

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
JAVOUGHN SMITH	:	
	:	
Appellant	:	No. 2505 EDA 2025

Appeal from the PCRA Order Entered September 22, 2025
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0001358-2022

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

MEMORANDUM BY KING, J.:

FILED SEPTEMBER 28, 2026

Appellant, Javoughn Smith, appeals from the order entered in the Philadelphia County Court of Common Pleas, which denied his petition filed pursuant to the Post Conviction Relief Act ("PCRA").¹ We affirm.

The relevant facts and procedural history of this appeal are as follows. On May 31, 2022, Appellant entered an open guilty plea to persons not to possess firearms. The charges arose from an incident when the police, during execution of an arrest warrant for Appellant, discovered a loaded semi-automatic handgun on his person. Appellant was ineligible to possess a firearm due to a prior conviction for third-degree murder. Appellant executed a written guilty plea colloquy, and the court conducted an oral plea colloquy to confirm Appellant's plea was knowing, intelligent and voluntary. On August

¹ 42 Pa.C.S.A. §§ 9541-9546.

15, 2022, the court sentenced Appellant to 9 to 18 years' imprisonment, which was a mitigated range sentence based on Appellant's prior record score and the offense gravity score. This Court affirmed Appellant's judgment of sentence on December 11, 2023. ***See Commonwealth v. Smith***, 311 A.3d 574 (Pa.Super. 2023) (unpublished memorandum). Appellant did not seek allowance of appeal with our Supreme Court.

The PCRA court explained the subsequent procedural history of the case as follows:

[Appellant] timely filed a first PCRA petition *pro se* on July 18, 2024. PCRA counsel was subsequently appointed and a counseled amended PCRA petition was filed on November 15, 2024. The amended petition raised an ineffective assistance of counsel claim, arguing that [Appellant] "was denied his constitutionally guaranteed right to effective representation when trial counsel failed to effectively communicate the consequences of his plea deal." Amended Petition for Post Conviction Relief Pursuant to the Post-Conviction Relief Act, November 15, 2024, at 2. An evidentiary hearing was held on this issue on September 22, 2025. At the conclusion of the hearing, the [c]ourt denied the amended PCRA petition and provided [Appellant] with notice of his appellate rights.

[Appellant] filed a timely notice of appeal on September 24, 2025. The [c]ourt issued an order for [Appellant] to file a statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b) on September 26, 2025. [Appellant] timely filed his 1925(b) statement of errors on October 14, 2025.

(PCRA Court Opinion, filed 11/24/25, at 1) (some internal citations omitted).

Appellant raises the following issues for our review:

The PCRA court erred when it denied [Appellant's] claim after an evidentiary hearing that trial counsel was ineffective

for not communicating that [Appellant's] sentence would be subject to the repeat violent offender guidelines, thus rendering his plea unknowing, involuntary and unintelligent.

The PCRA court erred when it denied [Appellant's] claim after an evidentiary hearing that trial counsel was ineffective for communicating to [Appellant] that he would be sentenced to six to twelve years, thus rendering his plea unknowing, involuntary and unintelligent.

(Appellant's Brief at 5).

"Our standard of review of [an] order granting or denying relief under the PCRA calls upon us to determine whether the determination of the PCRA court is supported by the evidence of record and is free of legal error." **Commonwealth v. Parker**, 249 A.3d 590, 594 (Pa.Super. 2021) (quoting **Commonwealth v. Barndt**, 74 A.3d 185, 191-92 (Pa.Super. 2013)). "The PCRA court's factual findings are binding if the record supports them, and we review the court's legal conclusions *de novo*." **Commonwealth v. Prater**, 256 A.3d 1274, 1282 (Pa.Super. 2021), *appeal denied*, 672 Pa. 30, 268 A.3d 386 (2021). If the record supports a post-conviction court's credibility determination, it is binding on the appellate court. **Commonwealth v. Dennis**, 609 Pa. 442, 17 A.3d 297 (2011).

In his issues combined, Appellant argues that plea counsel advised him that he would receive a sentence of 6-12 years' imprisonment if he pled guilty. Appellant maintains that he would not have pled guilty if he had known the sentence was not guaranteed and that the judge had sole discretion over sentencing. Appellant contends that plea counsel believed Appellant would be

sentenced based on his classification as a Repeat Felony Offender ("RFEL"). Significantly, however, Appellant maintains that he was classified as a Repeat Violent Offender ("REVOC"), which resulted in a higher prior record score and sentencing range. Appellant complains that plea counsel failed to inform Appellant that he could be sentenced as a REVOC. Appellant submits that plea counsel was required to convey the correct sentencing ranges to Appellant prior to Appellant deciding to plead guilty.

Appellant asserts that had he proceeded to trial he could have faced a sentence of 10-20 years' imprisonment if convicted. Appellant maintains that he only pled guilty because he thought he would receive a sentence of 6-12 years' imprisonment and if he knew he was going to receive a sentence of 9-18 years' imprisonment, he would have risked going to trial. Appellant avers that there was no reasonable basis for counsel's failure to inform Appellant of the appropriate sentencing range. Appellant acknowledges that his written guilty plea states there was no negotiated sentence in place, but he contends that he did not read the document in detail and relied instead on plea counsel's assurances. Appellant concludes that plea counsel was ineffective by inducing Appellant to enter an unknowing, unintelligent and involuntary plea, and this Court must grant relief. We disagree.

"Counsel is presumed to have rendered effective assistance."
Commonwealth v. Hopkins, 231 A.3d 855, 871 (Pa.Super. 2020), *appeal denied*, 663 Pa. 418, 242 A.3d 908 (2020).

[T]o establish a claim of ineffective assistance of counsel, a defendant must show, by a preponderance of the evidence, ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place. The burden is on the defendant to prove all three of the following prongs: (1) the underlying claim is of arguable merit; (2) that counsel had no reasonable strategic basis for his or her action or inaction; and (3) but for the errors and omissions of counsel, there is a reasonable probability that the outcome of the proceedings would have been different.

Commonwealth v. Sandusky, 203 A.3d 1033, 1043 (Pa.Super. 2019), *appeal denied*, 654 Pa. 568, 216 A.3d 1029 (2019) (internal citations and quotation marks omitted). The failure to satisfy any prong of the test for ineffectiveness will cause the claim to fail. ***Commonwealth v. Chmiel***, 612 Pa. 333, 30 A.3d 1111 (2011).

This Court has explained:

In the context of a plea, a claim of ineffectiveness may provide relief only if the alleged ineffectiveness caused an involuntary or unknowing plea. A defendant is bound by the statements which he makes during his plea colloquy. As such, a defendant may not assert grounds for withdrawing the plea that contradict statements made when he entered the plea.

Commonwealth v. Orlando, 156 A.3d 1274, 1281 (Pa.Super. 2017) (internal citations and quotation marks omitted). Further, in determining “a defendant’s actual knowledge of the implications and rights associated with a ... plea, a court is free to consider the totality of the circumstances surrounding the plea.” ***Commonwealth v. Allen***, 557 Pa. 135, 146, 732 A.2d 582, 588-89 (1999).

Our Rules of Criminal Procedure mandate that pleas are taken in open court and the court must conduct an on-the-record colloquy to ascertain whether a defendant is aware of his rights and the consequences of his plea. ***Commonwealth v. Hodges***, 789 A.2d 764 (Pa.Super. 2002). Specifically, the court must affirmatively demonstrate a defendant understands: (1) the nature of the charges to which he is pleading guilty; (2) the factual basis for the plea; (3) his right to trial by jury; (4) the presumption of innocence; (5) the permissible ranges of sentences and fines possible; (6) that the judge is not bound by the terms of any plea agreement unless the judge accepts the agreement; and (7) that the Commonwealth has a right to have a jury decide the degree of guilt if the defendant pleads guilty to murder generally. **See** Pa.R.Crim.P. 590, *Comment*.

Additionally, this Court may consider a written guilty plea as a supplement to an oral plea colloquy when evaluating the voluntariness of the plea. **See *Commonwealth v. Bedell***, 954 A.2d 1209 (Pa.Super. 2008), *appeal denied*, 600 Pa. 742, 964 A.2d 893 (2009). A guilty plea will be deemed valid if an examination of the totality of the circumstances surrounding the plea shows that the defendant had a full understanding of the nature and consequences of his plea such that he knowingly and intelligently entered the plea of his own accord. ***Commonwealth v. Rush***, 909 A.2d 805 (Pa.Super. 2006).

Instantly, the court announced its decision denying PCRA relief at the

conclusion of the PCRA hearing. The court stated:

So, I think that [Appellant] did testify credibly with regard to what his impressions were, but I don't think that he's accurate in his recollections of what his attorney said to him. I find that [plea counsel]...testified credibly about the process, and also, as the Commonwealth has pointed out, the colloquy in the courtroom, it was clearly told to him, "There are no negotiations between your attorney and the attorney from the Commonwealth as to what sentence to recommend to me. This means the sentencing will be left to my sole discretion." That's Judge Roberts Perez. "Do you understand that?" [Appellant's] response, "Yes." And then in addition, the written colloquy, the longer form version, on Page 3 of 7, specifically says, "No plea bargain or agreement."

So, I think that for all of these reasons, it's not appropriate—there's no evidence of ineffectiveness of counsel, and even if he had been advised of something different, it would not have changed the prejudice issues because he was properly advised by the [c]ourt in the colloquy process.

Insofar as he was thinking in his mind 6 to 12, I suspect it was probably because of the guidelines. Because his attorney was talking with him about REVOC versus RFEL and, if you look at the guidelines, if he had been RFEL instead of REVOC, it would have been a guideline sentence of...84 to 102, plus or minus 12, and if you do the full mitigation, minus 12, that's 72 months, that's 6 years, which you then double, 6 to 12.

So, I suspect what was happening is that, in the course of the conversation with his attorney, he heard the 6 to 12 as an option that his attorney would be aiming for, and I think that may have been also why the Commonwealth was thinking the way that it did in its recommendation, because that was the same recommendation the Commonwealth made at the sentencing.

And I think that ... was why that number was knocking around in people's recollections, but I don't think that his lawyer promised him 6 to 12. I think that was probably her professional advice about what she felt was likely, given—

you know, because it seems that Judge Roberts Perez gave the benefit of mitigation, and if it had been RFEL instead of REVOC, that would have landed at the 6 to 12.

And the attorney did do an effective job of litigating and relitigating that question of RFEL versus REVOC. That was done both at sentencing, and then after sentencing in the motion for reconsideration. So, she did her job, trying to get the [c]ourt to that resolution, and she just wasn't able to get that result for her client.

So, I find no ineffectiveness and, with that, I'm going to give you your notice of appellate rights. ...

(**See** N.T. PCRA Hearing, 9/22/25, at 65-67).

Further, in its Rule 1925(a) opinion, the PCRA court explained:

[T]he [c]ourt found that the defense attorney did not tell [Appellant] that he had a negotiated recommended sentence. The [c]ourt also found that the court's colloquy at the plea demonstrated [Appellant's] understanding of the open nature of the plea[.] ...

Any of [Appellant's] testimony to the contrary during the PCRA evidentiary hearing was based on his faulty recollection. ...

(PCRA Court Opinion at 2) (internal citations omitted).

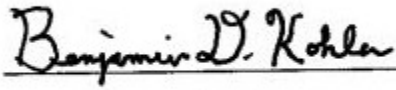
The record supports the court's analysis. Our review of the record demonstrates that although Appellant and plea counsel hoped for a sentence of 6 to 12 years' imprisonment, neither the Commonwealth nor plea counsel had promised Appellant that sentence in exchange for his plea. Appellant is bound by the statements he made in both his oral and written plea colloquies confirming his understanding of the nature of the plea, that he faced a maximum sentence of 20 years' imprisonment, and that there was no

agreement as to sentencing, which would be left to the sole discretion of the trial judge. **See Orlando, supra; Bedell, supra; Rush, supra. See also Commonwealth v. Fowler**, 893 A.2d 758 (Pa.Super. 2006) (holding that counsel's statements to appellant about what she believed his likely sentence might be did not induce appellant's guilty plea because any misconceptions appellant had about his possible sentence were dispelled by written and oral plea colloquies; although plea counsel testified that she believed sentence would be in certain range, counsel did not guarantee appellant any specific result; in addition, plea court told appellant maximum sentence he could face and that there was no agreement as to sentencing; moreover, there is no legal requirement that defendant be aware of guideline range to enter valid guilty plea; rather, defendant must be informed of statutory maximum, and appellant was given that information).

We also note that the Commonwealth had withdrawn two additional firearms charges in exchange for Appellant's plea. Further, the record supports the court's credibility determination that plea counsel did not promise Appellant a sentence of 6 to 12 years' imprisonment, and we are bound by that determination. **See Dennis, supra**. On this record, we agree with the PCRA court that plea counsel was not ineffective, and the PCRA court properly denied relief. **See Parker, supra; Sandusky, supra**. Accordingly, we affirm.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 9/28/2026