

(APPENDIX-A)

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

KENDALL WILLIAMS,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2194 EDA 2012

Appeal from the PCRA Order July 10, 2012
In the Court of Common Pleas of Montgomery County
Criminal Division at No: CP-46-CR-0007004-2005

BEFORE: FORD ELLIOTT, P.J.E., STABILE, and STRASSBURGER,* JJ.

MEMORANDUM BY STABILE, J.:

FILED DECEMBER 22, 2016

Appellant, Kendall Williams, appeals *pro se* from the July 10, 2012 order entered in the Court of Common Pleas of Montgomery County ("PCRA court") denying relief under the Post-Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-46. Appellant raises five issues on appeal. Upon review, we affirm.

The PCRA court summarized the factual and procedural history as follows.

On July 9, 2007, Appellant appeared before the Honorable Paul W. Tressler and entered into an open guilty plea to attempted murder and possessing an instrument of crime. All remaining counts were nolle prossed. On October 12, 2007, Judge Tressler imposed a seventeen and one-half (17½) to

* Retired Senior Judge assigned to the Superior Court.

thirty-five (35) year sentence, with a five (5) year consecutive probation [sentence]. Appellant, through counsel, filed a "Petition to Reinstate Appellate Rights Nunc Pro Tunc" on July 15, 2008. Appellant's sentence was affirmed through a Superior Court order dated June 26, 2009.

On May 26, 2010, Appellant filed a [m]otion for [p]ost-[c]onviction [c]ollateral [r]elief, in which he alleged both trial counsel's (John Armstrong) and appellate counsel's (Bonnie-Ann Brill Keagy) ineffectiveness prejudiced him. On June 2, 2010, Judge Tressler appointed James Tone, Esquire to represent Appellant in this matter. On August 17, 2010, Judge Tressler entered an order granting Attorney Tone an additional thirty days to review the record or file an amended petition. From [the PCRA court's] review of the record, it seems that Appellant then filed a complaint against Attorney Tone with the Disciplinary Board and the matter was placed on hold. Attorney Tone filed a detailed "no merit" letter, dated January 17, 2012, pursuant to **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988) as well as a petition to withdraw as counsel, stating that in his opinion [Appellant] is not entitled to relief under the PCRA. Following the [PCRA court's] independent review of the record, [the PCRA court] concurred with Attorney Tone's review of the case. However, it was [the PCRA court's] belief that there may have been some merit as to the limited issue of [Armstrong's] alleged failure to call character witnesses at Appellant's sentencing. Through an order dated March 2, 2012, [the PCRA court] required Attorney Tone to file an amended petition on this issue only and the Commonwealth to thereafter file a response. After considering both documents, [the PCRA court] concluded that the issue was meritless, there were no genuine issues of material fact, that [Appellant's] PCRA petition should be dismissed without a hearing and consequently entered its 907(1) Notice on April 3, 2012.

On May 9, 2012, the [PCRA court] received Appellant's response to its 907(1) Notice, which prompted the [PCRA court] to have a limited evidentiary hearing on July 3, 2012 regarding the issue of Appellant's request for petition for allowance of appeal. After receiving all documents regarding the issue, the [PCRA court] found the issue was meritless and issued its [f]inal [o]rder of [d]ismissal on July 10, 2012.

PCRA Court Opinion, 8/28/2012, at 1-2 (footnotes omitted). Appellant filed the instant appeal on August 7, 2012 and a 1925(b) statement on August 27, 2012. The PCRA court filed a 1925(a) opinion on August 28, 2012.¹

Appellant raises five issues on appeal that this Court quotes verbatim.

- I. Whether the PCRA Court erred in denying appellant relief for being sentenced by the [PCRA] court within the aggravated range of the guidelines and enhanced on the basis of charges that were (nolle prossed) dismissed and sentenced excessively beyond fundamental norms and predicated on improper factors while discarding remorse and penalized for a statutorily reiterated allocution.
- II. Whether the PCRA Court erred in denying [A]ppellant relief for being sentenced by the [PCRA] court for misapplication of the sentencing guidelines in computing the OGS and PRS to sentence on the crime alone.
- III. Whether the PCRA Court erred in denying [A]ppellant's "Motion for Change of Appointed PCRA Counsel" subject to meritorious "Office of Disciplinary Counsel" (ODC) claims for subverting appellate relief by unilaterally amended PCRA Petition coupled with ineffectiveness of self and trial counsel.
- IV. Whether the PCRA Court erred in denying appellant relief for failing to find trial counsel ineffective in trial and sentencing matters individual and cumulative coupled with preoccupation of undisclosed serious personal issues while not objecting to appellant's prejudicial and error plagued PSI, misrepresenting an involuntary, unknowing, and/or unintelligent plea agreement with stand mute provision and Sixth Amendment Constitutional witness cross-examination violations, illegal mandatory minimum notice, and contrary to specific requests of record failure to

¹ This matter languished in this Court for four years because Appellant filed numerous applications for relief and motions for reconsideration from the denial of those applications.

provide critical expert and character mitigation witnesses, denied pursuit of forensic defense option recommended by approved experts and failure to file post-sentencing motions.

- V. Whether the PCRA Court erred in denying [A]ppellant relief for failing to find direct [appeal] counsel ineffective for improper pursuit of post sentencing motions, discretionary sentencing including ineffectiveness of trial counsel and for not pursuing claims and/or seeking "Petition for Allowance of Appeal" (PAA) in the PA Supreme Court.

Appellant's Brief at 20-21.

Appellant's first two issues are challenges to the discretionary aspects of sentencing, namely Appellant asserts that he was sentenced in the aggravated range. A challenge to the discretionary aspects of sentencing is not a cognizable claim under the PCRA. *See Commonwealth v. Fowler*, 930 A.2d 586, 593 (Pa. Super. 2007) (citations omitted); 42 Pa.C.S.A. § 9543. A challenge to the legality of sentence is a cognizable claim under the PCRA; however, Appellant is not asserting that his sentence is illegal. Appellant's first two claims are not cognizable under the PCRA; therefore, Appellant's claims fail. Additionally, Appellant's second claim was not raised in his 1925(b) statement; therefore, Appellant's claim is waived. *See* Pa.R.A.P. 1925(b)(4)(vii).

Appellant's third claim asserts the PCRA court erred when it denied Appellant's motion for change of appointed PCRA counsel. Appellant's argument is disjointed and unclear; however, as far as this Court can discern, Appellant is claiming that Attorney Tome filed a *Turner/Finley* letter in retaliation for Appellant filing a complaint against Attorney Tome

with the Pennsylvania Disciplinary Board. Upon our review of the record, Attorney Tome filed the **Turner/Finley** letter prior to Appellant requesting new PCRA counsel. Moreover, Appellant consented to Attorney Tome representing him at the July 3, 2012 evidentiary hearing. This hearing occurred after Attorney Tome filed the **Turner/Finley** letter. Therefore, Appellant's claim lacks merit as it has no support in the record.

Appellant's fourth claim consists of numerous claims of ineffective assistance of counsel. A PCRA petitioner is entitled to relief if he pleads and proves that prior counsel rendered ineffective assistance of counsel. 42 Pa.C.S.A. § 9543(a)(2)(ii). "To prevail on an [ineffectiveness] claim, a PCRA petitioner must plead and prove by a preponderance of the evidence that (1) the underlying legal claim has arguable merit; (2) counsel had no reasonable basis for acting or failing to act; and (3) the petitioner suffered resulting prejudice." **Commonwealth v. Reyes-Rodriguez**, 111 A.3d 775, 780 (Pa. Super. 2015) (*en banc*). "A petitioner must prove all three factors of the '**Pierce**'^[2] test, or the claim fails." **Id.** "[O]n appeal, a petitioner must adequately discuss all three factors of the '**Pierce**' test or the appellate court will reject the claim." **Id.**

As far as this Court can discern, Appellant asserts that trial counsel was ineffective for 1) being preoccupied with a serious family illness, 2)

² **Commonwealth v. Pierce**, 527 A.2d 973 (Pa. 1987).

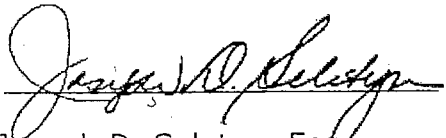
failing to object to the veracity of the PSI, 3) failing to follow an open-plea agreement, 4) failing to object to a mandatory minimum sentence, 5) failing to call a character witness at sentencing, and 6) failing to file post-sentence motions. Appellant failed to address the second and third prongs of the **Pierce** test for any of these allegations; therefore, Appellant's claims of ineffective assistance of counsel fail.

Finally, Appellant asserts that direct appellate counsel was ineffective for failing to raise a claim of ineffective assistance of trial counsel on direct appeal. Appellant's claim lacks merit as the "general rule of deferral to PCRA review remains the pertinent law on the appropriate timing of review of claims of ineffective assistance of counsel." **Commonwealth v. Holmes**, 79 A.3d 562, 563 (Pa. 2013). There are only two exceptions to **Holmes**. The first is when the claim is both meritorious and apparent such that immediate consideration or relief is warranted. **Id.** at 577. The second applies only when there are multiple claims of trial counsel ineffectiveness and the defendant expressly waives PCRA review. **Id.** at 563-64. Appellant failed to establish that either of these circumstances existed; therefore, direct appellate counsel could not have been ineffective for failure to raise ineffectiveness claims on direct appeal. Appellant's claim fails.

As all of Appellant's claims lack merit,³ we find the PCRA court properly dismissed Appellant's PCRA petition.

Order affirmed. Application for relief denied.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/22/2016

³ Appellant filed an application for relief seeking permission to file a reply brief that exceeds the page limit and an extension of time to file such brief on November 3, 2016. In light of the foregoing, Appellant's application is denied.

(APPENDIX-B)

IN THE SUPERIOR COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA : No. 2194 EDA 2012

v. :

KENDALL WILLIAMS :

Appellant :

ORDER

IT IS HEREBY ORDERED:

THAT the application filed January 3, 2017, requesting reconsideration of the decision dated December 22, 2016, is DENIED.

PER CURIAM

(App.8)

(APPENDIX-C)

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

No. 07004-05

vs.

PCRA

KENDALL WILLIAMS

FINAL ORDER OF DISMISSAL OF PCRA PETITION

AND NOW, this 10th day of July, 2012, the Court having appointed James Tone, Esquire to represent the Defendant, Kendall Williams, in connection with his PCRA petition, and Attorney Tone, having submitted a "no merit" letter (dated February 1, 2012) in accordance with *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1998), as well as a petition to withdraw as court-appointed counsel for Defendant, a copy of which is attached and incorporated by reference, and following this Court's independent review of the record, as well its July 3, 2012 evidentiary hearing on the limited issue of Defendant's request for petition for allowance of appeal; it is hereby **ORDERED** and **DECREED** that:

- 1) James Tone, Esquire is hereby granted leave to withdraw as court-appointed counsel for Defendant, Kendall Williams, in connection with Defendant's PCRA petition;
- 2) Defendant's PCRA petition is hereby **DISMISSED**, for all of the reasons set forth in this Court's Notice Pursuant to Pa.R.Crim.P. 907(1) of Intention to Dismiss Defendant's PCRA Petition Without a Hearing, dated April 3, 2012.

The undersigned has reviewed Defendant's response to the Court's 907(1) notice, which was received on May 9, 2012. Said responses raise no issue entitling Defendant to PCRA relief. Regarding the issue of Defendant's request for a petition for allowance of appeal, the Court has determined that Defendant is not entitled to PCRA relief on this claim.

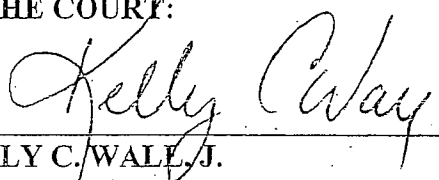
This Court held an evidentiary hearing on the above issue after the Defendant attached a July 10, 2009 letter addressed to his appellate attorney, in which he requested a petition for allowance of appeal, to the Court's 907(1) notice. The unjustified failure to file a requested direct appeal is ineffective assistance of counsel *per se* and an appellant need not show that he

likely would have succeeded on appeal in order to meet the prejudice prong of the test for ineffectiveness. *Commonwealth v. Lantzy*, 736 A.2d 564, 571 (1999).

In a letter dated July 2, 2009, Defendant's appellate attorney, Bonnie Keagy, informed Defendant of his right, and the time limits, to file a petition for allowance of appeal. Through a letter dated July 10, 2009, Defendant requested Attorney Keagy file the petition for allowance of appeal. A lengthy telephone conversation took place between the Defendant and Attorney Keagy on July 21, 2009, at which time Counsel discussed several options with Defendant. As a result of this conversation, Attorney Keagy penned a July 21, 2009 letter, in which she confirmed that the Defendant verbally withdrew his request for the petition for allowance of appeal during the telephone call. Through a letter dated July 21, 2009, Defendant once again withdrew his request for the petition for allowance of appeal in order to proceed with a PCRA petition "as soon as possible." Defendant did not include this letter in his response to this Court's 907(1) notice. During the evidentiary hearing, the Defendant attempted to argue that this letter never should have been sent; however, the undersigned cannot find Attorney Keagy ineffective when there is direct evidence to support the fact that Defendant withdrew his request to file a petition for allowance of appeal.

Defendant is hereby advised of his right to appeal from this final order of dismissal of his PCRA petition, within thirty (30) days of the date of this order, to the Pennsylvania Superior Court. As Attorney Tone is relieved of any further duty to represent Defendant, Defendant is further advised that he may proceed with such appeal from this Final Order of Dismissal either on his own or with the aid of private counsel engaged by him.

BY THE COURT:


KELLY C. WALL, J.

Copies of the above Order
Mailed to the following on 7/10/12:

James Tone, Esquire
Adrienne Jappe, Esquire, ADA, Captain of Appeals
Kendall Williams—HG0083—SCI-Smithfield
Bonnie Ann-Brill Keagy, Esquire
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA : No. 07004-05
:
vs. :
: PCRA
:
KENDALL WILLIAMS :

**NOTICE PURSUANT TO PA R. CRIM.P. 907(1) OF INTENTION TO DISMISS
DEFENDANT'S PCRA PETITION WITHOUT A HEARING**

AND NOW, this 3rd day of April, 2012, the Court hereby gives notice to the petitioner/defendant of its intention to dismiss his PCRA petition without a hearing. After a review of the petition, the entire court file, court appointed counsel's "no merit" letter to Petitioner, court appointed counsel's amended petition, the Commonwealth's reply to court appointed counsel's amended petition, we have determined that there are no genuine issues of any material fact, that Petitioner is not entitled to PCRA relief, and that no purpose would be served by any further proceedings.

On July 9, 2007, Petitioner appeared before the Honorable Paul W. Tressler and entered into an open guilty plea to attempted murder and possessing an instrument of crime.¹ All remaining counts were nolle prossed. On October 12, 2007, Judge Tressler imposed a seventeen and one-half (17 ½) to thirty-five (35) year sentence, with a five (5) year consecutive probation. Petitioner, through counsel, filed a "Petition to Reinstate Appellate Rights Nunc Pro Tunc" on July 15, 2008. Petitioner's sentence was affirmed through a Superior Court order dated June 26, 2009.²

On May 26, 2010, Petitioner filed a Motion for Post-Conviction Collateral Relief, in which he alleged both trial counsel's (John Armstrong) and appellate counsel's (Bonnie-Ann Brill Keagy) ineffectiveness prejudiced him. He also claimed that: (1) he did not receive notice of the mandatory minimum sentence; (2) trial counsel failed to pursue "Brady" violations; (3) trial counsel failed to call expert witnesses; (4) trial counsel failed to call character witnesses; (5) trial counsel failed to disclose his wife's illness, which affected his ability to effectively

¹ This file was re-assigned to the undersigned on February 7, 2012 after Judge Tressler's retirement.

² See, *Commonwealth v. Williams*, 3016 EDA 2008.

represent defendant; (6) trial counsel failed to interview defendant's physician or subpoena testimony regarding the Commonwealth's witnesses' behavioral impact on defendant; (7) trial counsel in part presented a criminal culpability defense option despite defendant's desire for a defense of absolution; (8) trial counsel interfered with defendant's right to testify after the Commonwealth reneged on the plea agreement to not discuss nolle prossed charges; (9) trial counsel and Judge Tressler failed to inform and discuss the option of withdrawing the guilty plea after the Commonwealth discussed the nolle prossed charges; (10) appellate counsel refused appellant review to the Pennsylvania Supreme Court at the last minute despite defendant's opposition; (11) appellate counsel submitted a unclear and inadequate brief to the Superior Court; (12) appellate counsel failed to raise additional claims of merit; (13) sentencing was predicated on the nolle prossed charges; (14) trial counsel threatened abandonment if defendant did not plead guilty; (15) defendant received erroneous advice on how the law would affect the duration of the sentence.

On June 2, 2010, Judge Tressler appointed James Tone, Esquire to represent Petitioner in this matter. On August 17, 2010, Judge Tressler entered an order granting Attorney Tone an additional thirty days to review the record or file an amended petition. From this Court's review of the record, it seems that Petitioner then filed a complaint against Attorney Tone with the Disciplinary Board and the matter was placed on hold.³ Attorney Tone filed a detailed "no merit" letter, dated January 17, 2012, pursuant to *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988), as well as a petition to withdraw as counsel, stating that in his opinion Petitioner is not entitled to relief under the PCRA. Following the Court's independent review of the record, we concurred with Attorney Tone's review of the case. However, it was this Court's belief that there may have been some merit as to the limited issue of trial counsel's alleged failure to call character witnesses at Petitioner's sentencing. Through an order dated March 2, 2012, we required Attorney Tone to file an amended petition on this issue only and the Commonwealth to thereafter file a response.⁴ After considering both documents, this Court concluded that this

³ Petitioner filed a "Motion for Change of Appointed PCRA Counsel" (dated January 27, 2012), which requested new PCRA counsel for Attorney Tone's alleged lack of communication with Petitioner. However, this petition was only filed *after* Attorney Tone submitted his *Finley* letter (dated January 17, 2012) to Petitioner. Therefore, this Court denied Petitioner's motion through an Order dated February 9, 2012.

⁴ It should be noted that Petitioner's PCRA petition does not explicitly state that trial counsel refused to call character witnesses at sentencing. Petitioner entered into a guilty plea and while this Court realizes that character witnesses would not have been called to testify during Petitioner's guilty plea colloquy; in the abundance of caution, we

issue contained no genuine issue of material fact and that Petitioner's PCRA petition should be dismissed without a hearing.

Legal Analysis and Conclusions

The requirements for relief under the PCRA are set forth in Section 9543 of the Judicial Code, 42 Pa.C.S. §9543 (relating to eligibility for relief). In order to prevail on an ineffectiveness claim, a petitioner must demonstrate that: 1) his claims are of arguable merit; 2) counsel had no reasonable basis for his actions; and 3) counsel's actions prejudiced the petitioner. *Commonwealth v. Allen*, 732 A.2d 582, 587 (Pa. 1999) citing *Commonwealth v. Pierce*, 527 A.2d 973, 975 (Pa. 1987). The law presumes that counsel was effective and it is the petitioner's burden to prove otherwise. *Commonwealth v. Cox*, 728 A.2d 923, 929 (Pa. 1999). Allegations of ineffectiveness in connection with the entry of a guilty plea will serve as a basis for relief only if the ineffectiveness caused the petitioner to enter an involuntary or unknowing plea. *Allen*, 732 A.2d at 587 citing *Commonwealth v. Frometa*, 555 A.2d 92, 93 (Pa. 1989); *Commonwealth v. Chumley*, 394 A.2d 497, 504-505 (1978); *Commonwealth v. McCauley*, 797 A.2d 920, 922 (Pa. Super. 2001). In determining whether a guilty plea was entered knowingly and intelligently, a reviewing court must review all of the circumstances surrounding the entry of that plea. *Allen*, 732 A.2d at 587 citing *Commonwealth v. Schultz*, 477 A.2d 1328, 1330 (Pa. 1984).

Petitioner first contends he is entitled to PCRA relief because he did not receive notice of a mandatory minimum sentence. On September 26, 2011, Assistant District Attorney Wallis Brooks filed a "Notice of Intent to Seek Mandatory Sentence," seeking the imposition of a five-year mandatory minimum sentence for the attempted murder charge. Pursuant to 42 Pa.C.S. § 9712(b), "reasonable notice of the Commonwealth's intention to proceed under this section shall be provided after conviction and before sentencing." However, there was no indication at sentencing that Judge Tressler imposed the mandatory sentence. The sentence imposed was within the standard range.

Petitioner next maintains that trial counsel failed to disclose his Wife's serious illness, which affected his ability to effectively represent Petitioner. On July 9, 2007, the defendant

assumed Petitioner meant that witnesses were not called at his sentencing hearing and therefore decided to look into this limited issue.

entered into an open guilty plea in which he confirmed he had enough time to speak to trial counsel and he was satisfied with counsel's advice and representation. N.T., 7/9/07, p. 14. Additionally, Petitioner completed a guilty plea colloquy and checked "yes" in response to whether he was satisfied with his attorney's representation and that he had sufficient time to talk to his attorney before deciding to plead guilty. See, Guilty Plea Colloquy, p. 6. Under oath, Petitioner confirmed that the answers contained in the guilty plea colloquy were his answers and they were honest. N.T., 7/9/07, pp. 20-21.

The law does not require that a defendant be pleased with the outcome of his plea, but only that the plea be knowingly, voluntarily and intelligently made. *Commonwealth v. Hallock*, 722 A.2d 180, 182 (Pa. Super. 1998); *Commonwealth v. Yager*, 685 A.2d 1000, 1004 (Pa. 1996). Once a defendant has entered a guilty plea, the law presumes that he was aware of what he was doing, and the burden of proving involuntariness is upon the defendant. *Commonwealth v. Myers*, 642 A.2d 1103, 1105 (Pa. 1984). Therefore, where the record clearly demonstrates that a guilty plea colloquy was conducted, during which it became evident that the defendant understood the nature of the charges against him, the voluntariness of the plea is established. A defendant who elects to plead guilty is bound by his statements made under oath in open court and may not later assert grounds to withdraw that plea based upon statements that contradict those made during the guilty plea colloquy. *Commonwealth v. Turetsky*, 925 A.2d 876, 881 (Pa. Super. 2007); *Commonwealth v. Stork*, 737 A.2d 789, 790-791 (Pa. Super. 1999); *Commonwealth v. Lewis*, 708 A.2d 497, 502 (Pa. Super. 1998); *Commonwealth v. Barnes*, 687 A.2d 1163, 1167 (Pa. 1996); *Commonwealth v. Cappelli*, 489 A.2d 813, 819 (Pa. 1985).

Petitioner next alleges that trial counsel failed to pursue "Brady" violations on sentencing once informed or prior to the plea. While Petitioner included a list a list of evidence (See, PCRA petition, p. 6) that he claimed is exculpatory; this list seems to include all documentation that Petitioner would have had access to if he chose to proceed to trial. However, the fact remains that Petitioner entered a guilty plea and is now bound by the outcome of that decision.

Petitioner next claims that his trial counsel failed to call expert witnesses, who would have negated the element of malice. First, in pleading guilty Petitioner relinquished the right to proceed to trial and, consequently, call expert witnesses. (See, Guilty Plea Colloquy, Questions 16, 39, p. 3, 7). Additionally, the issue surrounding "malice" was disposed of on direct appeal,

in which Petitioner's sentence was affirmed. (See, *Commonwealth v. Williams*, 3016 EDA 2008).

Petitioner next contends that he was induced to plead guilty because trial counsel inferred Judge Tressler was sympathetic to domestic victims and then threatened abandonment if Petitioner did not plead guilty. Consequently, Petitioner alleges that counsel's ineffectiveness resulted in Petitioner's acceptance of the plea. Under oath, Defendant specifically stated that no one "forced," "threatened," or "coerced" him into pleading guilty. N.T., 7/9/07, p. 24. In his written colloquy, he also checked "no," to the question as to whether anyone forced him to enter the guilty plea and "yes," to whether he was entering the plea on his own free will. See, Guilty Plea Colloquy, p. 6.

Petitioner also asserts that trial counsel failed to interview Petitioner's physician or subpoena testimony regarding the Commonwealth's witnesses' behavioral impact on the Petitioner. While the defendant does not explain the relevance of interviewing his physician, the behavioral impact of the Commonwealth's witnesses' on the Petitioner is irrelevant. Petitioner relinquished the right to proceed to trial and instead made the decision to enter into an open guilty plea—a decision that was knowingly, voluntarily and intelligently made.

Petitioner next claims that trial counsel was ineffective because he, in part, presented a criminal culpability defense option despite Petitioner's desire for a defense of absolute. Petitioner, under oath, entered into an open guilty plea to attempted murder and possessing an instrument of crime. A defense is not required when one enters a guilty plea. A guilty plea waives all nonjurisdictional defects and defenses. *Commonwealth v. Chumley*, 394 A.2d 497, 504-505 (Pa. 1978). Defendant stated he understood that he was relinquishing his rights, which included proceeding to trial and presenting a defense.

Petitioner next maintains that sentencing was predicated on nolle prossed charges despite an agreement to the contrary. This claim is incorrect. First, while the nolle prossed charges were withdrawn, there was no agreement that the Commonwealth could not discuss these charges at sentencing. As was stated by Judge Tressler at sentencing, "I understand that the charges are withdrawn. It's my understanding that that was the agreement, and that's what's been done. However, there was never any agreement that the information concerning these matters that might be relevant or important to the Court could be withheld at the time of sentencing." N.T.,

10/2/07, p. 25. Additionally, there is no indication that the sentencing was predicated on the charges that were nolle prossed. *Id.* at 42-43.

Petitioner next claims that trial counsel interfered with his required right to testify after the Commonwealth reneged on the plea agreement to discuss nolle prossed charges. As stated above, there was no agreement that the Commonwealth could not discuss the nolle prossed charges at sentencing. Additionally, Petitioner did allocute at his sentencing. *Id.* at 32-36. Petitioner also alleges that trial counsel entirely failed to discuss and Judge Tressler failed to inform/discuss any options to withdraw the guilty plea when the judge failed to accept the plea agreement to not discuss the nolle prossed charges. There was no agreement that the nolle prossed charges could not be discussed at sentencing. Additionally, Judge Tressler informed Petitioner of the right to withdraw his guilty plea and the time limits for doing so on the record. *Id.* at 43-44.

Petitioner next argues that appellate counsel refused appellant review to the Pennsylvania Supreme Court at the last minute despite his opposition. While it is unclear what Petitioner means by "appellant review," this Court will assume that defendant means an appeal to the Pennsylvania Superior Court. However, while Petitioner may now claim that he desired an appeal; there is no direct evidence that he ever requested an allowance of appeal to the Pennsylvania Supreme Court.

Petitioner maintains that counsel submitted an unclear and confusing argument, regarding the withdrawal of the guilty plea, in her brief to the Superior Court and failed to provide a separate concise statement of reasons relied upon for permission to appeal the discretionary aspects of the sentence. First, the Superior Court was able to address the argument relating to the guilty plea and affirmed Petitioner's sentence on appeal. Second, it is correct that appellate counsel failed to include the separate concise statement as is required to appeal the discretionary aspects of a sentence and therefore this issue was waived on appeal. However, even if appellate counsel had properly included the separate concise statement; it would not have affected the outcome. Prejudice in the context of ineffective assistance of counsel means establishing that there is a reasonable probability that, but for counsel's alleged errors, the outcome of the proceeding would have been different. *Commonwealth v. Bond*, 819 A.2d 33, 42 (Pa. 2002). In this case, Judge Tressler imposed a sentence that was within the guidelines and recited his reasons for imposing such a sentence on the record. Therefore, even if appellate counsel had

included the separate concise statement; this was a meritless issue that would likely have provided the defendant with no relief.

Petitioner next alleges that appellate counsel failed to raise additional claims of merit; however, he does not expound on this issue and therefore is not entitled to relief. A petitioner is not entitled to relief on broad and general claims of ineffectiveness. *See, Commonwealth v. Williams*, 732 A.2d 1167, 1177 (Pa. 1999).

Petitioner claims that he received erroneous advice on how the law would affect the duration of the sentence. Petitioner seems to claim that trial counsel inferred that defendant would receive a sentence of seven (7) to twenty (20) years minus the two (2) completed. This claim has no merit. Petitioner entered into an open guilty plea and was informed, on the record, that the maximum sentence was twenty (20) to forty (40) years. N.T., 7/9/07, p. 13.

Finally, regarding the claim of failing to call character witnesses, defendant claims that trial counsel failed to confer with him on the subject but character evidence was available at the time of sentencing. To prevail on this claim, it is the defendant's burden to establish: (1) the witness existed; (2) the witness was available to testify for the defense; (3) counsel knew of, or should have known of, the existence of the witness; (4) the witness was willing to testify for the defense; and (5) the absence of the testimony of the witness was so prejudicial as to have denied the defendant a fair trial. *Commonwealth v. Johnson*, 966 A.2d 523, 536 (Pa. 2009). In this case, Petitioner once again presented a broad claim (as opposed to naming this alleged character witness and thus proving his or her existence) and therefore this Court cannot conclude that he satisfied the elements of the above test. Petitioner's claim regarding failing to call character witnesses fails. Additionally, it should be noted that:

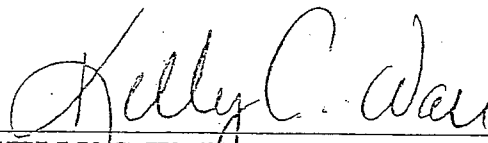
[t]he right to an evidentiary hearing on a post-conviction petition is not absolute. It is within the PCRA court's discretion to decline to hold a hearing if the petitioner's claim is patently frivolous and has no support either in the record or other evidence. It is the responsibility of the reviewing court on appeal to examine each issue raised the PCRA petition in light of the record certified before it in order to determine if the PCRA court erred in its determination that there were no genuine issues of material fact in controversy and in denying relief without conducting an evidentiary hearing.

Commonwealth v. Walls, 993 A.2d 289, 295 (Pa. Super. 2010).

Therefore, this Court determines that Petitioner's PCRA petition is meritless and, consequently, he should not be afforded any relief. Petitioner is hereby notified that he may

respond to this notice of the Court's intention to dismiss his PCRA petition within twenty (20) days of the date of this notice.

BY THE COURT:


KELLY C. WAITE, J.

Copies of the above Notice

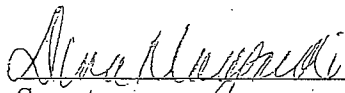
Mailed to the following on 04/03/12:

James Tone, Esquire

Adrienne Jappe, Esquire, ADA, Captain of Appeals

Kendall Williams—HG0083 (certified mail & regular mail)

Christine Sanchez—Esquire, Court Administration


Secretary

(APPENDIX-D)

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,

Respondent

v.

KENDALL WILLIAMS,

Petitioner

No. 162 MAL 2017

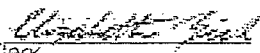
Petition for Allowance of Appeal from
the Order of the Superior Court

ORDER

PER CURIAM

AND NOW, this 28th day of August, 2017, the Petition for Allowance of Appeal is
DENIED.

A True Copy Elizabeth E. Zisk
As Of 8/28/2017

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

(App.19)

**Additional material
from this filing is
available in the
Clerk's Office.**