

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
ANGELO MALDONADO	:	
	:	
Appellant	:	No. 977 EDA 2021

Appeal from the PCRA Order Entered May 11, 2021
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0009674-2015

BEFORE: KUNSELMAN, J., McLAUGHLIN, J., and KING, J.

MEMORANDUM BY McLAUGHLIN, J.:

FILED JUNE 29, 2022

Angelo Maldonado appeals from the denial of his first Post-Conviction Relief Act ("PCRA") petition. 42 Pa.C.S.A. §§ 9541-9546. He maintains that the PCRA court erred in denying his ineffective assistance of counsel claims. We affirm.

A jury convicted Maldonado of first-degree murder and possession of an instrument of crime.¹ A panel of this Court previously summarized the facts as follows:

On August 8, 2015, John Kyser and a group of friends were playing darts and shooting pool at Owen's Bar, located at Cottman Avenue and Roosevelt Boulevard, Philadelphia. Kyser had never seen [Maldonado] prior to that night, but [Maldonado] joined in the group's pool game and [Maldonado] and Thomas Ewing, Jr. (Decedent) were on the

¹ 18 Pa.C.S.A. §§ 2502(a) and 907, respectively.

same pool team. [Maldonado] and Decedent did not appear to have any conflict between them during the pool game.

At approximately 3:00 a.m., Decedent and two of his companions stole several bottles of liquor and fled through the rear entrance of the bar. [Maldonado] gave chase in his pickup truck. [Maldonado] found Decedent in a nearby alley, exited his truck, and stabbed Decedent a dozen times, one of which hit Decedent's heart. Kyser observed [Maldonado] "swinging on [Decedent]." N.T. Trial Vol. 1, 4/5/17, at 18. Nicholas Lawrence was with Kyser and also saw [Maldonado] on top of Decedent. A separate group of people, including Logan Welch and Brendan Sharp, observed [Maldonado] swinging at Decedent and heard somebody yell that there was a knife or "he is stabbing me." **Id.** at 146.

[Maldonado's] neighbor, Christopher Hinkle, observed [Maldonado] in his driveway at approximately 3:30 a.m. on the night of the murder. Hinkle testified that [Maldonado] had a gash in his leg and was "pretty intoxicated." N.T. Trial Vol. 1, 4/6/17, at 31. [Maldonado] admitted to being in a scuffle on the ground with another man and continuously repeated, "I really messed up this time." **Id.**

Commonwealth v. Maldonado, 2018 WL 1280844 (Pa.Super. filed March 13, 2018) (unpublished memorandum). The trial court sentenced him to a term of mandatory life imprisonment. We affirmed the judgment of sentence and our Supreme Court denied allowance of appeal. **See id., Commonwealth v. Maldonado**, 193 A.3d 348 (Table) (Pa. filed September 5, 2018).

Maldonado filed the instant PCRA petition on January 29, 2019, and the court appointed counsel who filed an amended petition. In the amended petition counsel alleged ineffective assistance of trial counsel. Maldonado argued that counsel was ineffective for failing to seek a diminished capacity charge. He also argued that trial counsel erroneously advised him of the

admissibility of his prior federal drug conviction for possession with intent to distribute if he testified. He claimed that the advice of counsel “was the basis for his ultimate decision not to testify[.]” Amended Petition for Relief Under the Post-Conviction Relief Act (PCRA), filed 12/16/19, at 5. The court held an evidentiary hearing and heard testimony from Maldonado, trial counsel, and Nicole Riehl, a bartender who was present the night of the crime.²

Trial counsel testified that he did not seek a diminished capacity charge because he “didn’t want to present the jury with an alternate theory that they might jump on[,]” specifically third-degree murder. **See** N.T., PCRA Hearing, 4/9/21, at 30. He testified that he and Maldonado agreed on the trial strategy of pursuing voluntary manslaughter. **Id.** Counsel explained that Maldonado wanted to argue self-defense and had rejected the Commonwealth’s offer to plead guilty to third-degree murder. **Id.** at 39-40, 50. He also testified that he did not believe that there was enough evidence legally to satisfy the diminished capacity charge. **Id.** He testified that there would need to be evidence that Maldonado was intoxicated to the point of not being able to form the specific intent to kill. In counsel’s view, there was insufficient evidence to raise such a claim. **Id.** at 29.

Regarding Maldonado’s second claim, counsel testified that he did not tell Maldonado that if he testified, his prior drug conviction could be admitted

² Riehl’s testimony was presented on a claim that counsel was ineffective for failing to call her as a witness. We do not address this testimony, as Maldonado has not raised the claim before this Court.

at trial as a *crimen falsi* crime. **Id.** at 34-35. He also clarified that the conviction was not a *crimen falsi* crime. **Id.** at 34. He testified that Maldonado wished to present character witnesses and that counsel informed him that their testimony would have to be limited because his prior conviction negated any testimony that he was a law-abiding citizen. **Id.** Counsel explained that he did advise Maldonado not to testify because Maldonado believed he was justified in killing the decedent. **Id.** at 35.

[Counsel]: ...My advice to him in terms of not testifying, the problem was [Maldonado] sort of thought he was justified in doing this. Every time we had this discussion – how I sort of prep someone to see if he should testify or not is I go back to my old ADA days and sort of cross-examine them, ask the tough questions that I think they will get and every time we would go through that with him, it would come back around that he thought he was protecting the bar and, therefore, this was okay and I kept telling him you say that in front of a jury, you are going to be sunk because you can't kill someone over a couple of bottles of liquor and we went through it a bunch of times. Each time that is where it ended up and I just advised him I said, look, I don't think you should get up on the stand.

Id.

Maldonado testified that he may have been “confused” when trial counsel explained how character evidence could open the door to his prior drug conviction. **Id.** at 49. He believed that if he testified there was a chance that the conviction could be admitted into evidence. **Id.** at 50. He also testified that counsel had gotten “into my head” and told him that he should not testify. **Id.** at 54. Maldonado claimed that counsel did not explain “specific charges

regarding voluntary intoxication negating the intent from first degree down to third degree[.]” ***Id.***

The PCRA court concluded that trial counsel was not ineffective. It concluded that the evidence presented at trial would not have met the elements of a diminished capacity charge and therefore counsel did not err by not pursuing the defense. ***Id.*** at 78. It also credited counsel’s testimony that he informed Maldonado of the circumstances in which his prior conviction could be admitted at trial. ***Id.*** at 81. It also noted that it did not believe Maldonado’s testimony on the issue. ***Id.*** The PCRA court denied the petition and this timely appeal followed.

Maldonado raises the following issue: “Did the trial court err in denying post-conviction relief after an evidentiary [hearing] when trial counsel was ineffective for: (A) failing to request a diminished capacity charge; and (B) not properly explaining to [Maldonado] that his prior conviction was not admissible if he testified as it was not a *crimen falsi* offense?” Maldonado’s Br. at 4.

When reviewing the denial or grant of PCRA relief, we determine whether the PCRA court’s findings are supported by the record and if its legal conclusions are free of error. ***See Commonwealth v. Paddy***, 15 A.3d 431, 442 (Pa. 2011). When supported by the record, we are bound by the court’s credibility determinations. ***See Commonwealth v. Medina***, 92 A.3d 1210, 1214-15 (Pa.Super. 2014).

Ineffective assistance of counsel is an eligible claim for relief under the PCRA. **See** 42 Pa.C.S.A. § 9543(a)(2)(ii). Such a claim requires that the petitioner overcome the presumption that counsel is effective. **Commonwealth v. Pierce**, 527 A.2d 973, 975 (Pa. 1987). To do so, the petitioner must plead and prove: (1) the underlying legal claim has arguable merit; (2) counsel had no reasonable basis for his or her action or inaction; and (3) the petitioner suffered prejudice because of counsel's ineffectiveness. **Commonwealth v. Dennis**, 950 A.2d 945, 954 (Pa. 2008). We reject an ineffectiveness claim that does not satisfy each of the referenced prongs. **Commonwealth v. Treiber**, 121 A.3d 435, 451 (Pa. 2015) (citation omitted).

Maldonado claims that counsel was ineffective for failing to pursue the defense of diminished capacity. The defense of diminished capacity is limited “to those defendants who admit criminal liability but contest the degree of culpability based upon an inability to formulate the specific intent to kill.” **Commonwealth v. Hutchinson**, 25 A.3d 277, 312 (Pa. 2011). “The mere fact of intoxication does not give rise to a diminished capacity defense.” **Id.** Rather, “a defendant must prove that his cognitive abilities of deliberation and premeditation were so compromised, by mental defect or voluntary intoxication, that he was unable to formulate the specific intent to kill.” **Id.** Where the defense is successful, the impact will be a mitigation of first-degree murder to third-degree murder. **Id.**

The PCRA court rejected Maldonado's claim. It opined that "the evidence that came out during the trial was insufficient to warrant a diminished capacity jury instruction[.]" PCRA Ct. Op., filed 7/14/21, at 8. The court pointed out that Maldonado "had the capacity to form the intent enough to hide the knife in a black bag and place that black bag in a trash can that did not belong to him," and that the day after the murder Maldonado asked the owner of the bar to delete the surveillance footage from the night of the murder. **Id.** It concluded "[t]hese actions demonstrate a presence of mind which wholly contradicts voluntary intoxication to a degree that [Maldonado] was overwhelmed to the point of losing his faculties and sensibilities." **Id.** at 8-9.

The record supports the PCRA court's conclusion. The evidence did not rise to such a level as to support a claim that he was intoxicated to the point of not being able to form the specific intent to kill. Counsel therefore was not ineffective for declining to pursue this defense. The PCRA court did not err in denying this claim as meritless.

Maldonado also alleges that counsel did not properly advise him about the admissibility of his prior drug conviction. Maldonado's Br. at 10. In his PCRA petition, he claimed that because of counsel's advice, he decided not to testify. Since his prior drug conviction was not a *crimen falsi* crime, he maintains that counsel's advice was erroneous.

A defendant's decision to testify is to be made by the defendant following consultation with counsel. **See Commonwealth v. Nieves**, 746 A.2d 1102, 1104 (Pa. 2000). To sustain a claim that counsel did not properly

advise a defendant of the right to testify, a petitioner must show “either that counsel interfered with his right to testify, or that counsel gave specific advice so unreasonable as to vitiate a knowing and intelligent decision to testify on his own behalf.” **Id.**

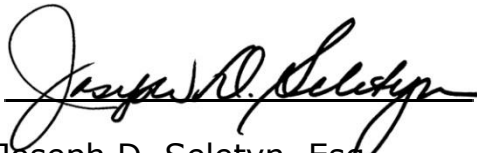
In general, only convictions for *crimen falsi* – crimes involving dishonesty or false statements – are admissible to attack the credibility of a witness. **See** Pa.R.E. 609(a). However, non-*crimen falsi* convictions may be admissible if the defendant “raises the issue of his good character.” **Commonwealth v. Murphy**, 182 A.3d 1002, 1008 (Pa.Super. 2018) (citations omitted). A drug conviction is not a *crimen falsi* crime. **See Commonwealth v. Coleman**, 207, 664 A.2d 1381, 1384 (Pa.Super. 1995) (concluding conviction for possession with intent to deliver controlled substance could not be considered *crimen falsi* crime).

Herein, the PCRA court credited counsel’s testimony that he did not advise Maldonado that his conviction could be admitted if he testified. Furthermore, counsel testified that Maldonado wished to present character witnesses. In this context, counsel explained to Maldonado that the testimony of these witnesses needed to be limited because of his prior drug conviction. He advised him that the conviction would prevent them from testifying that he had a character trait for being a law-abiding citizen. Though Maldonado stated that he might have been “confused” about counsel’s explanation, the court did not find Maldonado’s testimony credible.

The PCRA court's credibility determinations are supported by the record, and we find no error in its conclusion that this claim of ineffectiveness is meritless. **See Medina**, 92 A.3d at 1214-1215. Counsel did not advise Maldonado that his prior conviction prevented him from testifying. Furthermore, counsel correctly advised Maldonado that if he decided to present character witnesses their testimony would need to be limited due to his prior conviction. **See Murphy**, 182 A.3d at 1008. The PCRA court did not err in denying this claim of ineffectiveness. We affirm the order of the court denying Maldonado's PCRA petition.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn". The signature is written in a cursive style and is positioned above a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/29/2022