 77 A.3d 1285 (Pa. 2013) (table). Appellant did not seek further review of his Judgment of Sentence. Appellant's Judgment of Sentence, thus, became final on January 21, 2014.[3]

On December 8, 2014, Appellant filed *pro se* the instant PCRA Petition in which he claimed that: (1) the Commonwealth's evidence was insufficient to support his conviction; (2) the court gave an invalid jury instruction; (3) the initial search and seizure by police was constitutionally invalid; (4) the court erred in imposing a mandatory minimum sentence and incorrectly applied the deadly weapons enhancement; (5) the sentencing court incorrectly computed Appellant's prior record score ("PRS"); (6) the jury's

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[2] The court did not impose any mandatory minimum sentences. Appellant's individual sentences are at the top end of the guideline range and did not exceed the statutory maximums.

[3] ***See*** Pa.R.A.P. 903(a); 42 Pa.C.S. § 9545(b)(3).

verdict on multiple counts was constitutionally invalid; (7) his trial counsel was ineffective; and (8) his constitutional rights had been violated. Petition, 1/8/14, at 3-4.

On December 10, 2014, the PCRA court appointed counsel.[4] After an unexplained delay of more than four years, on February 25, 2019, PCRA counsel filed a Petition to Withdraw as Counsel along with a "no-merit" letter pursuant to ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1998), ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1988) (*en banc*), and their progeny, after concluding that Appellant's Petition presented no issues of arguable merit.

On May 29, 2019, the PCRA court issued a Pa.R.Crim.P. 907 Notice of its intent to dismiss Appellant's Petition without a hearing as meritless, and granted counsel's Motion to Withdraw. Appellant did not file a Response to the court's Rule 907 Notice. On June 19, 2019, the PCRA court dismissed Appellant's Petition.

This timely *pro se* appeal followed. Both Appellant and the PCRA court have complied with Pa.R.A.P 1925.

Appellant raises the following issues on appeal:

> I. Did the [PCRA] court err when it denied relief [on the claim that] evidence presented during trial was insufficient to sustain a

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[4] On December 30, 2014, the PCRA court vacated its first Order appointing Bruce Blocher, Esquire, as counsel, and instead appointed William H. Graff, Jr., Esquire, as counsel.

conviction on all five counts of robbery[,] a violation of the U.S. Constitution Fourteenth Amendment right?

II. Did the [PCRA] court err when it denied relief [on the claim that] the court gave invalid jury instructions[,] a U.S. Constitution Fourteenth Amendment violation?

III. Did the [PCRA] court err when it denied relief [on the claim of an] unreasonable search and seizure [in] violation of the U.S. Constitution Fourth and Fourteenth Amendment?

IV. Did the [PCRA] court err when it denied relief [on the claim of] prosecutorial misconduct[,] a U.S. Constitutional violation of Appellant's Fourteenth Amendment right?

V. Did the [PCRA] court err when it denied relief [on Appellant's claim that the] court's interpretation of 19 Pa.C.S.[] § 3701(a)(1)(ii) violates the U.S. Constitution Fifth and Fourteenth Amendment[s]?

VI. Did the [PCRA] court err when it denied relief for Claim F, Appellant convicted on multiplicity [*sic*,] a violation of the U.S. Constitutional Fourteenth Amendment right?

VII. Did the [PCRA] court err when it denied relief [on Appellant's claim that] Pennsylvania's mandatory minimum sentencing act and deadly weapon enhancement violates the U.S. Constitution Sixth and Fourteenth Amendment?

VII. Did the [PCRA] court err when it denied relief [on Appellant's claim of] ineffective assistance of counsel[,] a violation of [] Appellant's U.S. Constitutional Fourteenth Amendment right?

IX. Did the [PCRA] court err when it denied relief [on Appellant's claim that the] sentencing court incorrectly computed Appellant's [PRS] and deadly weapon enhancement which resulted in an inappropriate sentence[,] a Fourteenth Amendment due process violation?

Appellant's Brief at 5-6 (reordered for ease of disposition).

Cognizability of Claims

Before we address the merits of Appellant's claims, we must first determine which, if any, of them are cognizable under the PCRA. The PCRA

specifically permits challenges asserting (1) constitutional violations; (2) ineffective assistance of counsel; (3) an unlawful inducement of a guilty plea; (4) obstruction of a defendant's right to an appeal; (5) newly discovered exculpatory evidence that was not available at the time of the trial; (6) an imposition of a sentence greater than the lawful maximum; and (7) a lack of jurisdiction. ***See*** 42 Pa.C.S. § 9543(a)(2). Based on our review, Appellant's first seven issues are either not cognizable under the PCRA, are waived, or have been previously litigated.

This Court has consistently held that challenges to the sufficiency of the evidence are not cognizable under the PCRA. ***See Commonwealth v. Price***, 876 A.2d 988, 995 (Pa. Super. 2005) (rejecting a sufficiency claim that was raised on PCRA appeal without an ineffective assistance of counsel analysis because it is not cognizable under the PCRA); ***see also Commonwealth v. Bell***, 706 A.2d 855, 861 (Pa. Super. 1998) (holding that sufficiency claims are not cognizable under the PCRA).

In addition, issues previously raised and litigated on direct appeal are not cognizable under the PCRA. ***See*** 42 Pa.C.S. § 9543(a)(3) (providing that a petitioner must plead and prove by a preponderance of the evidence that the allegation of error has not been previously litigated); ***see also Commonwealth v. Spotz***, 18 A.3d 244, 281 (Pa. 2011) (recognizing that a claim that has been previously litigated is not cognizable under the PCRA).

Relatedly, an issue a petitioner could have raised "before trial, at trial, during unitary review, on appeal or in a prior state postconviction proceeding[,]" but failed to raise, is waived. 42 Pa.C.S § 9544(b).

Issue I

In his first issue, Appellant claims that his Robbery convictions violated his due process rights because the Commonwealth presented insufficient evidence to sustain each of the elements of the offense. Appellant's Brief at 13-28.

Appellant previously litigated his challenge to the sufficiency of the Commonwealth's evidence on direct appeal, and this Court affirmed that the evidence was sufficient. ***See Chase***, No. 2064 MDA 2011, at 9-15. This claim is, therefore, not cognizable under the PCRA. ***See*** 42 Pa.C.S. § 9543(a)(3). ***See also Price***, 876 A.2d at 995; ***Bell***, 706 A.2d at 861.

To the extent that Appellant attempts to avoid the PCRA's prohibition against relitigating previously litigated claims by arguing that the evidence was insufficient to satisfy due process, Appellant has waived this argument by not raising it at trial or on direct appeal. ***See*** 42 Pa.C.S § 9544(b). Therefore, even if Appellant had not previously litigated this claim, he would not be entitled to relief under the PCRA.

Issue II

In his second issue, Appellant claims the trial court violated his due process rights by providing the jury with an instruction on the Robbery charge that "contradicts the law" and "made it 'reasonably likely' that the jury applied

the improper instructions in an unconstitutional way." Appellant's Brief at 33-34. The crux of Appellant's claim is that the trial court's jury instruction essentially directed the jury to convict Appellant of multiple counts of Robbery even though Appellant's crimes arose in the course of only one event. Although Appellant attempts to frame this issue in federal constitutional law terms, our review indicates that it is merely an attempt to relitigate an issue he unsuccessfully raised on direct appeal. ***See Chase***, No. 2064 MDA 2011, at 17-19. Therefore, he is not eligible for relief under the PCRA. ***See*** 42 Pa.C.S. § 9543(a)(3).

Issue III

In his third issue, Appellant claims that a warrantless search of his vehicle by police was an unreasonable search and seizure in violation of the Fourth Amendments of the U.S. Constitution. Appellant's Brief at 34-36. Our review of the record indicates that Appellant failed to raise this issue before the trial court, for example, by filing a motion to suppress the evidence obtained from the allegedly illegal search. Appellant's failure to raise this claim prior to the filing of his PCRA Petition results in its waiver. ***See*** 42 Pa.C.S. § 9544(b).

Issue IV

In his fourth issue, Appellant claims prosecutorial misconduct occurred during his trial as a result of testimony given by a police officer that differed slightly by from an account given by another officer in the Criminal Complaint, which resulted in a violation of his due process rights. Appellant's Brief at 77-

80. Appellant could have raised this issue on direct appeal, but failed to do so. Accordingly, this claim is waived. ***See*** 42 Pa.C.S. § 9544(b).

Issue V

In what essentially amounts to a sufficiency of the evidence claim, in his fifth issue, Appellant argues that the Commonwealth and the trial court misinterpreted the Robbery statute when it charged him with multiple counts of Robbery because his "victims" were mere bystanders because did not subject them to any direct threats or thefts, and because they did not have a property interest in the items Appellant stole. ***See, e.g.***, Appellant's Brief at 61-62. He concludes, therefore, no robbery of them occurred. This Court's review of the record indicates that Appellant unsuccessfully raised this issue on direct appeal. ***See Chase***, No. 2064 MDA 2011, at 9-14. Therefore, he is not eligible for relief under the PCRA. ***See*** 42 Pa.C.S. § 9543(a)(3).

Issue VI

In his sixth issue, Appellant claims that his conviction of five counts of Robbery arising from one act of theft violates the double jeopardy clause of the U.S. Constitution. Appellant's Brief at 44-53. This Court's review of the record indicates that Appellant unsuccessfully raised this issue on direct appeal within the context of his challenge to the court's jury instruction. ***See Chase***, No. 2064 MDA 2011, at 17-19. Therefore, he is not eligible for relief under the PCRA. ***See*** 42 Pa.C.S. § 9543(a)(3).

Issue VII

In his seventh issue, Appellant claims that the trial court improperly calculated his Prior Record Score and misapplied the sentencing guidelines. Appellant's Brief at 42-44. Although Appellant attempts to argue that the court's alleged error violated his due process rights, in fact, this issue implicates the discretionary aspects of his sentence. ***See Commonwealth v. Keiper***, 887 A.2d 317, 319 (Pa. Super. 2005) (explaining that a "challenge to the calculation of the Sentencing Guidelines raises a question of the discretionary aspects of a defendant's sentence."); ***Commonwealth v. Sanchez***, 848 A.2d 977, 986 (Pa. Super. 2004) (holding that a miscalculation of the prior record score "constitutes a challenge to the discretionary aspects of [a] sentence.").

Appellant raised a challenge to the discretionary aspects of his sentence on direct appeal. ***See Chase***, No. 2064 MDA 2011, at 17-23. Therefore, he is not eligible for relief under the PCRA. ***See*** 42 Pa.C.S. § 9543(a)(3). To the extent that the arguments set forth by Appellant in support of his discretionary aspects of sentence claim in the instant appeal differ from those asserted before the trial court and on direct appeal, we find that Appellant has waived those arguments. ***See*** 42 Pa.C.S. § 9544(b).

Summary- Issues I-VII

In sum, following our review of the record, we conclude that, for the reasons articulated above, Appellant is not entitled to relief on his first seven issues. Thus, we proceed to address the merits of issues VIII and IX only.

Cognizable Issues

Standard of Review of PRCA Orders

We review the denial of a PCRA Petition to determine whether the record supports the PCRA court's findings and whether its order is otherwise free of legal error. ***Commonwealth v. Fears***, 86 A.3d 795, 803 (Pa. 2014). Because most PCRA appeals involve questions of fact and law, we employ a mixed standard of review. We defer to the PCRA court's factual findings and credibility determinations supported by the record, and we review the PCRA court's legal conclusions *de novo*. ***Commonwealth v. Roney***, 79 A.3d 595, 603 (Pa. 2013).

Issue VIII

In his eighth issue, Appellant claims that his trial counsel was ineffective for failing to "investigate and [] present substantial mitigating evidence to the jury" and for failing to "assert and preserve [his] Federal and State Constitutional rights[.]" Appellant's Brief at 53-54. In particular, Appellant asserts that counsel failed to depose the Commonwealth's key witnesses and to investigate a third suspect who Appellant alleges was likely one of the two actors who committed the robbery. ***Id.*** at 54-55. Appellant also claims that his counsel failed to assert a claim based on ***Alleyne v. U.S.***, 570 U.S. 99 (2013), before his Judgment of Sentence became final and failed to preserve Appellant's illegal sentence claim. ***Id.*** at 55-56.

We review ineffective assistance of counsel ("IAC") claims with the following precepts in mind. To warrant relief based on an ineffectiveness

claim, a petitioner must show that such ineffectiveness "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." ***Commonwealth v. Jones***, 912 A.2d 268, 278 (Pa. 2006); accord 42 Pa.C.S. § 9543(a)(2)(ii). We presume that counsel has rendered effective assistance. ***Commonwealth v. Weiss***, 81 A.3d 767, 783 (Pa. 2013).

To overcome this presumption, a petitioner must establish that: (1) the underlying claim has arguable merit; (2) counsel lacked a reasonable basis for his act or omission; and (3) petitioner suffered actual prejudice. ***Commonwealth v. Treiber***, 121 A.3d 435, 445 (Pa. 2015). In order to establish prejudice, a petitioner must demonstrate "that there is a reasonable probability that, but for counsel's error or omission, the result of the proceeding would have been different." ***Commonwealth v. Koehler***, 36 A.3d 121, 132 (Pa. 2012) (citation omitted). We will deny an IAC claim if the petitioner fails to meet any one of these prongs. ***Commonwealth v. Jarosz***, 152 A.3d 344, 350 (Pa. Super. 2016). We will not deem counsel ineffective for failing to raise a meritless claim. ***Jones***, 912 A.2d at 278. Moreover, trial counsel's approach must be "so unreasonable that no competent lawyer would have chosen it." ***Commonwealth v. Ervin***, 766 A.2d 859, 862–863 (Pa. Super. 2000) (quoting ***Commonwealth v. Miller***, 431 A.2d 233, 234 (Pa. 1981)). "[B]olierplate allegations and bald assertions of no reasonable basis and/or ensuing prejudice cannot satisfy a petitioner's burden to prove that

counsel was ineffective." ***Commonwealth v. Chmiel***, 30 A.3d 1111, 1128 (Pa. 2011) (citation omitted).

Appellant's IAC claim consists of nothing more than boilerplate assertions that his counsel was ineffective. He has utterly failed to demonstrate that (1) any of his underlying claims are of arguable merit; (2) his counsel's performance lacked a reasonable basis; and (3) his counsel's alleged ineffectiveness of counsel caused him prejudice. Having failed to satisfy the IAC test, we conclude that the trial court did not err in finding that Appellant is not entitled to relief on this claim.

Issue IX

In his final issue, Appellant claims that the court sentenced him to an illegal mandatory minimum sentence and that its application of the deadly weapon enhancement violated his constitutional rights. Appellant's Brief at 36-41 (citing 42 Pa.C.S § 9712.1 and ***Alleyne***, ***supra***). He argues that ***Alleyne*** required the trial court to submit the application of the deadly weapon enhancement to the jury because the deadly weapon enhancement is an "element" that increased the penalty for his crimes. Appellant's Brief at 37-38.

Appellant has raised a challenge to the legality of his sentence. We "review the legality of sentence *de novo* and our scope of review is plenary." ***Commonwealth v. Foust***, 180 A.3d 416, 422 (Pa. Super. 2018) (citation omitted).

Having found Appellant's claims either not cognizable under the PCRA or without merit, we affirm the Order denying PCRA relief.

Order affirmed.

Judgment Entered.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 04/08/2020