

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
	:	
v.	:	No. CR-216-2021
	:	
JOSHUA P. CORRELL,	:	
	:	
Defendant	:	
Jennifer L. Rapa, Esquire		Counsel for the Commonwealth
Assistant District Attorney		
Michael P. Gough, Esquire		Counsel for the Defendant

**MEMORANDUM OPINION**

Serfass, J. - June 27, 2025

Here before the Court is Defendant's pro se "Petition for Post-Conviction Collateral Relief" and the "Supplement to Petition for Post-Conviction Collateral Relief" filed by PCRA counsel. Both the petition and supplement thereto raise claims of ineffective assistance of trial counsel and request that this Court enter an order reversing and setting aside Defendant's convictions and sentences in this matter.

**FACTUAL AND PROCEDURAL HISTORY**

On January 21, 2021, Officer John Pruitte of the Jim Thorpe Police Department filed a criminal complaint against Defendant. Following a Formal Arraignment on April 9, 2021, at which Defendant was represented by Assistant Public Defender Matthew J. Mottola, Esquire, the charges were bound over to this Court.

On or about March 5, 2021, the Carbon County District Attorney's Office filed the Criminal Information in this matter charging Defendant with the following criminal offences: Count One - Possession of Firearm Prohibited; Count Two - Firearms Not to be Carried without a License<sup>1</sup>; Count Three - Flight to Avoid Apprehension; Count Four - Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver; Count Five - Resisting Arrest; Count Six - False Identification to a Law Enforcement Officer; Counts Seven and Eight - Intentional Possession of a Controlled Substance by a Person Not Legally Registered; and Count Nine - Use/Possession of Drug Paraphernalia.

On August 6, 2021, following a two (2) day jury trial, Defendant was found guilty on all charges. On October 28, 2021, Defendant appeared with Attorney Mottola for a sentencing hearing. On that same date, this Court imposed a sentence of incarceration in a state correctional institution of not less than one hundred seventeen (117) months nor more than two hundred thirty-four (234) months.

On March 25, 2022, following our denial of Defendant's "Post-Sentence Motion", Defendant filed a Notice of Appeal to the Superior Court of Pennsylvania. On April 3, 2023, the Superior Court filed a Memorandum Opinion affirming Defendant's

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<sup>1</sup> We note that Count Two was dismissed by this Court via order dated July 15, 2021.

judgment of sentence. Defendant's subsequent Petition for Allowance of Appeal was denied by the Supreme Court of Pennsylvania via Order dated August 22, 2023.

On February 5, 2024, Defendant filed his "Petition for Post-Conviction Collateral Relief", in which he claims ineffectiveness of counsel for failure to sever a charge. Via Order dated February 9, 2024, we appointed Michael P. Gough, Esquire, to represent Defendant as PCRA counsel. On August 23, 2024, Attorney Gough filed a "Supplement to Petition for Post-Conviction Relief" on behalf of Defendant in which an additional claim of ineffectiveness of counsel was raised for a lack of action on fingerprinting the firearm. A PCRA hearing, at which Defendant and Attorney Mottola testified, was held before this Court on October 17, 2024. Following the PCRA hearing, Attorney Gough filed Defendant's "Memorandum in Support of the Pro Se Petition for Post-Conviction Relief" and Assistant District Attorney Rapa responded with the Commonwealth's "Memorandum in Opposition to the Pro Se Petition for Post-Conviction Collateral Relief and Supplement Thereto".

#### **ISSUES**

In his PCRA Petitions, Defendant raises the following issues for consideration by this Court:

1. Whether Defendant's former counsel rendered ineffective assistance for failing to sever Count One: Possession of a Firearm Prohibited, a violation of 18 Pa.C.S. § 6105, from the other charges.
2. Whether Defendant's former counsel rendered ineffective assistance for failing to arrange fingerprint and/or a DNA analysis of the firearm in question.

### DISCUSSION

To prevail on a petition for PCRA relief, a petitioner must plead and prove by a preponderance of the evidence that his conviction or sentence resulted from one or more of the circumstances enumerated in 42 Pa.C.S.A. §9543(a)(2). These circumstances include ineffective assistance of counsel which "so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place." 42 Pa.C.S.A. §9543(a)(2)(ii).

The law presumes counsel has provided effective assistance. Commonwealth v. Rivera, 10 A.3d 1276, 1279 (Pa. Super. 2010). "[T]he burden of demonstrating ineffectiveness rests on [the] appellant" Id. To satisfy this burden, the defendant must plead and prove by a preponderance of the evidence that: (1) the underlying claim has arguable merit; (2) no reasonable basis existed for counsel's actions or failure to act; and (3) there

is a reasonable probability that the outcome of the challenged proceeding would have been different absent counsel's error. Commonwealth v. Fulton, 830 A.2d 567, 572 (Pa. 2003). A failure to establish any of these three prongs will defeat a claim of ineffective assistance of counsel. Commonwealth v. Walker, 36 A.3d 1, 7 (Pa. 2011). Our Supreme Court has stated that the elements need not be analyzed in any particular order; if a claim fails under any necessary element of the test, the reviewing court may proceed to that element first. Commonwealth v. Lesko, 15 A.3d 345, 358 (Pa. 2011) (citing Strickland v. Washington, 466 U.S. 668 (1984)).

A claim has arguable merit where the facts upon which it is based, if determined to be accurate, give rise to a prima facie basis for questioning whether counsel's representation fell below an objective standard of reasonableness. Commonwealth v. Jones, 876 A.2d 380, 385 (Pa. 2005). In examining whether counsel's actions lacked a reasonable basis, we must determine "whether no competent counsel would have chosen that action or inaction, or, [whether] the alternative, not chosen, offered a significantly greater potential chance of success." Commonwealth v. Stewart, 84 A.3d 701, 707 (Pa. Super. Ct. 2013) (*en banc*) (citations omitted), *appeal denied*, 93 A.3d 463 (Pa. 2014). In determining whether a reasonable basis for counsel's actions

existed, we must evaluate counsel's performance based on counsel's perspective at the time the conduct occurred, Commonwealth v. Carson, 913 A.2d 220, 273-4 (Pa. 2006), and make "all reasonable efforts to avoid the distorting effects of hindsight," while also avoiding "post hoc rationalization of counsel's conduct." Commonwealth v. Sattazahn, 952 A.2d 650, 656 (Pa. 2008) (citations omitted). "To demonstrate prejudice, the [defendant] must show that 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" Commonwealth v. King, 57 A.3d 607, 613 (Pa. 2012) (quoting *Strickland*, 466 U.S. at 694). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the proceeding." King, 57 A.3d at 613 (citation omitted). Importantly, "counsel cannot be deemed ineffective for failing to raise a meritless claim." Commonwealth v. Fears, 86 A.3d 795, 804 (Pa. 2014).

**A. Issue One.** Whether Defendant's former counsel rendered ineffective assistance in not seeking severance of Count One - Possession of a Firearm Prohibited, a violation of 18 Pa.C.S. § 6105, from the other charges.

Attorney Mottola testified that he met with Defendant approximately ten times and had one or two phone calls with him prior to trial. (N.T. pg. 26, lines 14 and 22). In these

conversations, Attorney Mottola stated that he had brief discussions with Defendant regarding severance of the charges, but did not see a good legal argument to sever in this particular case. (N.T. pg. 31, lines 17-19). The defendant agreed and told Attorney Mottola, "[he] just wanted to get evidence out that at least those robberies, there was no evidence supporting that he had a firearm in those robberies..." (N.T. pg. 17, line 11). Additionally, Defendant stated that he was not disputing that he was a person not to possess a firearm, only the possession of the firearm itself. (N.T. pg. 17, line 22). Defendant further stated that he did not wish to go to trial on all the charges he knew he was guilty of, namely all but the firearm possession charge. (N.T. pg. 11, lines 1-3). However, after Attorney Mottola testified, Defendant restated his innocence on the Possession with Intent to Deliver charge. (N.T. pg. 34, line 25). Such an assertion means that under our analysis, the Court must determine whether Defendant was prejudiced by ineffectiveness of counsel for only the Possession with Intent to Deliver charge and the Possession of a Firearm by a Prohibited Person charge.

In criminal trials, evidence of prior crimes is generally not admissible, and any reference to it constitutes reversible error. Commonwealth v. Martin, 479 A.2d 835 (1978). In the



present case, introduction of Defendant's prior conviction of an enumerated offense under 18 Pa. C.S.A §6105 was necessary as an element of proof of the firearm charge. Where a prior conviction is an element of a crime charged, defense counsel will normally request severance of that charge, to prevent the jury from hearing evidence relating to the defendant's prior conviction which is not admissible to demonstrate criminal propensity. Commonwealth v. Cobb, A.3d. 930 (Pa. Super. 2011). When determining whether severance is proper, the court looks to: "(1) whether the evidence of each of the offenses would be admissible in a separate trial for the other; (2) whether such evidence is capable of separation by the jury so as to avoid danger of confusion; and if the answers to these inquiries are in the affirmative; (3) whether the defendant will be unduly prejudiced by the consolidation of the offenses." Commonwealth v. Melendez-Rodriguez, 856 A.2d 1278, 1283 (Pa. Super. 2004).

Attorney Mottola testified that he believed the Court would not sever the firearm possession charge because there was a firearm recovered that was potentially intertwined with the drug charge. (N.T. pg. 37, lines 7-10; pg. 38). Attorney Mottola stated that while the Commonwealth would not need to establish a prior conviction for the remaining charges, he felt it could still be admissible under Pennsylvania Rule of Evidence 404(b).



(N.T. pg. 38, lines 1-19). Under Rule 404(b)(2), evidence that a defendant committed a prior crime is admissible where it tends to demonstrate, among other things, motive. Pa. R.E. 404(b)(2). Here, the Defendant's prior convictions provided him with a motive to not cooperate when he was in a vehicle that contained a firearm he was not legally allowed to possess.

Attorney Mottola further testified that he did not believe the Court would sever the firearm charge from the Possession with Intent to Deliver charge because of the small amount of methamphetamine recovered. (N.T. pg. 40, lines 1-4). The fact that the firearm in question was a "ghost gun" indicates criminal activity since they are unregistered and untraceable. (N.T. pg. 39, lines 13-20). Such weapons are commonly used by people involved in drug transactions or individuals who can't lawfully possess a firearm. (N.T. pg. 39, lines 13-16). Further, drug paraphernalia, and around \$2,000 in cash were recovered from Defendant's person. Commonwealth v. Correll, 297 A.3d 694, 695 (Pa. Super. Ct.), appeal denied, 303 A.3d 707 (Pa. 2023). A search of Defendant's vehicle also uncovered 1.2 grams of methamphetamine, other drug paraphernalia, and firearm accessories. Id. The close proximity of the drugs and paraphernalia to the "ghost gun", and the common use of such a

firearm, support a conclusion that the possession of the firearm was connected to drug transactions.

Based upon Attorney Mottola's analysis of the relevant facts, evidence and his discussions with Defendant, a motion for severance was not filed. This Court finds that trial counsel had a reasonable basis for his decision not to file for severance, that Defendant was not prejudiced by this decision and that his claim to the contrary is without merit. ("... we do not question whether there were other more logical courses of action which counsel could have pursued; rather we must examine whether counsel's decision had any reasonable basis.") Commonwealth v. Paddy, 15 A.3d 431, 442 (Pa. 2011), citing Commonwealth v. Washington, 927 A2.d 586, 594 (Pa. 2007).

**B. Issue Two.** Whether Defendant's former counsel rendered ineffective assistance for failing to arrange fingerprint and/or a DNA analysis of the firearm in question.

Defendant next contends that former counsel was ineffective for failing to request fingerprint and or DNA analysis of the firearm recovered. He testified that he only met with Attorney Mottola once or twice, but made the request for analysis multiple times. (N.T. pg. 9, lines 14 and 20). Attorney Mottola testified that he met with the Defendant approximately ten times and he does not recall any requests for testing to be run on the

firearm. (N.T. pg. 26, line 14). However, Attorney Mottola further testified that he and Defendant discussed the strategy of using the Commonwealth's lack of testing and due diligence to create reasonable doubt, and that Defendant did not object. (N.T. pg. 31, lines 24-25; pg. 32, lines 1-11). In pursuing that strategy, Attorney Mottola reasonably considered the risks of testing the firearm. Considering the fact that the firearm was found under Defendant's seat, and that Officer Pruitte witnessed Defendant place something under the seat moments before the arrest, Attorney Mottola realized that there was a possibility that his client's fingerprints or DNA made their way onto the firearm. (N.T. pg. 33, lines 5-15). He testified that if the test results had come back positive for Defendant's fingerprints or DNA, it would have proven that Defendant possessed the firearm, to which he would have had no defense. (Id, lines 2-5). Attorney Mottola also concluded that even if the firearm did not have Defendant's fingerprints or DNA, that would not have been enough to exculpate Defendant from guilt. (Id, lines 19-20). The accompanying evidence of drugs, drug paraphernalia, firearm paraphernalia, and the police officer witnessing Defendant hiding something under his seat raised the possibility that Defendant was in possession of the firearm. (Id, lines 5-15). Additionally, Defendant knew the firearm had not been tested at

the time of trial, yet he made no effort to request a continuance for the analysis to be performed. This, coupled with the fact that Defendant was adamant about having the trial occur as soon as possible, indicates that he agreed with Attorney Mottola's trial strategy. This Court finds Attorney Mottola's actions to be reasonable under the circumstances and that Defendant was not prejudiced by any lack of testing of the firearm.

#### CONCLUSION

Based upon the foregoing, we find that Defendant's "Petition for Post-Conviction Collateral Relief" and "Supplement to Petition for Post-Conviction Collateral Relief" are without merit and shall be denied accordingly.

BY THE COURT:

A handwritten signature in black ink, appearing to read "S.R. Serfass", written over a horizontal line.

Steven R. Serfass, J.

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**ORDER OF COURT**

AND NOW, to wit, this 27<sup>th</sup> day of June, 2025, upon consideration of Defendant's "Petition for Post-Conviction Collateral Relief" and "Supplement to Petition for Post-Conviction Collateral Relief", and following an evidentiary hearing thereon and our review of the post-hearing memoranda of counsel, and in accordance with our Memorandum Opinion bearing even date herewith, it is hereby

ORDERED and DECREED that Defendant's "Petition for Post-Conviction Collateral Relief" and "Supplement to Petition for Post-Conviction Relief" are **DENIED**.

BY THE COURT:

  
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Steven R. Serfass, J.

FS-17-2025

**Notice to Defendant**

1. You have the right to appeal to the Pennsylvania Superior Court from this Order denying your PCRA Petition and such appeal must be filed within 30 days from the entry of this order, Pa.R.A.P. Rules 108 & 903;
2. You have the right to assistance of legal counsel in the preparation of the appeal; and
3. You have the right to proceed in forma pauperis and to have an attorney appointed to assist you in preparation of the appeal, if you are indigent. However, you may also "proceed pro se, or by privately retained counsel, or not at all." Commonwealth v. Turner, 544 A.2d 927, 926 (Pa. 1988)