

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
MITCHELL E. MONAGHAN	:	
	:	
Appellant	:	No. 161 WDA 2020

Appeal from the PCRA Order Entered January 8, 2020,
in the Court of Common Pleas of Jefferson County,
Criminal Division at No(s): CP-33-CR-0000419-2009.

BEFORE: KUNSELMAN, J., KING, J., and COLINS, J.*

MEMORANDUM BY KUNSELMAN, J.:

FILED JULY 07, 2020

Mitchell E. Monaghan appeals from the order denying his first petition filed pursuant to the Post Conviction Relief Act. 42 Pa.C.S.A. §§ 9541-9546. We affirm.

The pertinent facts and procedural history may be summarized as follows. On May 5, 2010, Monaghan entered a guilty plea to the possession with intent to deliver cocaine and heroin. That same day, the trial court imposed a sentence of 2½ to 5 years of imprisonment and a consecutive three-year probationary term. Monaghan was paroled from state

* Retired Senior Judge assigned to the Superior Court.

incarceration in April of 2011.¹ Monaghan committed new crimes in 2012, which resulted in the revocation of his parole, and he was recommitted for twenty-four months.

Monaghan was reparaoled in August of 2014. His maximum sentence of incarceration expired in November 2016, and he began serving his three years of probation. On January 23, 2017, the county adult probation department filed a notice of a Gagnon I hearing,² based on an incident of domestic violence that occurred approximately two weeks earlier. Although the charges originally filed as a result of this incident were withdrawn, the trial court found probable cause to revoke based upon technical violations, and scheduled a Gagnon II hearing. Although Monaghan held been represented by a county public defender to this point, the public defender's office withdrew. Monaghan appeared with privately-retained counsel ("revocation counsel") at the hearing held on February 15, 2017. At the hearing, Monaghan admitted the violations, but the trial court still heard testimony from Monaghan's state parole agent, as well as Monaghan's girlfriend and her sister.

After hearing this testimony, the trial court found that Monaghan violated his probation. The trial court requested an updated presentence

¹ The facts regarding Monaghan's state parole history are taken from his parole agent's testimony at a hearing held on February 15, 2017. See N.T., 2/15/17, at 7-8.

² Gagnon v. Scarpelli, 411 U.S. 778 (1973).

report and continued the hearing to another date. On March 1, 2017, the hearing reconvened and the trial court heard argument from revocation counsel and Monaghan made a statement to the court. Although adult probation recommended a minimum sentence of 7½ years, the trial court imposed a new sentence of 4 to 15 years of imprisonment.

Although he never entered his appearance, Attorney David Shrager, who was hired by Monaghan's family, filed a timely post-sentence motion for reconsideration, which the trial court denied by order entered March 13, 2017. Monaghan did not file a direct appeal.

On December 18, 2017, Monaghan filed a pro se PCRA petition in which he asserted, inter alia, that revocation counsel "rendered ineffective assistance of counsel for failing to advise, consult or make a reasonable effort to discuss with [him] his right to appeal." PCRA Petition, 12/18/17, at 3. The PCRA court appointed counsel. Monaghan was reparaoled in May 2018.³

On August 19, 2019, PCRA counsel filed a motion for an evidentiary hearing.⁴ On October 11, 2019, the PCRA court held an evidentiary hearing

³ See N.T., 10/11/19, at 12 (Monaghan testifies he served eighteen months before being reparaoled).

⁴ Although it appears that PCRA counsel successfully sought an order from the court requiring revocation counsel to return Monaghan's file, there is no other explanation for the almost two-year delay between Monaghan's filing of his pro se PCRA petition, and PCRA counsel's request for an evidentiary hearing. Our Supreme Court has made clear that "[t]he PCRA court [has] the ability and responsibility to manage its docket and caseload and thus has an essential

at which both Monaghan and revocation counsel testified. By order entered January 8, 2020, the PCRA court denied Monaghan's PCRA petition. This timely appeal followed. Both Monaghan and the PCRA court have complied with Pa.R.A.P. 1925.

Monaghan now raises the following issue:

1. Did the [PCRA] court err in denying [Monaghan's] PCRA petition when the court failed to find that [revocation counsel] was ineffective for failing to consult with [him] in a meaningful way subsequent to [the] imposition of [the] revocation sentence . . . as to the advantages and disadvantages of taking a direct appeal[?]

Monaghan's Brief at 4.

Under the applicable standard of review, we determine whether the ruling of the PCRA court is supported by the record and is free of legal error. The PCRA court's factual findings will not be disturbed unless there is no support for the findings in the certified record. *Commonwealth v. Barndt*, 74 A.3d 185, 191-92 (Pa. Super. 2013) (citations omitted). We apply a de novo standard of review to the PCRA court's legal conclusions. *Commonwealth v. Blakeney*, 108 A.3d 739, 749 (Pa. 2014).

Our scope and standard of review is well settled:

In PCRA appeals, our scope of review is limited to the findings of the PCRA court and the evidence on the record of the PCRA court's hearing, viewed in the light most favorable to the prevailing party. Because most PCRA

role in ensuring the timely resolution of PCRA matters." *Commonwealth v. Renschenski*, 52 A.3d 251, 260 (Pa. 2012) (citation omitted).

appeals involve questions of fact and law, we employ a mixed standard of review. We defer to the PCRA court's factual findings and credibility determinations supported by the record. In contrast, we review the PCRA court's legal conclusions de novo.

Commonwealth v. Reyes-Rodriguez, 111 A.3d 775, 779 (Pa. Super. 2015) (citations omitted).

Monaghan's claim alleges the ineffective assistance of revocation counsel. To obtain relief under the PCRA premised on a claim that counsel was ineffective, a petitioner must establish by a preponderance of the evidence that counsel's ineffectiveness so undermined the truth determining process that no reliable adjudication of guilt or innocence could have taken place. *Commonwealth v. Johnson*, 966 A.2d 523, 532 (Pa. 2009). "Generally, counsel's performance is presumed to be constitutionally adequate, and counsel will only be deemed ineffective upon a sufficient showing by the petitioner." *Id.* This requires the petitioner to demonstrate that: (1) the underlying claim is of arguable merit; (2) counsel had no reasonable strategic basis for his or her action or inaction; and (3) petitioner was prejudiced by counsel's act or omission. *Id.* at 533. A finding of "prejudice" requires the petitioner to show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* A failure to satisfy any prong of the test for ineffectiveness will require rejection of the claim. *Commonwealth v. Martin*, 5 A.3d 177, 183 (Pa. 2010).

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