No. 24A488

IN THE

SUPREME COURT OF THE UNITED STATES

RAUL BROWN — PETITIONER
(Your Name)

vs.

Thomas McGinley
Superintendent Coal Twp SCI — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Third Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

APPENDICES OF PETITIONER

RAUL BROWN
(Your Name)

SCI Coal Township, 1 Kelley Dr
(Address)

Coal Township, PA 17866
(City, State, Zip Code)

(Phone Number)

DLD-073

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **23-2576**

PAUL A. BROWN, Appellant

VS.

SUPERINTENDENT BENNER TOWNSHIP SCI, et al.

(M.D. Pa. Civ. No. 3-19-cv-02037)

Present: JORDAN, PORTER, and PHIPPS, Circuit Judges

Submitted are:

(1) Appellant's Motion for Certificate of Appealability;

(2) Appellee's Memorandum in Opposition; and

(3) Appellant's Reply Brief

in the above-captioned case.

Respectfully,

Clerk

ORDER

The request for a certificate of appealability is denied. Jurists of reason could not debate that, for essentially the reasons provided in the Magistrate Judge's report and recommendation and the District Court's memorandum order, the District Court properly dismissed Appellant's 28 U.S.C. § 2254 petition because Appellant failed to meet his burden regarding his ineffective assistance of counsel claims. See Slack v. McDaniel, 529 U.S. 473, 484 (2000).

By the Court,

A

s/David J. Porter
Circuit Judge

Dated: March 5, 2024
PDB/cc: Paul A. Brown
All Counsel of Record

A True Copy:

Patricia S. Dodszuweit, Clerk
Certified Order Issued in Lieu of Mandate

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

PAUL A. BROWN, #MD-1590, Petitioner, v. J. LUTHER, Warden, Respondent.	CIVIL ACTION NO. 3:19-cv-02037 (RAMBO, J.) (SAPORITO, M.J.)

REPORT AND RECOMMENDATION

On November 23, 2019, the petitioner, Paul A. Brown, filed a fee-paid *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. 1.) At the time of filing, Brown was incarcerated at SCI Smithfield, located in Huntingdon County, Pennsylvania.

I. STATEMENT OF THE CASE

A. Procedural History

On April 29, 2015, Brown pleaded guilty to one count of attempted homicide and one count of aggravated assault causing serious bodily injury in the Court of Common Pleas of Monroe County, Pennsylvania. *Commonwealth v. Brown*, Case No. CP-45-CR-0002030-2014 (Monroe Cty. (Pa.) C.C.P.). On July 28, 2015, the state trial court sentenced Brown to serve a term of 15 to 40 years in prison. *Id.* Brown did not file a direct

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appeal from his conviction and sentence.

Brown filed a *pro se* PCRA petition in the Court of Common Pleas on or about January 28, 2016, and the state court appointed PCRA counsel to represent him. *Id.* Brown filed a counseled amended PCRA petition on March 8, 2016, which was denied on May 25, 2016. *Id.* The denial of his PCRA petition was affirmed on appeal by the Superior Court of Pennsylvania on April 18, 2017. *Commonwealth v. Brown*, 169 A.3d 1178 (Pa. Super. Ct. 2017) (table decision); *see also Commonwealth v. Brown*, No. 1798 EDA 2016, 2017 WL 1397405 (Pa. Super. Ct. Apr. 18, 2017) (unpublished opinion).

On or about September 10, 2017, Brown filed a second *pro se* PCRA petition alleging that his court-appointed PCRA counsel had been ineffective in failing to file a petition for allocatur in his first PCRA proceedings, and the Court of Common Pleas dismissed this second PCRA petition as untimely filed on February 6, 2018. *Commonwealth v. Brown*, Case No. CP-45-CR-0002030-2014 (Monroe Cty. (Pa.) C.C.P.). On July 27, 2018, the Superior Court of Pennsylvania reversed that decision, finding the second petition to have been timely filed, and remanded the case for further proceedings on the merits of Brown's ineffective-

assistance-of-PCRA-counsel claim. *Commonwealth v. Brown*, 194 A.3d 716 (Pa. Super. Ct. 2018) (table decision); *see also Commonwealth v. Brown*, No. 776 EDA 2018, 2018 WL 3598977 (Pa. Super. Ct. July 27, 2018) (unpublished decision).

On remand, the court once again appointed PCRA counsel to represent Brown, and Brown filed a counseled amended PCRA petition on November 19, 2018. *Commonwealth v. Brown*, Case No. CP-45-CR-0002030-2014 (Monroe Cty. (Pa.) C.C.P.). An evidentiary hearing was held on January 14, 2019. *Id.* On January 31, 2019, the state court granted PCRA relief and reinstated Brown's appellate rights with respect to his first petition. *Id.*

Brown then timely filed a petition for allocatur in the Supreme Court of Pennsylvania with respect to appeal from denial of his *first* PCRA petition, and his allocatur petition was summarily denied by the state supreme court on July 24, 2019. *Commonwealth v. Brown*, 216 A.3d 1029 (Pa. 2019) (per curiam).

Brown constructively filed his federal habeas petition in this Court

on November 23, 2019.[1] (Doc. 1.) On January 7, 2020, the respondent filed his answer to the petition. (Doc. 12.) On October 21, 2020, Brown filed his reply. (Doc. 34.)

B. Habeas Claims Presented

Liberally construed, Brown's habeas petition contends that his trial counsel was constitutionally ineffective for: (1) failing to adequately explain the consequences of accepting the government's plea offer and pleading guilty;[2] (2) failing to move for suppression of certain statements or admissions made by Brown during custodial interrogation;[3] (3) failing to object and permitting Brown to plead guilty in a group plea colloquy;[4] and (4) failing to object to the sentence imposed by the trial judge.[5] *See generally Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 244–46 (3d Cir. 2013) (discussing a court's obligation to liberally construe *pro se* pleadings and other submissions, particularly when dealing with

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[1] The instant petition was received and docketed by the Court on November 27, 2019, but it appears to have been deposited in the prison mail system on November 23, 2019, and thus effectively filed that day. *See* R. 3(d), 28 U.S.C. foll. § 2254.

[2] This claim is set forth as "Ground Four" of the *pro se* petition.

[3] This claim is set forth as "Ground Three" of the *pro se* petition.

[4] This claim is set forth as "Ground One" of the *pro se* petition.

[5] This claim is set forth as "Ground Two" of the *pro se* petition.

imprisoned *pro se* litigants).

Brown raised claim (1) in his PCRA appeal before the Superior Court, which denied it on the merits. He has raised the remainder of his ineffective assistance claims—claims (2), (3), and (4)—for the first time in the instant federal habeas petition.

II. DISCUSSION

The Court must begin with the validity of Brown's plea because a valid guilty plea waives all non-jurisdictional claims occurring prior to the guilty plea that are not expressly preserved by the plea agreement. *Tollett v. Henderson*, 411 U.S. 258, 266–67 (1973); *Washington v. Sobina*, 475 F.3d 162, 165 (3d Cir. 2007) (per curiam).

> [A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. He may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within the standards set forth in [*Strickland v. Washington*, 466 U.S. 668 (1984)].

Tollett, 411 U.S. at 267; *see also Hill v. Lockhart*, 474 U.S. 52, 59 (1985) ("[T]h two-part *Strickland v. Washington* test applies to challenges to

guilty pleas based on ineffective assistance of counsel."). "This includes 'many of the most fundamental protections afforded by the Constitution,' such as . . . the right against self-incrimination." *Washington*, 475 F.3d at 165 (quoting *United States v. Mezzanatto*, 513 U.S. 196, 201 (1995)). "[W]hile claims of prior constitutional deprivation may play a part in evaluating the advice rendered by counsel, they are not themselves independent grounds for federal collateral relief." *Tollett*, 411 U.S. at 267.

A. The Validity of Brown's Guilty Plea

Brown's first claim for habeas relief has alleged that his conviction was based on a guilty plea that was not knowing, voluntary, and intelligent due to ineffective assistance of counsel.[6] Brown alleges that he was under the mistaken impression that he would be pleading guilty to two separate counts of aggravated assault, rather than one count of aggravated assault and a separate count of attempted homicide. Brown presented this same claim to the PCRA court, which denied it on the merits, and he presented the same claim on appeal to the Superior Court,

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[6] Although Brown frames his first claim as a simple ineffective assistance of counsel claim with respect to a motion to suppress the confession, the prejudice alleged is that he would not have pleaded guilty but for his trial counsel's failure to move to suppress the allegedly inadmissible confession.

which affirmed the PCRA court's denial of habeas relief on the merits.

A federal court may not grant relief on a habeas claim previously adjudicated on the merits in state court unless that adjudication:

> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State Court proceeding.

28 U.S.C. § 2254(d). In drafting this statute, Congress "plainly sought to ensure a level of 'deference to the determinations of state courts,' provided those determinations did not conflict with federal law or apply federal law in an unreasonable way." *Williams v. Taylor*, 529 U.S. 362, 386 (2000); *see also Eley v. Erickson*, 712 F.3d 837, 846 (3d. Cir. 2013). Consequently, "state-court judgments must be upheld unless, after the closest examination of the state-court judgment, a federal court is firmly convinced that a federal constitutional right has been violated." *Williams*, 529 U.S. at 387. "A federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly. Rather, that application must also be

[objectively] unreasonable." *Id.* at 411; *see also Eley*, 712 F.3d at 846. Moreover, any factual findings by the state trial and appellate courts are presumed to be correct, and the petitioner bears the burden of rebutting that presumption by clear and convincing evidence. 28 U.S.C. § 2254(e)(1); *Burt v. Titlow*, 571 U.S. 12, 18–19 (2013); *Eley*, 712 F.3d at 846.

Because the Supreme Court of Pennsylvania summarily denied allocatur, this Court looks to the disposition of Brown's PCRA appeal by the Superior Court of Pennsylvania as the last reasoned state judgment on his claim. *Ylst v. Nunnemaker*, 501 U.S. 797, 803 (1991). Moreover, although the Superior Court's decision was not an entirely summary disposition, it expressly adopted the reasoning of the PCRA court by reference and directed that a copy of the PCRA court's opinion be appended as an attachment to its opinion. *See Brown*, 2017 WL 1397405. Accordingly, we look to the PCRA court's opinion as well. *See id.*

In affirming the PCRA court's denial of PCRA relief, the Superior Court rejected this claim on its merits, expressly adopting the reasoning set forth by the PCRA court below, stating:

> After careful review of the record, the parties' briefs and the relevant case law, we conclude that [the PCRA

> court's] opinion accurately and thoroughly addresses the merits of Brown's claim on appeal. Brown's claim that he was "confused" and believed he was entering a plea to two counts of aggravated assault, is contradicted by the record. Accordingly, we affirm the PCRA court's May 25, 2016 order on the basis of that decision.

Brown, 2017 WL 397405, at *1 (citation omitted).

In denying post-conviction relief, the PCRA court had applied the three-pronged Pennsylvania standard for judging ineffectiveness claims set forth in *Commonwealth v. Pierce*, 645 A.2d 189, 194–95 (Pa. 1994), which courts of the Third Circuit have previously found to be substantively identical to the two-pronged federal ineffectiveness standard enunciated by the Supreme Court of the United States in *Strickland v. Washington*, 466 U.S. 668 (1984). *See Boyd v. Waymart*, 579 F.3d 330 334 n.2 (3d Cir. 2009) (en banc) (Scirica, J., concurring); *Jacobs v. Horn*, 395 F.3d 92, 106 n.9 (3d Cir. 2005); *Werts v. Vaughn*, 228 F.3d 178, 203 (3d Cir. 2000); *Showers v. Beard*, 586 F. Supp. 2d 310, 321–22 (M.D. Pa. 2008); *see also Veal v. Myers*, 326 F. Supp. 2d 612, 625 (E.D. Pa. 2004) (citing *Pierce*). Accordingly, this Court may not grant relief unless it determines that the state appellate court's decision on the merits was an unreasonable application of *Strickland*, or that it was based on "unreasonable factual determinations when deciding whether

the petitioner received constitutionally effective counsel." *Showers*, 586 F. Supp. 2d at 322.

Under *Strickland*, a habeas petitioner is required to establish two elements to state a successful claim for ineffective assistance of counsel: (1) "that counsel's performance was deficient," and (2) "that the deficient performance prejudiced the defense." *Strickland*, 466 U.S. at 687. The *Strickland* test is conjunctive, and a habeas petition must establish both the deficient performance prong as well as the prejudice prong. *See id.* at 687; *Rainey v. Varner*, 603 F.3d 189, 197 (3d Cir. 2010). But, "[i]f it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, . . . that course should be followed." *Strickland*, 466 U.S. at 697.

Counsel's performance is deficient only if it falls below the wide range of competence demanded of attorneys in criminal cases. *Id.* at 687–89. This requires a showing "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Harrington v. Richter*, 562 U.S. 86, 104 (2001) (quoting *Strickland*, 466 U.S. at 687). When a federal habeas petitioner advances an ineffective assistance of counsel claim that a state court has

already rejected on its merits, he is faced with "the 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). Under this "doubly deferential" standard, the Court must "give[] both the state court and the defense attorney the benefit of the doubt." *Burt*, 134 S. Ct. at 13. Indeed, a federal habeas court is "required not simply to give the attorney the benefit of the doubt, but to affirmatively entertain the range of possible reasons petitioner's counsel may have had for proceeding as he did." *Branch v. Sweeney*, 758 F.3d 226, 235 (3d Cir. 2014) (quoting *Cullen v. Pinholster*, 131 S. Ct. 1388, 1407 (2011)) (alterations omitted).

With respect to the prejudice prong of the *Strickland* test, the petitioner "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. In the context of a guilty plea, the petitioner "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill*, 474 U.S. at 59.

> In many guilty plea cases, the "prejudice" inquiry will closely resemble the inquiry engaged in by courts

> reviewing ineffective-assistance challenges to convictions obtained through a trial. For example, where the alleged error of counsel is a failure to investigate or discover potentially exculpatory evidence, the determination whether the error "prejudiced the defendant by causing him to plead guilty rather than go to trial will depend on the likelihood that discovery of the evidence would have led counsel to change his recommendation as to the plea. This assessment, in turn, will depend in large part on a prediction whether the evidence likely would have changed the outcome of a trial. Similarly, where the alleged error of counsel is a failure to advise the defendant of a potential affirmative defense to the crime charged, the resolution of the "prejudice" inquiry will depend largely on whether the affirmative defense likely would have succeeded at trial. [T]hese predictions of the outcome at a possible trial, where necessary, should be made objectively, without regard for the "idiosyncrasies of the particular decisionmaker."

Id. at 59–60 (quoting *Strickland*, 466 U.S. at 695).

The PCRA court considered Brown's ineffectiveness claim and found that he had failed to meet his evidentiary burden with respect to either the performance prong or the prejudice prong. The PCRA court summarized and discussed the evidence presented at Brown's PCRA hearing with respect to the issue of prejudice:

> . . . [Brown's] testimony given and exhibits presented at the PCRA hearing allege that [Brown] was "confused" as to which charges he pleaded guilty. [Brown] avers he believed he was pleading guilty to two counts of Aggravated Assault and not Attempted Homicide and

Aggravated Assault. Other evidence, however, blatantly contradicts such a contention. At [Brown's] plea colloquy, this Court asked [Brown] if he reviewed and signed his guilty plea form, to which he indicated that he did. After the factual recitation, this Court asked [Brown,] "Did you on September 3rd swing a machete at Ms. Brown in an attempt to kill her and cause lacerations to her and amputation of a finger," to which he indicated that he did. Thereafter, this Court accepted [Brown's] guilty plea to Attempted Homicide. On cross examination at the PCRA Hearing, [Brown] testified that he remembered this exchange and the Court said "Attempted Homicide." Furthermore, [Brown] stated he remembered pleading guilty to said charge.

At the PCRA Hearing, [Brown] presented . . . a letter dated July 10, 2015, where he inquires of [defense counsel,] "Why was the charge change[d] from assault to attempted homicide?" However, at his sentencing on July 28, 2015, [Brown] spoke to the Court, expressed remorse for his actions, and never stated anything regarding confusion about his guilty plea.

[Defense counsel] credibly testified at the PCRA Hearing that he fully discussed and explained, on more than one occasion, [Brown's] guilty plea and sentencing possibilities prior to the plea hearing. Furthermore, [defense counsel] testified that whenever he spoke to [Brown] about the guilty plea, although not necessarily pleased, [Brown] understood what the plea entailed. In discussing the guilty plea with [Brown], [defense counsel] went over the possible incarceration [Brown] faced if he were to take this case to trial. Moreover, [defense counsel] negotiated with the Commonwealth in an attempt to bring both charges down to Aggravated Assault and stated that this may have been the source of [Brown's] initial confusion. Nevertheless, [defense counsel] indicated that at the time of the plea, [Brown]

> understood what he would be pleading guilty to and that the plea was open with no agreement on sentencing. [Brown] was further reminded of the openness of his plea at the guilty plea colloquy.

Brown, 2017 WL 1397405, at *4–*5 (citations and brackets omitted).

Based on these factual findings, the PCRA court found that:

> [Brown] has failed to meet his burden with respect to involuntariness of his plea. The credible evidence suggests [Brown] understood exactly what his plea was and that he voluntarily entered into said plea. [Brown's] discontent with this Court's sentence has no bearing on the voluntariness of his plea as guilty pleas are not meant to be used as sentence-testing devices.

Id. at *5 (citation omitted).

The PCRA court further addressed the performance prong as well, stating:

> Furthermore, we find that [defense counsel's] advice regarding said plea was effective. [Defense counsel] explained the plea and the accompanying sentence possibilities to [Brown] and testified that [Brown] understood these consequences. Moreover, [defense counsel] explained that [Brown's] plea was open and that while they might hope for a certain sentence, there was no guarantee this Court would impose said sentence. Again, simply because this Court did not impose the sentence [Brown] wanted is of no consequence to [defense counsel's] effectiveness as [defense counsel's] advice was within the range of competence demanded of attorneys in criminal cases.

Id. (citation omitted).

Based on the record before the state appellate court, there is nothing to suggest, much less clearly establish, an unreasonable determination of the facts with respect to Brown's failure to "show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill*, 474 U.S. at 59; *see also Hill*, 474 U.S. at 60 (affirming denial of habeas relief where petitioner failed to explicitly allege that, if counsel had given correct advice, he would have pleaded not guilty and insisted on going to trial); *Burt*, 134 S. Ct. at 15 ("The prisoner bears the burden of rebutting the state court's factual findings 'by clear and convincing evidence.'"); *Eley*, 712 F.3d at 846. Nor is there anything in the record before the state appellate court to support a finding that the state court's decision was an unreasonable application of *Strickland*. *See Woodford v. Visciotti*, 537 U.S. 19, 25 (2002) ("[I]t is the habeas applicant's burden to show that the state court applied *Strickland* to the facts of the case in an objectively unreasonable manner."); *Hill*, 474 U.S. at 60.

Accordingly, it is recommended that the petition be denied on the merits with respect to Brown's claim (1), that his conviction was based on a guilty plea that was not knowing, voluntary, and intelligent due to

ineffective assistance of counsel.

B. Pre-Plea Ineffective Assistance Claim

Brown's second claim alleges that he was denied the effective assistance of counsel because his trial counsel failed to move for suppression of certain statements or admissions made by Brown during custodial interrogation. In the preceding section, it has been recommended that the court reject Brown's challenge to the validity of his guilty plea. If that recommendation is adopted, Brown's guilty plea will remain valid.

As previously noted, a valid guilty plea waives all non-jurisdictional claims occurring prior to the guilty plea that are not expressly preserved by the plea agreement. *See Tollett*, 411 U.S. at 266–67; *Washington*, 475 F.3d at 165. This includes pre-trial claims that police elicited inculpatory testimony without first administering *Miranda* warnings, as well as claims involving the suppression of evidence more generally. *See United States v. Tucker*, 511 Fed. App'x 166, 169–70 (3d Cir. 2013) (*Miranda* claims); *United States v. Owens*, 427 Fed. App'x 168, 171–72 (3d Cir. 2011) (suppression of evidence).

In this case, Brown unconditionally pleaded guilty to attempted

homicide and aggravated assault, and his plea agreement did not preserve any issues for appellate review. Indeed, the written guilty plea and colloquy signed by Brown expressly advised him—and he expressly acknowledged—that his guilty plea would waive any rights he might have to litigate pre-trial motions seeking to suppress evidence. As a result, Brown has waived any federal claims relating to allegedly illegal custodial interrogation, or that his defense counsel was constitutionally ineffective for failing to pursue a motion to suppress any statements or admissions he made during custodial interrogation.

Accordingly, it is recommended that the petition be denied as waived with respect to Brown's claim (2), that he was denied the effective assistance of counsel because his trial counsel failed to move for suppression of certain statements or admissions made by Brown during custodial interrogation.

C. Other Ineffective Assistance Claims

Brown asserts additional claims of ineffective assistance of counsel, alleging that trial counsel failed to object and permitted him to plead guilty in a group plea colloquy and failed to object to the sentence imposed by the trial judge. These claims are presented here for the first time.

Generally, for this Court to address the merits of a habeas petition, all of the claims contained in the petition must be exhausted. 28 U.S.C. § 2254(b). Ordinarily, "[t]he exhaustion requirement is satisfied only if the petitioner can show that he fairly presented the federal claim at each level of the established state-court system for review." *Holloway v. Horn*, 355 F.3d 707, 714 (3d Cir. 2004); *see also O'Sullivan v. Boerckel*, 526 U.S. 838, 844–45 (1999) ("[T]he exhaustion doctrine is designed to give the state courts a full and fair opportunity to resolve federal constitutional claims before those claims are presented to the federal courts . . . ."). "'Fair presentation' of a claim means that the petitioner 'must present a federal claim's factual and legal substance to the state courts in a manner that puts them on notice that a federal claim is being asserted.'" *Holloway*, 355 F.3d at 714 (quoting *McCandless*, 172 F.3d at 261). A federal claim may be exhausted by presenting it either on direct appeal or in post-conviction PCRA proceedings. *See O'Sullivan*, 526 U.S. at 844 (citing *Brown v. Allen*, 344 U.S. 443, 447 (1953)). In Pennsylvania, a federal claim may be exhausted by presenting it to the Superior Court of Pennsylvania, either on direct appeal from a state criminal conviction or on appeal from a PCRA court's denial of post-conviction relief. *See*

Lambert v. Blackwell, 387 F.3d 210, 233 (3d Cir. 2004); *see also In re Exhaustion of State Remedies in Criminal and Post-Conviction Relief Cases*, Order No. 218, 30 Pa. Bull. 2582 (Pa. May 9, 2000); Pa. R. App. P. 1114 historical notes (Order of May 9, 2000).

The remainder of Brown's ineffective assistance of counsel claims, however construed, were not presented to the Superior Court in his PCRA appeal. Nevertheless, if these claims were dismissed without prejudice for failure to exhaust, and Brown were to return to state court now to attempt to exhaust these claims in a new PCRA petition, his PCRA petition would be untimely and the matter would be dismissed by the state court pursuant to 42 Pa. Cons. Stat. Ann. § 9545(b). Under this state statute, a PCRA petition must be filed "within one year of the date the judgment becomes final," subject to certain enumerated exceptions not applicable here. *See* 42 Pa. Cons. Stat. Ann. § 9545(b). "When a claim is not exhausted because it has not been 'fairly presented' to the state courts, but state procedural rules bar the applicant from seeking further relief in state courts, the exhaustion requirement is satisfied because there is 'an absence of available State corrective process.'" *McCandless*, 172 F.3d at 260 (quoting 28 U.S.C. § 2254(b)(1)(B)(i)); *see also Coleman*,

501 U.S. at 732 ("A habeas petitioner who has defaulted his federal claims in state court meets the technical requirements for exhaustion; there are no state remedies any longer 'available' to him."). Thus, for the purpose of this federal habeas petition, Brown's remaining ineffective assistance claims are technically exhausted. *See Hurlburt v. Lawler*, Civil No. 1:CV-03-0665, 2008 WL 2973049, at *12 (M.D. Pa. Aug. 4, 2008).

"Even so, this does not mean that a federal court may, without more, proceed to the merits. Rather, claims deemed exhausted because of a state procedural bar are procedurally defaulted . . . ." *Lines*, 208 F.3d at 160. Generally, a federal court will not review a claim that is procedurally defaulted. *Johnson v. Folino*, 705 F.3d 117, 127 (3d Cir. 2013). A claim is procedurally defaulted when "a state prisoner has defaulted his federal claims in state court pursuant to an independent and adequate state procedural rule." *Coleman v. Thompson*, 501 U.S. 722, 750 (1991). The one-year statute of limitations applicable to state PCRA proceedings has been held to be such an independent and adequate state procedural rule. *See Glenn v. Wynder*, 743 F.3d 402, 409 (3d Cir. 2014); *Banks v. Horn*, 49 F. Supp. 2d 400, 403–07 (M.D. Pa. 1999). *See generally Bronshtein v. Horn*, 404 F.3d 700, 708–10 (3d Cir. 2005)

(discussing history and strict application of the PCRA statute of limitations since 1999).

Notwithstanding procedural default, a federal court may review a habeas claim where the petitioner can demonstrate cause for the default and actual prejudice as a result, or that failure to review the claim will result in a fundamental miscarriage of justice. *Coleman*, 501 U.S. at 750; *McCandless v. Vaughn*, 172 F.3d 255, 260 (3d Cir. 1999). It is the petitioner's burden to demonstrate circumstances excusing procedural default. *See Sweger v. Chesney*, 294 F.3d 506, 520 (3d Cir. 2002); *see also Coleman*, 501 U.S. at 750; *Lines v. Larkins*, 208 F.3d 153, 160 (3d Cir. 2000). To demonstrate "cause" for a procedural default, the petitioner must show that "some objective factor external to the [petitioner's] defense impeded [his] efforts to comply with the State's procedural rule." *Murray v. Carrier*, 477 U.S. 478, 488 (1986). Meanwhile, to demonstrate "actual prejudice," the petitioner must show "not merely that the errors at his [plea] created a *possibility* of prejudice, but that they worked to his *actual* and substantive disadvantage, infecting his entire [plea] with error of constitutional dimensions." *United States v. Frady*, 456 U.S. 152, 170 (1982) (emphasis in original); *McCabe v. Pennsylvania*, 419 F. Supp.

2d 692, 697 n.3 (E.D. Pa. 2006); *Mutope v. Folino*, No. Civ. 3:CV-04-2053, 2005 WL 3132315, at *3 (M.D. Pa. Nov. 22, 2005)). Alternatively, to show that a fundamental miscarriage of justice will occur if the claims are not reviewed, a petitioner must present new evidence that he is actually innocent of the crime for which he has been convicted. *Cristin v. Brennan*, 281 F.3d 404, 412 (3d Cir. 2002); *see also Bousley v. United States*, 523 U.S. 614, 623 (1998) ("'[A]ctual innocence means factual innocence, not mere legal insufficiency."); *Schlup v. Delo*, 513 U.S. 298, 327 (1995) ("[A] petitioner must show that it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt.").

Brown's *pro se* petition and *pro se* reply address only briefly whether procedural default of these claims may be excused under the "cause and prejudice" exception to procedural default.[7] In his reply,

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[7] Brown does not assert that procedural default may be excused under the "miscarriage of justice" exception. Throughout his papers, in these proceedings and in the state court trial and PCRA proceedings, Brown acknowledges that he did in fact strike his wife and son with a machete, causing serious bodily injury to both. He disputes only the validity of his plea and the length of his resultant sentence. In light of these admissions, it is clear that Brown cannot establish actual innocence, and therefore the "miscarriage of justice" exception to procedural default is unavailable to him. *See Bousley*, 523 U.S. at 623; *Schlup*, 513 U.S. at 327; *Cristin*, 281 F.3d at 412.

Brown points to the state court's finding in his second PCRA proceedings that PCRA counsel was ineffective in failing to file an allocatur petition on his behalf, arguing that this finding is sufficient to constitute cause and prejudice excusing procedural default of these two ineffective assistance claims.

The Supreme Court of the United States has recognized that, under certain circumstances, the procedural default of an ineffective assistance of counsel claim may be excused where the default was caused, in turn, by ineffective assistance of counsel in post-conviction collateral proceedings. *See Martinez v. Ryan*, 132 S. Ct. 1309, 1315–21 (2012). Specifically, the *Martinez* Court held that:

> [A] procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the [state] initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective.

Id. at 1320.

The *Martinez* Court explicitly limited its holding to cases where state procedural law provided that "claims of ineffective assistance of trial counsel *must* be raised in an initial-review collateral proceeding"—that is, in states like Arizona, where state procedural law explicitly

prohibited the adjudication of ineffective assistance claims on direct appeal. *Id.* Shortly thereafter, the Supreme Court revisited its *Martinez* holding, extending it to apply not only to cases where state procedural law expressly prohibited ineffective assistance claims on direct appeal, but where "state procedural framework, by reason of its design and operation, makes it highly unlikely in a typical case that a defendant will have a meaningful opportunity to raise a claim of ineffective assistance of trial counsel on direct appeal." *Trevino v. Thaler*, 133 S. Ct. 1911, 1921 (2013). The Third Circuit has subsequently examined Pennsylvania procedural law and found that *Martinez* applies in Pennsylvania. *Cox v. Horn*, 757 F.3d 113, 124 n.8 (3d Cir. 2014).

A particular nuance of the *Martinez* decision is implicated with respect to these two claims, claims (3) and (4), insofar as the alleged ineffective assistance of PCRA counsel may be asserted as "cause" excusing procedural default of these claims. In *Martinez*, the Supreme Court explicitly distinguished between finding cause based on ineffective assistance of counsel at *initial-review* collateral proceedings and at *appellate* collateral proceedings. *See Martinez*, 132 S. Ct. at 1320. Under *Martinez*, procedural default may be excused when caused by ineffective

assistance of counsel during *initial-review* PCRA proceedings before the Court of Common Pleas, which effectively constitutes "a prisoner's 'one and only appeal' as to an ineffective-assistance [of trial counsel] claim." *See id.* at 1315, 1318; *see also Vaughter v. Fisher*, Civil Action No. 12-00493, 2014 WL 1152540, at *10 (E.D. Pa. Mar. 24, 2014) (discussing distinction between initial-review PCRA and appellate PCRA proceedings under *Martinez*); *Glenn v. Wynder*, Civil Action No. 06-513, 2012 WL 4107827, at *43 (W.D. Pa. Sept. 19, 2012) (same). But the *Martinez* rule does not apply to allegedly deficient performance by counsel during *appellate* PCRA proceedings before the Superior and Supreme Courts of Pennsylvania. *See Martinez*, 132 S. Ct. at 1320 ("The holding in this case does not concern attorney errors in . . . appeals from initial-review collateral proceedings . . . ."); *see also Vaughter*, 2014 WL 1152540, at *10; *Glenn*, 2012 WL 4107827, at *43. Instead, errors by appellate PCRA counsel, or by a petitioner proceeding *pro se* on appeal from an initial-review PCRA decision, fall under the rule established decades earlier in *Coleman* that a criminal defendant has no right to counsel on appeal from initial-review collateral proceedings, and therefore ineffective assistance of counsel in any such appeal cannot

constitute cause excusing procedural default. *See Coleman*, 501 U.S. at 755; *see also Martinez*, 132 S. Ct. at 1320; *Vaughter*, 2014 WL 1152540, at *10; *Glenn*, 2012 WL 4107827, at *43. Here, the procedural default at issue was Brown's failure to present claims (3) and (4) on PCRA appeal. Accordingly, as a matter of law, any allegedly deficient performance of counsel in appellate PCRA proceedings cannot constitute cause sufficient to excuse the procedural default of claims (3) and (4).

Accordingly, it is recommended that the petition be denied as procedurally defaulted with respect to Brown's claim (3), that trial counsel was ineffective for failing to object and permitting him to plead guilty in a group plea colloquy, and claim (4), that trial counsel was ineffective for failing to object to the sentence imposed by the state court trial judge.

III. RECOMMENDATION

Based on the foregoing, it is recommended that the petition (Doc. 1) be **DENIED** and **DISMISSED WITH PREJUDICE**. It is further recommended that the Court decline to issue a certificate of appealability, as the petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see*

also Buck v. Davis, 137 S. Ct. 759, 773–75 (2017); *Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Dated: December 15, 2022

s/Joseph F. Saporito, Jr.
JOSEPH F. SAPORITO, JR.
United States Magistrate Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

PAUL A. BROWN, #MD-1590, Petitioner, v. J. LUTHER, Warden, Respondent.	CIVIL ACTION NO. 3:19-cv-02037 (RAMBO, J.) (SAPORITO, M.J.)

NOTICE

NOTICE IS HEREBY GIVEN that the undersigned has entered the foregoing Report and Recommendation dated December 15, 2022. Any party may obtain a review of the Report and Recommendation pursuant to Local Rule 72.3, which provides:

> 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.

Failure to file timely objections to the foregoing Report and Recommendation may constitute a waiver of any appellate rights.

Dated: December 15, 2022

s/Joseph F. Saporito, Jr.
JOSEPH F. SAPORITO, JR.
United States Magistrate Judge

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

PAUL A. BROWN, #MD-1590,	:	**Civil No. 3:19-cv-2037**
Petitioner,	:	
v.	:	
J. LUTHER, Warden,	:	
Respondent.	:	**Judge Sylvia H. Rambo**

ORDER

AND NOW, this 19th day of July, 2023, upon consideration of the petitioner, Paul A. Brown's pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc.1), and after careful review of the Report and Recommendation of United States Magistrate Judge Joseph F. Saporito (Doc. 39), and Brown's Objections to the Report and Recommendation (Doc. 42), IT IS HEREBY ORDERED as follows:

1. The Report and Recommendation of Magistrate Judge Saporito (Doc. 39) is ADOPTED;

2. Brown's Objections to the Report and Recommendation are OVERRULED;[1]

[1] The procedural history of this case is set forth in detail in the Report and Recommendation and need not be repeated. As the report summarized, Brown's habeas petition contends that his trial counsel was constitutionally ineffective for: (1) failing to adequately explain the consequences of accepting the government's plea offer and pleading guilty; (2) failing to move for suppression of certain statements or admissions made by Brown during custodial interrogation; (3) failing to object and permitting Brown to plead guilty in a group plea colloquy; and (4) failing to object to the sentence imposed by the trial judge. (Doc. 39, p. 4.) After adequately addressing claim, the Report and Recommendation recommends that Brown's petition be denied, and the court agrees with the recommendation.

When objections are timely filed to a magistrate judge's report and recommendation, the district court must conduct a de novo review of those portions of the report to which objections are made. 28 U.S.C. § 636(b)(1); *Brown v. Astrue*, 649 F.3d 193, 195 (3d Cir. 2011). Although the standard is de novo, the extent of review is committed to the sound discretion of the district judge, and the

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3. The Petition (Doc. 1) is DENIED and DISMISSED WITH PREJUDICE;

4. The Clerk of Court is DIRECTED to close this case; and

5. The court declines to issue a certificate of appealability, as Brown has failed to demonstrate a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see also Buck v. Davis*, 137 S.Ct. 759, 773-75 (2017); *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

s/Sylvia H. Rambo
Sylvia H. Rambo
United States District Judge

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court may rely on the recommendations of the magistrate judge to the extent it deems proper. *Rieder v. Apfel*, 115 F. Supp. 2d 496, 499 (M.D. Pa. 2000) (citing *United States v. Raddatz*, 447 U.S. 667, 676 (1980)). For those sections of the report and recommendation to which no objection is made, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." FED. R. CIV. P. 72(b), advisory committee notes; *see also Univac. Dental Co. v. Dentsply, Intern.*, 702 F. Supp. 2d 465, 469 (M.D. Pa. 2010) (citations omitted). Regardless of whether objections are made, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1); L.R. 72.31.

The report first recommends that Brown's petition be dismissed because his guilty plea was valid and unconditional, which therefore waived all non-jurisdictional claims, including his trial counsel's alleged failure to both apprise Brown of the consequences of his plea and to move to suppress certain statements or admissions. Second, the report recommends that the petition be denied as procedurally defaulted with respect to Brown's claims that trial counsel was ineffective for permitting him to plead guilty in a group plea colloquy and for failing to object to the sentence imposed by the state court trial judge.

Brown's objections to the Report and Recommendation primarily restate and reargue issues related to the validity of his guilty plea. Since mere disagreement with a report and recommendation is not a basis to decline to adopt it, the court construes Brown's objections as general objections, and thus is limited "to ascertaining whether there is 'clear error' or 'manifest injustice'" on the face of the record. *Boomer v. Lewis*, No. 3:06-cv-0850, 2009 WL 2900778, at *1 (M.D. Pa. Sept. 9, 2009). The court finds no such error or injustice here.

COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: 2030 CR 2014
vs.	:
PAUL BROWN, Defendant.	: POST-CONVICTION COLLATERAL RELIEF

OPINION

This matter comes before the Court on Paul Brown's ("Defendant") Petition for Post-Conviction Collateral Relief. The underlying facts and procedural history are summarized as follows:

On September 3, 2014, police were called to a residence in Coolbaugh Township, Monroe County, to investigate an alleged assault. Upon arrival, police were informed that Diana Brown and her son, Matthew Brown, were assaulted with a machete by Defendant, Diana's husband and Matthew's father. During this assault, Diana suffered a laceration to her head and a severed finger and Matthew sustained cuts to his arm and leg.

Defendant was charged by Criminal Information with two counts of Attempted Homicide,[1] four counts of Aggravated Assault,[2] two counts of Terroristic Threats,[3] four counts of Simple Assault,[4] and two counts of Recklessly Endangering.[5] Robert Saurman, Esq., was court-appointed to represent Defendant and on April 29, 2015, Defendant pleaded guilty to one count each of Attempted Homicide and Aggravated Assault. On July 28, 2015, Defendant was

[1] 18 Pa. C.S.A § 901(a).
[2] § 2702(a)(1), (4).
[3] § 2706(a)(1).
[4] § 2701(a)(1), (3).
[5] § 2705.

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sentenced to 15 to 40 years incarceration for the Attempted Homicide and 5 to 10 years for the Aggravated Assault, run concurrently. The remaining charges were *nolle prossed* and no post-sentence motions or direct appeal were filed.

On February 11, 2016, we received a *pro se* Motion for Reconsideration *Nunc Pro Tunc*. As Defendant's time for post-sentence motions had clearly run, see Pa.R.Crim.Pro. 720(A)(1), we treated Defendant's *pro se* Motion as a *pro se* Petition for Post-Conviction Collateral Relief. We appointed Brian Gaglione, Esq., to represent Defendant in his PCRA and directed him to file an Amended PCRA. We received the Amended Petition on March 8, 2016, and the Commonwealth's Answer on March 9, 2016. In the Amended Petition, Defendant avers that Attorney Saurman was ineffective as plea counsel which resulted in Defendant's plea being unlawfully induced. Defendant asks that we allow him to withdraw his plea and proceed to trial. In the alternative, Defendant asks that we reinstate his appellate rights, *nunc pro tunc*, as he alleges Attorney Saurman was ineffective for failing to appeal Defendant's sentence.

On April 4, 2016, we held a hearing on Defendant's Petition and ordered briefs to be filed by counsel on or before May 2, 2016. We timely received the Commonwealth's brief, however, as of the date of this Opinion, we have yet to receive a brief from defense counsel. After review of Defendant's Amended PCRA Petition, the testimony and evidence from the hearing, and the Commonwealth's Answer and brief, we are ready to dispose of this matter.

DISCUSSION

In his Petition, Defendant avers that the guilty plea he entered was "unlawfully induced" because he was "under the impression that he would be pleading to two separate counts of Aggravated Assault, and not a single count of Aggravated Assault and a single count of Attempted Homicide." Def.'s Amended PCRA Pet., ¶ 4(b)(i) [hereinafter "Def.'s PCRA,

¶ _____."]. Further, Defendant argues he was under said impression "due to discussions he had with his attorney, Robert Saurman, Esq., prior to taking his plea." *Id.* at ¶ 4(b)(ii). Defendant also contends that he sent letters to Attorney Saurman "expressing confusion as to what he had actually pled guilty to, and confusion regarding what his sentence could be." *Id.* at ¶ 4(b)(iii).

The Commonwealth responds that Attorney Saurman provided effective assistance to Defendant during the plea process. Com.'s Br., p. 3. To support its argument, the Commonwealth points to the written plea offer and Defendant's executed guilty plea form as well as the transcripts from Defendant's guilty plea hearing and sentencing. *Id.* Moreover, the Commonwealth avers that Attorney Saurman also provided effective counsel regarding Defendant's direct appeal because Defendant did not carry his burden to prove that he requested said appeal and that Attorney Saurman disregarded that request. *Id.* at p. 4 (citing *Commonwealth v. Lantzy*, 736 A.2d 570–72 (Pa. 1999)).

The Pennsylvania Superior Court has held that when a PCRA Petition raises both a request to reinstate appellate rights and other claims of ineffectiveness, the trial court must address the request to reinstate appellate rights first. *Commonwealth v. Miller*, 868 A.2d 578, 580 (Pa. Super. 2005). If this request is meritorious and the defendant's appellate rights are reinstated, the trial court "may address, but not 'reach' the merits of any remaining claims." *Id.* Thus, despite Defendant arguing in the alternative for reinstatement of his appellate rights, we address this issue first.

As with all PCRA claims, Defendant has the burden of proof by a preponderance of the evidence. *See* 42 Pa. C.S.A. § 9543(a). In order to prove ineffective assistance of counsel, Defendant must show (1) the issue is of arguable merit; (2) counsel's act or omission did not have a reasonable basis in effectuating Defendant's interests; and (3) counsel's ineffectiveness

worked to Defendant's prejudice. *Commonwealth v. Pierce*, 645 A.2d 189, 194–95 (Pa. 1994) (citation omitted). When assessing whether counsel was ineffective regarding a defendant's appellate rights, we are to use the same standards. *See Commonwealth v. Lantzy*, 736 A.2d 564, 570–72 (Pa. 1999). "[W]here there is an unjustified failure to file a requested direct appeal, the conduct of counsel falls beneath the range of competence demanded of attorneys in criminal cases." *Id.* at 572.

After careful review of the record, we find that Defendant is not entitled to reinstatement of his appellate rights because Defendant did not carry his burden to prove he requested the appeal. *See Lantzy*, 736 A.2d at 570–72. At Defendant's PCRA hearing, Attorney Saurman credibly testified that he did not file a direct appeal because Defendant did not request it. Attorney Saurman indicated that he did not believe an appeal of Defendant's sentence would have been successful, however, had Defendant requested such an appeal, he would have filed it regardless of the merits. Defendant testified that he did request an appeal but that Attorney Saurman did not comply with said request.

Defendant pleaded guilty on April 29, 2015, and was sentenced on July 28, 2015. At the PCRA hearing, Defendant presented Exhibit 3 to support his allegation that he requested an appeal. Def.'s Ex. 3, PCRA Hearing, p. 1 (original letter dated November 2, 2015, asking "What is the status of the appeal and can you send me a copy?"). However, at the sentencing hearing, this Court explained Defendant's appellate rights to him, including the time in which he had to file an appeal of his sentence. Notes of Testimony, Sentencing, 7/28/15, pp. 10–11 [hereinafter "N.T., Sentencing, p. ___."]. According to the evidence presented by Defendant, he did not

attempt to contact his attorney[6] regarding an appeal until nearly three months after he was sentenced despite being aware that he only had 30 days to file an appeal. Defendant's version of events regarding his requested appeal is not credible. Thus, we find that he has not met his burden to show he requested a direct appeal. *See Lantzy*, 736 A.2d at 572. Accordingly, Defendant's request to reinstate his appellate rights, *nunc pro tunc*, is DENIED.

Having addressed and denied defendant's request to reinstate his appellate rights, we may now address the merits of whether Defendant's plea was unknowing and involuntary due to ineffectiveness of counsel. *See Miller*, 868 A.2d at 580.

As stated above, ineffective assistance of counsel claims are analyzed under the four-pronged *Pierce* test. *Pierce*, 645 A.2d at 194–95. "A failure to satisfy any one prong of the test for ineffectiveness will result in this Court's rejection of the claim." *Commonwealth v. Bishop*, 936 A.2d 1136, 1139 (Pa. Super. 2007) (citation omitted). "The standard for post-sentence withdrawal of guilty pleas dovetails with the arguable merit/prejudice requirements for relief based on a claim of ineffective assistance of plea counsel." *Commonwealth v. Flanagan*, 854 A.2d 489, 502 (Pa. 2004). "If a reasonable basis exists for the particular course chosen by counsel, the inquiry ends and counsel's performance is deemed constitutionally effective." *Commonwealth v. Lauro*, 819 A.2d 100, 106 (Pa. Super. 2003) *called into doubt on other grounds by Commonwealth v. Ford*, 44 A.3d 1190, 1198–99 (Pa. Super. 2012).

Generally, once a defendant pleads guilty, we assume he was aware of his actions and thus "the burden of proving involuntariness is upon him." *Commonwealth v. Willis*, 68 A.3d 997, 1002 (Pa. Super. 2013). Defendant must show his plea resulted in "prejudice on the order of manifest injustice" to be allowed to withdraw it post-sentence. *Commonwealth v. Jones*, 596

[6] We would note that Exhibit 3 is an original letter with no accompanying envelope or post mark. Indeed, Defendant presented no evidence that he ever sent this, or any other, letter to Attorney Saurman. Such an absence of evidence is yet another reason why we find Defendant's version of events incredible.

A.2d 885, 889 (Pa. Super. 1991). A post-sentence attempt to withdraw a plea "must sustain this more substantial burden because of the recognition that a plea withdrawal can be used as a sentence testing device." *Commonwealth v. Anthony*, 453 A.2d 600, 607 (Pa. Super. 1982).

Allegations of ineffective assistance of plea counsel provide a basis for withdrawal of a plea "only where there is a causal nexus between counsel's ineffectiveness, if any, and an unknowing or involuntary plea." *Commonwealth v. Flood*, 627 A.2d 1193, 1199 (Pa. Super. 1993). Whether a plea was entered knowingly and voluntarily is a factual determination. *Commonwealth v. Gray*, 463 A.2d 1179, 1180 (Pa. Super. 1983). "Where the defendant enters his plea on the advice of counsel, the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." *Commonwealth v. Hickman*, 799 A.2d 136, 141 (Pa. Super. 2002) (quotation omitted). If counsel's advice was not within that range of competence, only then must we determine whether "it is reasonably probable that, but for counsel's errors, [the defendant] would not have pleaded guilty and would have gone to trial." *Id.*

After careful review of the record, we find that Defendant is not entitled to post-sentence withdraw of his guilty plea. Defendant's testimony given and exhibits presented at the PCRA hearing allege that Defendant was "confused" as to which charges he pleaded guilty. *See, e.g.*, Def.'s Ex. 2, PCRA Hearing. Defendant avers he believed he was pleading guilty to two counts of Aggravated Assault and not Attempted Homicide and Aggravated Assault. Other evidence, however, blatantly contradicts such a contention. At Defendant's plea colloquy, this Court asked Defendant if he reviewed and signed his guilty plea form, to which he indicated that he did. Notes of Testimony, Guilty Plea, 4/29/2015, p. 8 (a group colloquy where the Court asked "Did each of you review this [guilty plea] form with your attorney and sign where it says Defendant's

signature?" and "[a]ll Defendants responded in the affirmative"); p. 9 (Defendant was asked individually whether he reviewed his guilty plea form, to which he responded "Yes, I did.") [hereinafter "N.T., Guilty Plea, p. ___."]. After the factual recitation, this Court asked Defendant "[D]id you on September 3rd swing a machete at Ms. Brown in an attempt to kill her and cause lacerations to her and amputation of a finger . . . ," to which he indicated that he did. N.T., Guilty Plea, p. 10. Thereafter, this Court accepted Defendant's guilty plea to Attempted Homicide. *Id.* On cross examination at the PCRA Hearing, Defendant testified that he remembered this exchange and that the Court said "Attempted Homicide." Furthermore, Defendant stated he remembered pleading guilty to said charge.

At the PCRA Hearing, Defendant presented Exhibit 2: a letter dated July 10, 2015, where he inquires of Attorney Saurman "Why was the charge change [*sic*] from assault to attempted homicide?" Def.'s Ex. 2, PCRA Hearing. However, at his sentencing on July 28, 2015, Defendant spoke to the Court, expressed remorse for his actions, and never stated anything regarding confusion about his guilty plea. N.T., Sentencing, p. 7.

Attorney Saurman credibly testified at the PCRA Hearing that he fully discussed and explained, on more than one occasion, Defendant's guilty plea and sentencing possibilities prior to the plea hearing. Furthermore, Attorney Saurman testified that whenever he spoke to Defendant about the guilty plea, although not necessarily pleased, he understood what the plea entailed. In discussing the guilty plea with Defendant, Attorney Saurman went over the possible incarceration Defendant faced if he were to take this case to trial. Moreover, Attorney Saurman negotiated with the Commonwealth in an attempt to bring both charges down to Aggravated Assault and stated this may have been the source of Defendant's initial confusion. Nevertheless, Attorney Saurman indicated that at the time of the plea, Defendant understood what he would be

pleading guilty to and that the plea was open with no agreement on sentencing. Defendant was further reminded of the openness of his plea at the guilty plea colloquy. N.T., Guilty Plea, pp. 7–8.

Based on the above information, we find that Defendant has failed to meet his burden with respect to involuntariness of his plea. *See Willis*, 68 A.3d at 1002. The credible evidence suggests Defendant understood exactly what his plea was and that he voluntarily entered into said plea. Defendant's discontent with this Court's sentence has no bearing on the voluntariness of his plea as guilty pleas are not meant to be used as sentence-testing devices. *See Anthony*, 453 A.2d at 607. Furthermore, we find that Attorney Saurman's advice regarding said plea was effective. *See Hickman*, 799 A.2d at 141. Attorney Saurman explained the plea and the accompanying sentencing possibilities to Defendant and testified that Defendant understood these consequences. Moreover, Attorney Saurman explained that Defendant's plea was open and that while they might hope for a certain sentence, there was no guarantee this Court would impose said sentence. Again, simply because this Court did not impose the sentence Defendant wanted is of no consequence to Attorney Saurman's effectiveness as Attorney Saurman's advice was within the range of competence demanded of attorneys in criminal cases. *See id.* Accordingly, Defendant's request to withdraw his guilty plea and petition for post-conviction collateral relief is DENIED.

Having decided all issues before us, we enter the following order:

COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	**: 2030 CR 2014**
vs.	**:**
PAUL BROWN,	**:**
Defendant.	**: POST-CONVICTION**
	: COLLATERAL RELIEF

ORDER

AND NOW, this 25th day of May, 2016, upon consideration of Defendant's Amended Petition for Post-Conviction Collateral Relief, and after a review of the testimony and evidence from the hearing in this matter, Defendant's Petition is **DENIED**.

Defendant is advised he has **thirty (30) days** from the date of this Order within which to file an appeal with the Superior Court of Pennsylvania.

BY THE COURT:

MARGHERITA PATTI-WORTHINGTON, P.J.

2016 MAY 25 AM 10 07
MONROE COUNTY, PA
CLERK OF COURTS

cc: Kimberly Metzger, Esq., ADA
Brian Gaglione, Esq., Counsel for Defendant
Paul Brown, Defendant
Clerk of Courts
MPW2016-0020

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

COMMONWEALTH OF PENNSYLVANIA Appellee v. PAUL A. BROWN Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1798 EDA 2016

Appeal from the PCRA Order May 25, 2016
In the Court of Common Pleas of Monroe County
Criminal Division at No(s): CP-45-CR-0002030-2014

BEFORE: BENDER, P.J.E., LAZARUS, J., and FITZGERALD, J.*

JUDGMENT ORDER BY LAZARUS, J.: **FILED APRIL 18, 2017**

Paul Brown appeals from the order, entered in the Court of Common Pleas of Monroe County, denying his petition for collateral relief filed under the Post Conviction Relief Act, 42 Pa.C.S.A. §§ 9541-46 ("PCRA"). Upon review, we affirm

On September 3, 2014, Brown attacked his wife after she rebuffed his sexual advances. When the couple's son came to his mother's aid, Brown retrieved a machete and attacked him, cutting his arm and leg. Brown then attacked his wife with the machete as she and their son ran down the street to escape. Brown's wife suffered a laceration to her head and a partially amputated finger. Brown fled into the woods; he was apprehended three

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* Former Justice specially assigned to the Superior Court.

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days later and charged with two counts of attempted homicide and related offenses.

Brown entered a guilty plea to attempted homicide-serious bodily injury with respect to the attack on his wife, and aggravated assault-serious bodily injury for his attack on his son. Following a written guilty plea colloquy and an on-the-record oral colloquy, the court accepted Brown's plea. On July 28, 2015, the court sentenced Brown to fifteen to forty years' incarceration. Brown did not file post-sentence motions or a direct appeal.

On February 4, 2016, Brown filed a *pro se* PCRA petition; the PCRA court appointed counsel. Counsel filed an amended petition on Brown's behalf on March 8, 2016, The PCRA court held a hearing and, on May 25, 2016, denied Brown's petition for relief. This appeal followed.

Brown raises one issue for our review:[1]

> Whether the [PCRA] court erred by finding that trial counsel's actions and inaction in connection with [Brown's] entry of his guilty plea did not cause [Brown] to enter an involuntary or unknowing plea?

Appellant's Brief, at 4.

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[1] In his PCRA petition and in his concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b), Brown also raised counsel's ineffectiveness for failing to file a direct appeal. ***See*** Amended PCRA Petition, 3/8/16, at ¶5. Although the PCRA court addressed this issue in its Rule 1925(a) opinion, Brown has abandoned that claim in his brief on appeal. ***See*** Pa.R.A.P. 2116.

We review an order dismissing a petition under the PCRA in the light most favorable to the prevailing party at the PCRA level. Our review is limited to determining whether the findings of the PCRA court are supported by the evidence of record. We will not disturb a PCRA court's ruling if it is supported by evidence of record and is free of legal error. ***Commonwealth v. Ford***, 44 A.3d 1190, 1194 (Pa. Super. 2012). To establish ineffectiveness of counsel in the context of a guilty plea, Brown must demonstrate that counsel's ineffectiveness caused him to enter an involuntary or unknowing guilty plea. ***Commonwealth v. Lutz***, 424 a.2d 1302, 1305 (Pa. 1981).

After careful review of the record, the parties' briefs and the relevant case law, we conclude that President Judge Margherita Patti-Worthington's opinion accurately and thoroughly addresses the merits of Brown's claim on appeal. ***See*** PCRA Court Opinion, 5/25/16, at 4-8. Brown's claim that he was "confused" and believed he was entering a plea to two counts of aggravated assault, is contradicted by the record. Accordingly, we affirm the PCRA court's May 25, 2016 order on the basis of that decision. We direct the parties to attach a copy of the PCRA court's Rule 1925(a) Opinion in the event of further proceedings in this case.

Order affirmed.

Judgment Entered.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/18/2017

COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	**NO. 2030 CRIMINAL 2014**
	:	
v.	:	
	:	
PAUL BROWN,	:	
Defendant	:	**PCRA**

ORDER

AND NOW, this 6th day of February, 2018, after consideration of the Defendant's *pro* se second Petition for Post-Conviction Collateral Relief, and his response to our Notice of Disposition Without Hearing, the Defendant's Petition for Post-Conviction Collateral Relief is **DISMISSED.**

Defendant filed his *pro se* second Petition for Post-Conviction Collateral Relief on September 14, 2017. This Court filed a Notice of Disposition Without Hearing on September 28, 2017, based on the untimeliness of Defendant's Petition. Defendant filed a response to this Court's Notice of Disposition Without Hearing on October 13, 2017. Such response was docketed by the Clerk of Courts as "Case Correspondence," and was not forwarded to this Court for review. On January 25, 2018, Defendant sent correspondence to the Court requesting that his case be adjudicated, or in the alternative, that an evidentiary hearing be scheduled to consider the merits of his Petition. Defendant's October 13 response was brought to this Court's attention at that time.

As stated in this Court's prior Notice, this Court is without jurisdiction to consider the merits of an untimely PCRA Petition. *See* Commonwealth v. Fahy, 737 A.2d 214, 220 (Pa. 1999) (holding that where a petitioner fails to satisfy the PCRA time requirements, this court has no jurisdiction to entertain the petition.).

Defendant was sentenced on July 28, 2015. As such, Defendant's judgment became final on August 27, 2015, the date on which his opportunity to appeal expired.

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Defendant was required to file any petition under the Act, including a second or subsequent PCRA petition by August 27, 2016. *See* Com. v. Johnson, 732 A.2d 639, 642 (Pa. Super. Ct. 1999). The present Petition was filed on September 14, 2017, well over the one-year time limit set forth in 42 Pa. C.S.A. § 9545(b)(1). Furthermore, Defendant's Petition has failed to show a valid exception under § 9545(b)(1).

Assuming *arguendo*, that Defendant fell within an exception under § 9545(b)(1), the Petition remains untimely. The Superior Court rendered its decision on April 18, 2017. "Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been presented." As such, Defendant would have had until July 17, 2017 to file a Petition under a § 9545(b)(1) exception. Defendant's Petition was filed well over the sixty day time limit set forth in 42 Pa. C.S.A. § 9545(b)(1).

Upon review of Defendant's Response, Defendant has not presented an argument that overcomes the jurisdictional issue of untimeliness. As such, Defendant's *pro* se second Petition for Post-Conviction Collateral Relief is dismissed.

Defendant is advised that he has thirty (30) days from the date of this Order within which to file an Appeal with the Superior Court of Pennsylvania.

IT IS FURTHER ORDERED AND DIRECTED that the Clerk of Courts serve a copy of this Order upon the Commonwealth and the Defendant. The Order shall be sent to the Defendant via certified mail, return receipt requested and by regular first class mail.

BY THE COURT:

MARGHERITA PATTI-WORTHINGTON, P.J.

Clerk of Courts
FEB 7 '18 AM 8:44

cc: District Attorney
Paul Brown
SCI Smithfield
1120 Pike Street
Huntingdon, PA 16652
Clerk of Courts

J-S44020-18

Pac Filed

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

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
PAUL BROWN	:	
Appellant	:	No. 776 EDA 2018

Appeal from the PCRA Order February 6, 2018
In the Court of Common Pleas of Monroe County Criminal Division at
No(s): CP-45-CR-0002030-2014

BEFORE: LAZARUS, J., MURRAY, J., and MUSMANNO, J.

MEMORANDUM BY MURRAY, J.: **FILED JULY 27, 2018**

Paul Brown (Appellant) appeals *pro se* from the order denying as untimely his second petition filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541–9546. We reverse.

On April 29, 2015, Appellant pled guilty to attempted homicide and aggravated assault. This Court previously summarized the procedural background:

> [Appellant] entered a guilty plea to attempted homicide-serious bodily injury with respect to the attack on his wife, and aggravated assault-serious bodily injury for his attack on his son. Following a written guilty plea colloquy and an on-the-record oral colloquy, the court accepted [Appellant's] plea. On July 28, 2015, the court sentenced [Appellant] to fifteen to forty years' incarceration. [Appellant] did not file post-sentence motions or a direct appeal.

G

Commonwealth v. Brown, 1798 EDA 2016 (Pa. Super. filed April 18, 2017) (unpublished judgment order adopting the opinion of the PCRA court).[1]

Because Appellant did not file a direct appeal, his judgment of sentence became final 30 days later, on August 27, 2015, when the time for taking a direct appeal expired. ***See*** 42 Pa.C.S.A. § 9545(b)(3); Pa.R.Crim.P. 720(A)(3). On February 4, 2016, Appellant filed a timely *pro se* petition for PCRA relief. After appointing counsel and conducting a hearing, the PCRA court, by order dated May 25, 2016, denied Appellant's petition. This Court affirmed the judgment of sentence. ***Brown, supra***.

On September 14, 2017, Appellant filed a second *pro se* PCRA petition. The PCRA court dismissed the petition without a hearing on February 6, 2018. Appellant filed a timely appeal. Both the PCRA court and Appellant have complied with Pa.R.A.P. 1925.

Appellant raises the following issue for our review:

> Whether the PCRA court erred by dismissing [Appellant's] petition for Post Conviction Relief as untimely in lieu of considering the merits of the issues raised therein, namely [Appellant's] viable claim of newly discovered evidence, Counsel ineffectiveness for failing to perfect a requested appeal, to object to the defective colloquy, and the illegal sentence of 15 to 40 years.

Appellant's Brief at 3.

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[1] We note that the parties failed to adhere to this Court's instruction "to attach a copy of the PCRA court's Rule 1925(a) Opinion in the event of further proceedings in this case." ***See id.***

Our standard of review of an order denying PCRA relief is "whether the PCRA court's determination is supported by the evidence of record and free of legal error. We grant great deference to the PCRA court's findings, and we will not disturb those findings unless they are unsupported by the certified record." ***Commonwealth v. Holt***, 175 A.3d 1014, 1017 (Pa. Super. 2017) (citation omitted). A PCRA petitioner must establish a claim by a preponderance of the evidence. ***Commonwealth v. Gibson***, 925 A.2d 167, 169 (Pa. 2007).

Further, before reaching the merits of a petitioner's claim, section 9545 of the PCRA requires that "[a]ny petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final." 42 Pa.C.S.A. § 9545(b)(1). A judgment becomes final "at the conclusion of direct review, including discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking the review." 42 Pa.C.S.A. § 9545(b)(3).

This Court has held that the timeliness requirement of the PCRA is "mandatory and jurisdictional in nature." ***Commonwealth v. McKeever***, 947 A.2d 782, 784-785 (Pa. Super. 2008) (citing ***Commonwealth v. Davis***, 916 A.2d 1206, 1208 (Pa. Super. 2007)). Therefore, "no court may disregard, alter, or create equitable exceptions to the timeliness requirement in order to reach the substance of a petitioner's arguments." ***Id.*** at 785.

Although the timeliness requirement is mandatory and jurisdictional, "an untimely petition may be received when the petition alleges, and the petitioner proves, that any of the three limited exceptions to the time for filing set forth at 42 Pa.C.S.A. § 9545(b)(1)(i), (ii), and (iii), is met." ***Commonwealth v. Hernandez***, 79 A.3d 649, 651 (Pa. Super. 2013). The three exceptions to the timeliness requirement are:

> (i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States;
>
> (ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; or
>
> (iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

42 Pa.C.S.A. § 9545(b)(1)(i)-(iii). A PCRA petition invoking an exception "shall be filed within 60 days of the date the claim could have been presented." 42 Pa.C.S.A. § 9545(b)(2).

As noted above, Appellant's judgment of sentence became final on August 27, 2015. He thus had until August 29, 2016 to file a timely PCRA petition.[2] Because he filed his petition on September of 2017, it is untimely.

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[2] August 27, 2016 was a Saturday.

However, Appellant acknowledges the PCRA's time bar, and claims the newly discovered evidence exception, citing his "due diligence in obtaining the information that his attorney failed to file a requested appeal." Appellant's Brief at 6. Appellant states that "he discovered on July 12, 2017 that his counsel of record failed to file an appeal with Superior Court, whereas Petitioner with promptness filed a PCRA [petition] on September 10, 2017, well within the 60 day time frame allotted . . . " ***Id.*** at 6-7. To clarify, Appellant's claim is that PCRA counsel was ineffective for failing to file a petition for allowance of appeal with the Pennsylvania Supreme Court, and Appellant did not learn that the appeal was not filed until July 12, 2017. Appellant continues: "As stated supra, Petitioner informed counsel that he wished to appeal his denial [of his appeal from his first PCRA petition] from the Superior Court and it was not until July 12, 2017 when petitioner discovered that counsel failed to file an appeal as requested." ***Id.*** at 10. ***See also*** PCRA Petition, 9/14/17, at 3 (stating, "Appellate counsel failed to file petition for allowance of appeal to the Supreme Court, informed by Superior Court prothonotary via docket sheet.").

Sixty days from Appellant's asserted July 12, 2017 discovery of new evidence – that his PCRA counsel did not file a petition for allowance of appeal – is Sunday, September 10, 2017. Therefore, Appellant had until Monday, September 11, 2017 to file his PCRA petition to meet the 60 requirement under 42 Pa.C.S.A. § 9545(b)(2). The trial court docket shows that

Appellant's second petition was filed on September 14, 2017. However, Appellant cites the prisoner mailbox rule in support of his claim that he filed his petition on September 10, 2017. The prisoner mailbox rule provides that a *pro se* petitioner's document is deemed filed on the date he delivers it to prison authorities for mailing. ***Commonwealth v. Jones***, 700 A2d 423, 426 (Pa. 1997). Appellant states that "as evidence of the date upon which Petitioner gave his PCRA petition to prison authorities for mailing, Petitioner offers a cash slip indicating that his prison account was charged for the postage for mailing his PCRA petition on September 10, 2017. See Exhibit E." Appellant's Brief at 7; Exhibit E. Appellant's PCRA petition contains a copy of his handwritten proof of service stating that he placed the petition "in the hands of prison official for mailing to the Court of Common Pleas, Monroe County." The stamped "inmate mail" envelope is also appended, and although the date stamp is difficult to discern, it is logical that a letter given to prison officials on Sunday, September 10, 2017 at SCI-Smithfield in Huntington, Pennsylvania, would be docketed on September 14, 2017 in Monroe County. On this record, we find merit to Appellant's claim that he filed his PCRA petition within 60 days of discovering the new evidence that PCRA counsel had not petitioned for allowance of appeal with the Supreme Court as requested.

In rejecting Appellant's argument, the PCRA court reasoned:

> [T]he Petition remains untimely. The Superior Court rendered its decision on April 18, 2017. "Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been presented." As such, [Appellant] would

> have had until July 17, 2017 to file a Petition under a § 9545(b)(1) exception. [Appellant's] Petition was filed well over the sixty day time limit set forth in 42 Pa.C.S.A. § 9545(b)(1).

PCRA Court Order, 2/6/18, at 2. Upon review of the aforementioned record, in conjunction with our holding in ***Commonwealth v. Burton***, 121 A.3d 1063 (Pa. Super. 2015) (*en banc*), ***aff'd sub nom***, ***Commonwealth v. Burton***, 158 A.3d 618 (Pa. 2017), we are constrained to disagree.

In ***Burton***, we held that "due diligence requires neither perfect vigilance nor punctilious care, but rather it requires reasonable efforts by a petitioner, based on the particular circumstances, to uncover facts that may support a claim for collateral relief." ***Id.*** at 1071. We also "recognize[d] a limited exception to the 'public records' rule, which presumes that petitioners have access to information available in the public domain." ***Id.*** at 1066. With specific reference to a petitioner's access to his own criminal docket, we stated:

> . . . If our Supreme Court has recognized expressly that, without the benefit of counsel, we cannot presume a petitioner has access to information contained in his own public, criminal docket, then surely it cannot be that we presume a *pro se* petitioner's access to public information contained elsewhere.

Burton, 121 A.3d at 1073, citing ***Bennett,*** 930 A.2d 1264, 1266 (Pa. 2007) (stating that the Superior Court's order dismissing appellant's appeal was a matter of public record "only in the broadest sense," and where counsel had abandoned appellant, "the matter of 'public record' does not appear to have been within Appellant's access.").

Here, Appellant claims "newly discovered evidence that [PCRA] counsel failed to file a requested appeal, therefore abandoning appellant." Appellant's Brief at 15. Consistent with both the record and prevailing legal authority, we conclude that the PCRA court erred in determining that Appellant had only until July 17, 2017 to raise his claim of PCRA counsel's ineffectiveness, and in turn dismissing Appellant's second PCRA petition without a hearing. Accordingly, we reverse the February 6, 2018 order, and remand for an evidentiary hearing on Appellant's claim of PCRA ineffectiveness.

Order reversed. Case remanded. Jurisdiction relinquished.

Judgment Entered.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/27/18

COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	**2030 CR 2014**
	:	
vs.	:	**776 EDA 2018**
	:	
PAUL BROWN,	:	
	:	**POST-CONVICTION**
Defendant/Petitioner	:	**COLLATERAL RELIEF**

ORDER

AND NOW, this 31st day of January, 2019, after remand from the Pennsylvania Superior Court for an evidentiary hearing regarding Defendant's claim of PCRA ineffectiveness, and after consideration of Defendant's second PCRA Petition, the Defendant's Petition is **GRANTED** and Defendant's appellate rights are REINSTATED *Nunc-Pro-Tunc* with regard to his claim of an involuntary guilty plea raised in his first PCRA Petition. All additional claims raised in Defendant's Amended second PCRA Petition were not considered by this Court as the scope of the remand was limited to only the claim of ineffective assistance of Defendant's first PCRA counsel. *See Commonwealth v. Sepulveda*, 144 A.3d 1270 (Pa. 2016) ("Following a full and final decision by a PCRA court on a PCRA petition, that court no longer has jurisdiction to make any determinations related to that petition unless, following appeal, the appellate court remands the case for further proceedings in the lower court. In such circumstances, the PCRA court may only act in accordance with the dictates of the remand order. The PCRA court does not have the authority or the discretion to permit a petitioner to raise new claims outside the scope of the remand order and to treat those new claims as an amendment to an adjudicated PCRA petition.").

H

Defendant has **thirty (30) days** from the date of this Order to file a Petition for Allocatur with the Pennsylvania Supreme Court appealing the Superior Court's April 18, 2017 Opinion affirming our denial of his first PCRA Petition.

BY THE COURT:

MARGHERITA PATTI-WORTHINGTON, P.J.

Clerk of Courts
JAN 31 '19 PM3:56

cc: District Attorney
Bradley W. Weidenbaum, Esq., Counsel for Defendant
Paul Brown, Defendant
SCI – Smithfield
P.O. Box 999
1120 Pike Street
Huntington, PA 16652
Clerk of Courts
Prothonotary—Superior Court
Prothonotary—Supreme Court
MPW2019-005

COMMONWEALTH OF PENNSYLVANIA, Respondent
v. PAUL A. BROWN, Petitioner
SUPREME COURT OF PENNSYLVANIA
2019 Pa. LEXIS 4086
No. 131 MAL 2019
July 24, 2019, Decided

Notice:

DECISION WITHOUT PUBLISHED OPINION

Editorial Information: Prior History

Petition for Allowance of Appeal from the Order of the Superior Court.Commonwealth v. Brown, 169 A.3d 1178, 2017 Pa. Super. Unpub. LEXIS 1465 (Apr. 18, 2017)

Opinion

ORDER

PER CURIAM

AND NOW, this 24th day of July, 2019, the Petition for Allowance of Appeal is **DENIED**.

I

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

November 15, 2024

Mr. Paul A. Brown
Prisoner ID #MD-1590
SCI Coal Township
1 Kelley Drive
Coal Township, PA 17866-1021

Re: Paul A. Brown
v. Tom McGinley, Superintendent, State Correctional Institution at Coal Township, et al.
Application No. 24A488

Dear Mr. Brown:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Alito, who on November 15, 2024, extended the time to and including January 25, 2025.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by

Susan Frimpong
Case Analyst

5

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-2576

PAUL A. BROWN,
Appellant

v.

SUPERINTENDENT BENNER TOWNSHIP SCI; ATTORNEY GENERAL PENNSYLVANIA; DISTRICT ATTORNEY MONROE COUNTY

(D.C. Civil No. 3-19-cv-02037)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, JORDAN, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES and CHUNG, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the the Court en banc, is denied.

BY THE COURT,

s/ David J. Porter
Circuit Judge

K