

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

COMMONWEALTH OF PENNSYLVANIA

vs.

JOHN MICHAEL CORRELL,

Defendant/Appellant

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No. CR 1227-2015

Joseph Perilli, Esquire

Carole Walbert, Esquire

Counsel for Commonwealth
Assistant District Attorney
Counsel for Defendant

MEMORANDUM OPINION

Matika, J. - July 7, 2017

Defendant, John Michael Correll, has appealed from the Order entered by this Court on April 5, 2017 denying and dismissing Defendant's Petition for Post-Conviction Collateral Relief. In his Concise Statement of Matters Complained of on Appeal, Defendant raises nine issues, the crux of which appears to be that Defendant argues he was denied the effective assistance of counsel at every prior stage of litigation, and that this Court erred in denying and dismissing Defendant's Post Conviction Relief Act ("PCRA") Petition. This memorandum opinion is filed in accordance with Pennsylvania Rule of Appellate Procedure 1925(a).

FACTUAL AND PROCEDURAL BACKGROUND

On November 9, 2015, Defendant entered guilty pleas for the charges in the present case. On that same date, Defendant was sentenced to a total sentence of no less than twenty-one (21)

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months to no more than forty-two (42) months in a state correctional institution with credit for seventy-six (76) days served, to be followed by two (2) years of state probation with various special provisions, one of which was that the Court recommended Defendant be eligible for participation in the Boot Camp Program.

On April 1, 2016, Defendant, through counsel, filed a Petition for Post-Conviction Relief. On May 5, 2016, Defendant, through new counsel, filed a Praecipe to Discontinue Post-Conviction Relief Hearing, requesting that the Petition be withdrawn, as Defendant's new counsel believed the Petition was improper. On December 1, 2016, Defendant pro se filed "Supplemental Issues to His Pending Post Conviction Relief Act." On December 13, 2016, this Court issued an order appointing new defense counsel at Defendant's request and instructed said counsel to consider whether Defendant's Petition met the time limits for filing a PCRA Petition or raised issues previously litigated and, as appropriate, either seek to withdraw after filing a "no-merit" letter pursuant to *Finley/Turner* or file an amended petition within forty-five (45) days. On January 20, 2017, Defendant pro se filed a Motion for Evidentiary Hearing, which on January 23, 2017 this Court denied without prejudice on the basis that Defendant was then represented by appointed counsel.

On February 10, 2017, Defendant's counsel filed a "no-merit"

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letter and Application to Withdraw as Counsel. In response, on February 27, 2017, this Court issued a Notice of Intent to Dismiss Defendant's Post-Conviction Collateral Relief Petition Without Hearing Pursuant to Pa.R.Crim.P. 907. On March 2, 2017, Defendant again pro se filed "Supplemental Issues to His Pending PCRA Petition," and on March 20, 2017 he pro se filed a Response to this Court's February 27, 2017 Notice of Intent to Dismiss. On April 5, 2017, this Court granted defense counsel's Application to Withdraw and denied and dismissed Defendant's Petition for Post-Conviction Collateral Relief, finding that Defendant's Response to this Court's February 27, 2017 Notice did not affect this Court's belief that Defendant's Petition is without merit. Defendant subsequently filed a Motion for Reconsideration on April 19, 2017, which this Court denied on May 8, 2017. Also on May 8, 2017, Defendant filed the instant appeal of this Court's April 5, 2017 Order. On May 9, 2017, this Court directed that Defendant file a Concise Statement of Matters Complained of on Appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b).

On May 24, 2017, Defendant filed a Concise Statement raising the following issues:

1. APPELLANT WAS DENIED HIS RIGHT TO THE EFFECTIVE ASSISTANCE OF ALL PRIOR COUNSEL AT HIS PRELIMINARY HEARING, FORMAL ARRAIGNMENT, GUILTY PLEA, AND SENTENCING, AND DUE PROCESS UNDER RESPECTFULLY, THE SIXTH AND FOURTEENTH AMENDMENT'S TO

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THE UNITED STATES CONSTITUTION, AND AT INITIAL-REVIEW
COLLATERAL POST CONVICTION PROCEEDINGS;

2. TRIAL COUNSEL WAS INEFFECTIVE WHEN FAILING TO FILE EITHER A
HABEAS CORPUS PETITION OR A PRE-TRIAL MOTION TO DISMISS ALL
CHARGES DUE TO THE FACT THAT APPELLANT WAS DENIED COUNSEL AT
HIS PRELIMINARY HEARING, AND FAILING TO ARGUE THAT APPELLANT
WAS NOT TAKEN BEFORE THE ISSUING AUTHORITY IN A TIMELY MANNER,
VIOLATING RULE 516;
3. TRIAL COUNSEL WAS INEFFECTIVE WHEN FAILING TO INSURE THAT
APPELLANT WAS PROVIDED A COMPLETE, FULL AND FAIR FORMAL
ARRAIGNMENT IN COMPLIANCE WITH RULE 571;
4. GUILTY PLEA COUNSEL WAS INEFFECTIVE AT BOTH GUILTY PLEA AND
SENTENCING WHEN HAVING APPELLANT ENTER INTO A PLEA BARGAIN
WITH THE COMMONWEALTH TO A RECOMMENDED CERTAIN SENTENCE;
5. ALL PRIOR AND PRESENT PCRA COUNSEL WERE INEFFECTIVE WHEN
FAILING TO RAISE INEFFECTIVE ASSISTANCE OF PRELIMINARY
HEARING, FORMAL ARRAIGNMENT, TRIAL, GUILTY PLEA, AND
SENTENCING COUNSEL, OR ANY PREVIOUSLY APPOINTED PCRA COUNSEL,
OR PROPERLY PRESERVE ALL OF APPELLANT'S CLAIMS/ISSUES
PRESENTED IN HIS SUPPLEMENTAL ISSUES TO HIS PENDING POST
CONVICTION RELIEF ACT;
6. THE PCRA COURT ERRED WHEN ACCEPTING PCRA COUNSEL'S TURNER
FINLEY LETTER AND DISMISSED APPELLANT'S PCRA PETITION WHEN
COUNSEL'S LETTER FAILED TO LIST AND ADDRESS ALL APPELLANT'S

PRO-SE CLAIMS AS WERE PRESENTED IN HIS FIRST TIMELY INITIAL-
REVIEW COLLATERAL POST CONVICTION PROCEEDINGS;

7. THE PCRA COURT ERRED, WHEN IT FAILED TO PROVIDE APPELLANT THE
BENEFIT OF A PROPERLY CONDUCTED EVIDENTIARY HEARING TO
DETERMINE THE CREDIBILITY OF ALL ISSUES PRESENTED THAT LED TO
THE FILING OF BOTH THE PCRA PETITION AND SUPPLEMENTAL ISSUES
TO HIS PENDING POST CONVICTION RELIEF ACT;
8. APPELLANT'S SIXTH AMENDMENT RIGHT TO COUNSEL WAS VIOLATED
WHEN ATTORNEY FAILED TO FILE A REQUESTED MODIFICATION OF
SENTENCE OR A DIRECT APPEAL DUE TO HER PERSONAL BELIEF ANY
CHALLENGE TO THE SENTENCE WOULD BE UNSUCCESSFUL; AND
9. AS RELIEF FOR SENTENCING COUNSEL'S ERROR, APPELLANT'S DIRECT
APPEAL RIGHTS SHOULD BE REINSTATED.

DISCUSSION

As a threshold matter, this Court believes the present appeal should be dismissed as untimely filed. Pennsylvania Rule of Appellate Procedure 903(a) requires that an appeal must be filed within thirty (30) days after the entry of the order from which the appeal is taken. In this case, Defendant is appealing this Court's April 5, 2017 Order. His thirty day window to file his appeal expired on May 5, 2017, yet he did not file until May 8. Because his appeal was not timely filed, this Court respectfully recommends that the appeal be dismissed.

If the Court finds, however, that it may still address this

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appeal despite its late filing, this Court believes it should be dismissed on the grounds that both Defendant's "Supplemental Issues" were untimely filed, and alternatively because his Concise Statement is impermissibly vague.

Defendant pleaded guilty and was sentenced on November 9, 2015. As per 42 Pa.C.S.A. § 9545(b), any PCRA Petition Defendant wished to file was required to be filed within one (1) year of that date, unless Defendant could demonstrate that an exception to that deadline were applicable. There are no facts of record to support the applicability of an exception, and Defendant has never raised such an argument. Defendant filed his First PCRA Petition on April 1, 2016, which was timely. However, Defendant, through counsel, withdrew that Petition on May 5, 2016. Defendant subsequently pro se filed two separate "Supplemental Issues" to his PCRA Petition on December 1, 2016 and March 2, 2017, respectively. Though, because his First PCRA Petition had been withdrawn, this Court treated these "Supplemental Issues" as a new PCRA Petition. Since these "Supplemental Issues" were filed more than one year after November 9, 2015, they were untimely. This Court therefore respectfully recommends that Defendant's appeal be dismissed on these grounds.

In the alternative, this Court believes Defendant's Concise Statement is impermissibly vague. Rule 1925 is intended to aid trial judges in identifying and focusing upon those issues which

the parties plan to raise on appeal. *Commonwealth v. Lemon*, 804 A.2d 34, 37 (Pa. Super. Ct. 2002). When an appellant "provides a concise statement which is too vague to allow the trial court an opportunity to identify the issues raised on appeal, he/she has provided 'the functional equivalent of no Concise Statement at all.'" *Ferris v. Harkins*, 940 A.2d 388, 397 (Pa. Super. Ct. 2007) (citation omitted), *appeal granted in part, decision vacated in part*, 961 A.2d 56 (Pa. 2008). When a trial court must guess what issues are being appealed, it cannot engage in meaningful review. *Id.* Further, it is improper for a trial court to frame the issues for the appellant by guessing or anticipating. *Commonwealth v. Pettus*, 860 A.2d 162, 164 (Pa. Super. Ct. 2004). Finally, "issues contained in a vague Rule 1925(b) statement will be deemed waived on appeal." *Wells v. Cendant Mobility Financial Corp.*, 913 A.2d 929, 932 (Pa. Super. Ct. 2006), *appeal granted*, 939 A.2d 343 (Pa. 2007).

In the present case, Defendant's Concise Statement is merely a word-for-word regurgitation of the issues he raised in his "Supplemental Issues," with the exception of Issue #6. Because the remaining issues do not articulate why this Court's April 5, 2017 Order was in error, these issues are impermissibly vague, rendering this Court unable to engage in meaningful review. At best, the Court would be reduced to an improper exercise of guessing and anticipating what Defendant is challenging. That being the case,

this Court respectfully recommends that Issues #1-5 and #7-9 be deemed waived.

With regard to Issue #6, the Court is still left guessing what Defendant is challenging. He references his "First Timely Initial-Review Collateral Post Conviction Proceedings," but it is not clear what Defendant means by this. If he is referring to the PCRA Petition that was filed on April 1, 2016, then the challenge is incorrect and moot on its face because that PCRA Petition was not denied by this Court, but rather withdrawn by Defendant's counsel on May 5, 2016. On the other hand, if he is referring to one or the other of his "Supplemental Issues" filed on December 1, 2016 and March 2, 2017, respectively, then the challenge is incorrect in its assertion that either of those filings was "timely" for the reasons stated *supra*. This Court therefore respectfully recommends that Issue #6 also be deemed waived for vagueness.

Based upon the foregoing, this Court respectfully recommends that its Order dated April 5, 2017, denying and dismissing Defendant's Petition for Post-Conviction Collateral Relief, be affirmed for the myriad of reasons stated herein.

BY THE COURT:



Joseph J. Matika, J.