

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
STEVEN ALEXANDER FULMER	:	
	:	
Appellant	:	No. 372 WDA 2026

Appeal from the PCRA Order Entered February 20, 2026
In the Court of Common Pleas of Butler County Criminal Division at
No(s): CP-10-CR-0001496-2022

BEFORE: KING, J., NEUMAN, J., and BENDER, P.J.E.

MEMORANDUM BY KING, J.:

FILED: October 23, 2026

Appellant, Steven Alexander Fulmer, appeals from the order entered in the Butler County Court of Common Pleas, which denied his timely first petition filed under the Post Conviction Relief Act ("PCRA").¹ We affirm.

The relevant facts and procedural history of this matter are as follows. On October 5, 2022, the Commonwealth filed a criminal complaint against Appellant, alleging that the 16-year-old victim had come forward to report that Appellant forcibly inserted his fingers into her vagina when she was eight years old. Victim could not recall the specific date and time of the assault other than her age, as well as the fact that several months after the incident, she learned that Appellant was incarcerated.

On October 25, 2023, Appellant entered a negotiated guilty plea to one

¹ 42 Pa.C.S.A. §§ 9541-9546.

count of aggravated indecent assault.² The court colloquied Appellant in open court, Appellant completed a written colloquy form, and the court accepted the plea as knowing, intelligent, and voluntary.

On January 30, 2024, the court conducted a sexually violent predator (“SVP”) and sentencing hearing. Brenda Manno, of the Sexual Offender Assessment Board, testified regarding her assessment of Appellant. Ms. Manno stated that at the time of the offense, Victim was between seven and nine years old, and that “[t]he second case with the younger victim [occurred] somewhere between January 1st of 2013 and December 31st of 2014.” (N.T. Sentencing, 1/30/24, at 9). Ms. Manno testified regarding Appellant’s prior offenses, including a 2015 case in which he entered a guilty plea to endangering the welfare of children and recklessly endangering another person. The offense date underlying those convictions was September 26, 2014.

At the conclusion of the hearing, the court found that Appellant was an SVP and sentenced Appellant, in accordance with the negotiated plea agreement, to 36 to 72 months of incarceration.³ Appellant did not file post-sentence motions or a direct appeal.

² At that same hearing, Appellant also entered a plea at docket No. CP-10-CR-0001271-2022, to one count of disseminating explicit sexual material to a minor. The instant PCRA petition does not concern that docket.

³ The negotiated sentence was for both cases to which Appellant had entered guilty pleas.

On January 21, 2025, Appellant timely filed a PCRA petition, averring, *inter alia*, that he was incarcerated at the time he was accused of committing the offense. Specifically, Appellant claimed that he was incarcerated “from the end of 2014 into May 2015” or that he was “incarcerated at the end of 2014, until June 2015.” (**See** PCRA Petition, 1/21/25, at 1-2). Appellant attached a letter from the Butler County Prison Records office, which stated that records reflected that he was incarcerated from October 16, 2014, through May 15, 2015. (**See id.** at Ex. 1).

The court appointed counsel, who filed an amended petition on June 19, 2025, raising claims of ineffective assistance of counsel. Appellant averred that the record did not contain Victim’s birth date nor an approximate time period during which the offense was committed, and that Appellant was incarcerated during the time in which Victim had accused him of assaulting her such that he could not have committed the offense. Appellant claimed that he only entered a guilty plea on the advice of counsel, and that counsel’s ineffectiveness in advising him to plead guilty under these circumstances had caused him to enter a plea that was not knowing, voluntary, or intelligent.

On December 2, 2025, the court convened an evidentiary hearing, at which Appellant and plea counsel, Jennifer Popovich, Esq., testified. Appellant testified that he spoke to Attorney Popovich three times prior to the plea and wrote additional letters to her requesting that she come and speak to him about his case. (**See** N.T. PCRA Hearing, 12/2/25, at 6-7). Appellant claimed that he advised Attorney Popovich that he may have been incarcerated in

2014 when Victim claimed the offense had been committed. (**See id.** at 8-9). According to Appellant, he did not meet Victim until 2015. (**Id.** at 8). Appellant did not believe that Attorney Popovich had conducted any investigation to determine a timeframe during which the crime could have taken place, but Appellant also admitted that he did not speak to her regarding the investigation prior to entering the plea because he “didn’t think about it.” (**Id.** at 10). Nevertheless, Appellant also claimed that he believed Attorney Popovich had conducted an investigation when he entered his plea. (**Id.** at 11).

Attorney Popovich testified that she represented Appellant at both cases for his October 25, 2023 plea hearing. (**See id.** at 18). She testified that in her recollection of the cases, both involved offenses against 8-year-old victims who knew each other. Attorney Popovich stated:

These two cases would have taken part during the same time period, and that’s why he was incarcerated in 2014, which was the case on the first eight-year-old. This one ended up being a delayed report that they filed later.

(**Id.** at 19). When asked how she determined Victim’s age, Attorney Popovich explained:

I watched all related interviews. I believe there was a forensic interview, and we don’t have access to those that we get to keep and share them; we get one shot at watching them, and I did speak to the police in this matter about that.

What’s tricky in these cases is that case law is pretty clear that the Commonwealth doesn’t have to prove when the crime happened. When it’s a child case, they can be as vague as they want to be. They can be off by years, and

it's still acceptable if a jury believes them so establishing a time frame is often difficult in these cases and, unfortunately, the law allows for that.

(***Id.*** at 20). Attorney Popovich explained that she attempted to investigate by having both herself and an investigator speak to Appellant as well as to other witnesses, who ultimately proved unhelpful. (***Id.*** at 20, 33). She spoke to Appellant on her own several times, and with an investigator at least twice. (***Id.*** at 35). Attorney Popovich believed that the negotiated plea was Appellant's best option, especially in light of the potential sentencing exposure. (***Id.*** at 31, 34).

On February 20, 2026, the court denied PCRA relief. On March 12, 2026, Appellant timely filed a notice of appeal. On March 24, 2026, the court ordered Appellant to file a Pa.R.A.P. 1925(b) statement of errors complained of on appeal, which Appellant filed on April 14, 2026.

On appeal, Appellant raises the following issue for our review:

Was Appellant's [plea] counsel ineffective for failing to undertake a sufficient investigation into the timing of the alleged offense and [A]ppellant's claimed alibi, and did the [PCRA] court err in holding otherwise?

(Appellant's Brief at 4).

Appellant argues that plea counsel was ineffective because she did not undertake any efforts to determine the date or time frame of the alleged offense, nor did she challenge the lack of particulars of the alleged offense through pretrial motions. Appellant asserts that counsel failed to provide him with discovery, involve him the process or enable him to participate in his defense, and failed to appropriately investigate the underlying allegations and

alibi information Appellant had provided to counsel. Appellant insists that counsel lacked a reasonable basis for her actions and that he suffered prejudice, because he would have proceeded to trial but for counsel's errors. Appellant concludes that the PCRA court erred in denying relief on these grounds, and this Court must grant relief. We disagree.

"Our standard of review of the denial of a PCRA petition is limited to examining whether the evidence of record supports the court's determination and whether its decision is free of legal error." ***Commonwealth v. Beatty***, 207 A.3d 957, 960-61 (Pa.Super. 2019), *appeal denied*, 655 Pa. 482, 218 A.3d 850 (2019). "[W]e review the court's legal conclusions *de novo*." ***Commonwealth v. Prater***, 256 A.3d 1274, 1282 (Pa.Super. 2021), *appeal denied*, ___ Pa. ___, 268 A.3d 386 (2021). This Court grants great deference to the findings of the PCRA court if the record contains any support for those findings. ***Commonwealth v. Boyd***, 923 A.2d 513 (Pa.Super. 2007), *appeal denied*, 593 Pa. 754, 932 A.2d 74 (2007). 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).

"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 PCRA court explained:

At [Appellant's] PCRA evidentiary hearing, [Appellant's] former counsel credibly explained, in detail, the investigation that she performed, communications she had with [Appellant] and the factors she considered, including

the requirements of Pa.R.Crim[P.] 504⁴ and the inability to plausibly formulate a viable alibi defense given the permissible timeframe for child reports, prior to recommending to [Appellant] that he accept the Commonwealth's proposed offer. Attorney Popovich also testified to her efforts to establish a timeframe based on a related case, evidence and potential witnesses supplied to her by [Appellant], and information gathered from a private investigator. Attorney Popovich also spoke to her efforts, and those of the private investigator, to speak to witnesses, but that they were either uncooperative or were not helpful to [Appellant's] case.

Furthermore, Attorney Popovich discussed the likelihood of success in asserting an alibi defense at trial, the risks associated with [Appellant's] prior conviction for a crime of a similar nature, and that [Appellant] would be more successful entering into a mitigated plea agreement because he would receive a significantly shorter sentence of incarceration than he was facing if he proceeded to and was convicted at trial and avoid a mandatory twenty (20) year registration period and mandatory probation under the SORNA statute. Attorney Popovich also testified that [Appellant] understood the likelihood of success at trial, that investigation would continue if he proceeded to trial, and that if he accepted the plea offer, further investigation would cease. She also testified that [Appellant] did not want to reject the tendered plea offer to conduct further investigation and gave no indication he wanted to pursue further investigation at the time of the plea.

Here, Attorney Popovich undertook reasonable investigations into possible defenses, establishment of a specific timeline, and potential witnesses and mitigating evidence. After reviewing the law, facts, and information discovered from her investigation with [Appellant] and discussing his likelihood of success at trial, counsel pursued

⁴ Rule 504(4)(a) states that every complaint shall contain the date when the offense is alleged to have been committed; provided, however, that if the specific date is unknown, or if the offense is a continuing one, it shall be sufficient to state that it was committed on or about any date within the period of limitations. **See** Pa.R.Crim.P. 504(4)(a).

a reasonable and strategic course of action to advise her client to accept a mitigated plea offer that ultimately rendered further investigation unnecessary. [Appellant] has therefore failed to establish that plea counsel was ineffective for failing to investigate the law and facts, develop a defense strategy, and present any mitigating evidence. Accordingly, this [c]ourt finds that counsel's actions and decisions made on [Appellant's] behalf were competently and adequately rendered and grounded in a reasonable basis designed to effectuate [Appellant's] interests.

(PCRA Court Opinion, 2/20/26, at 4-6) (citations omitted).

The record supports the PCRA court's determination to deny relief. Here, Appellant testified that counsel did not adequately communicate with him and did not investigate his claims that he was incarcerated when the offense occurred. On the other hand, Attorney Popovich testified that she **had** conducted an investigation, spoken to Appellant numerous times, and discussed with him the difficulty of proving an alibi defense for a time period that consisted of approximately one year. She explained the maximum exposure that Appellant faced, as well as the risks of proceeding to trial. The PCRA court made an explicit credibility determination in Attorney Popovich's favor, and we are bound by that determination as it is supported by the record. ***See Dennis, supra. See also Commonwealth v. Rizer***, ___ Pa. ___, 304 A.3d 1034 (2023) (explaining that PCRA court's credibility determinations are to be provided great deference—indeed, they are one of primary reasons PCRA hearings are held in first place; given that PCRA court, as fact-finder, has opportunity to listen to witnesses, to observe their demeanor and attitude, there is no justification for appellate court, relying solely upon cold record, to

review fact-finder's first-hand credibility determinations).

In evaluating the reasonableness of counsel's advice, we note that during the pendency of this appeal, this Court decided ***Commonwealth v. Mancuso***, 357 A.3d 957 (Pa.Super. 2026). In ***Mancuso***, this Court held that the Commonwealth failed in its burden of proving the date for which the defendant had committed offenses to a reasonable certainty, in violation of the defendant's due process rights and of Pa.R.Crim.P. 560(B)(3) (providing that criminal information shall provide date when offense is alleged to have been committed if precise date is known, ... provided that if precise date is not known or if offense is continuing one, allegation that it was committed on or about any date within period fixed by statute of limitations shall be sufficient).

Specifically, the ***Mancuso*** Court held that the Commonwealth failed "to specify, on or about any date, when [the defendant] committed the alleged assault within the one-year period alleged in the second and third amended informations." ***Mancuso, supra*** at 978. Notably, the defendant had raised a due process challenge throughout pre-trial proceedings and, despite the defendant's objections, "the Commonwealth either failed or was unable to file further amendments that narrowed the time of the alleged assault." ***Id.*** "Even more problematic was the Commonwealth's failure during trial to narrow the time of the alleged assault in a manner that enabled [the defendant] to present his defense. [The victim] gave no testimony that narrowed the timeframe to less than one year. Since she was age sixteen at the time of the alleged assault, long past childhood, she should have been

able to identify some event—*e.g.*, the season, the weather, whether school was in session, her birthday—that narrowed the time span to less than one year.” ***Id.*** (internal citation omitted). Thus, in ***Mancuso***, “the one-year timeframe in the informations, in conjunction with [the victim’s] failure to narrow the timeframe during her testimony, made it impossible for [the defendant] to offer an alibi defense.” ***Id.*** at 979.

Further, this Court noted that other testimony from Commonwealth witnesses that “might have compressed the timeframe to approximately half a year at best...still spanned too many months to establish the date of the offense with sufficient particularity.” ***Id.*** The Court noted that the victim was not a young child when the alleged assault occurred, so she should have been able to describe when the offense occurred within the one-year timeframe; she failed to do so, and the Commonwealth did not remedy that omission with evidence from an alternative source. ***Id.*** at 981. Therefore, this Court reversed the defendant’s judgment of sentence because it ran afoul of due process principles. ***See id.***

Although this Court decided ***Mancuso*** before the filing of Appellant’s brief in this case, he did not rely on ***Mancuso*** in support of his claims on appeal. In any event, ***Mancuso*** is distinguishable from the facts of this case in several ways. First, from a procedural standpoint, ***Mancuso*** was an appeal from a judgment of sentence following a jury trial, in which the defendant had asserted the alleged due process violations throughout pre-trial proceedings and on appeal. In the case at bar, Appellant raises his claim in PCRA

proceedings, in the context of a claim of ineffective assistance of counsel in which Appellant bears the burden of proving all three prongs of the ineffectiveness test. Moreover, Appellant entered a guilty plea to the offenses and did not proceed to trial. Here, the criminal information specified that Victim recalled that several months after the assault, she learned that Appellant was in jail. The record indicates that Appellant was incarcerated as of October 2014; thus, the criminal information narrows the date of the offense to a period of several months prior to that date. Further, unlike the victim in **Mancuso** who was 16 years old at the time of the offense, the victim in this case was only eight years old at the time of the offense. Because Appellant pled guilty, it is unclear whether further investigation by counsel would have yielded additional evidence to narrow the timeframe of the assault. As the PCRA court recognized: "Attorney Popovich also testified that [Appellant] understood the likelihood of success at trial, that investigation would continue if he proceeded to trial, and that if he accepted the plea offer, further investigation would cease. She also testified that [Appellant] did not want to reject the tendered plea offer to conduct further investigation and gave no indication he wanted to pursue further investigation at the time of the plea." (PCRA Court Opinion at 5).

Therefore, to the extent Attorney Popovich's advice to Appellant was faulty, with respect to her statements that the Commonwealth was permitted

to have a one-year timeframe in which to allege when the assault occurred,⁵ we cannot say that Appellant suffered prejudice based on such advice. **See Commonwealth v. Barndt**, 74 A.3d 185 (Pa.Super. 2013) (stating that in context of ineffectiveness claim concerning entry of guilty plea, to establish prejudice, petitioner must show there is reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial). Notably, Appellant does not even attempt to prove the prejudice prong of the analysis on appeal. (**See** Appellant's Brief at 21-24) (stating that regarding remaining prongs of ineffectiveness test, it is incredibly difficult to determine whether any merit exists to appellant's alibi-related claim, as there was no determination by counsel as to applicable timeframe of alleged crime; without knowing whether it was even possible for appellant to have committed alleged offense, there is no way to know whether plea would be prudent or reasonable).⁶

⁵ We note that in other portions of her testimony, Attorney Popovich spoke of a more limited time frame the Commonwealth would have to establish for the date of the offense. (**See** N.T. PCRA Hearing, 9/25/23, at 24) (counsel stated: "I'm referencing the case law that says that in child sex abuse cases that they don't have to prove an exact date or time; just saying in the summertime, around the time that I was four, things like that is sufficient, and I just had an appeal at the Superior Court level on that issue"). This portion of Attorney Popovich's testimony is wholly consistent with **Mancuso**. **See Mancuso, supra**.

⁶ Appellant relies heavily on the notion that he may have been incarcerated at the time of the offense, which would have served as an alibi defense. Nevertheless, Appellant seems to ignore that the criminal complaint stated that **after** the offense occurred, Victim learned that Appellant was
(Footnote Continued Next Page)

Here, an examination of the record reveals that Appellant was thoroughly colloquied regarding his decision to enter a negotiated guilty plea. (**See** N.T. Plea Hearing at 4-11; Plea Agreement and Colloquy, 9/25/23). As previously stated, the PCRA credited Attorney Popovich's testimony regarding her investigation of the case and reasons why she believed Appellant should enter a negotiated guilty plea with a mitigated sentence, including but not limited to, the potential sentencing exposure had Appellant proceeded to trial and was convicted, particularly in light of Appellant's prior record. While Appellant might not be pleased with the outcome of his decision to plead guilty, the law requires only that he made a knowing, voluntary, and intelligent decision to plead guilty. **See Orlando, supra**. Appellant is bound by the statements made in the oral and written colloquies. **See id.** Under the totality

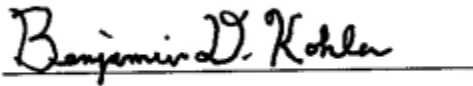
incarcerated. In other words, the complaint stated the offense at issue, which took place around when Victim was eight years old, pre-dated Appellant's incarceration.

Further, to the extent Appellant suggests that prejudice would be presumed in this case, we reject that assertion. In **Commonwealth v. Cronic**, 466 U.S. 658, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984), the United States Supreme Court held that where there has been a complete denial of counsel or where circumstances are such that any competent attorney would be unable to provide effective assistance, a defendant need not demonstrate that he was prejudiced by counsel's actions. **See also Commonwealth v. Kohli**, 359 A.3d 1213 (Pa.Super. 2026) (unpublished memorandum) (explaining that in narrow category of circumstances, where there is actual or constructive denial of assistance of counsel, prejudice is legally presumed; prejudice may be presumed in cases where counsel's deficiencies amount to complete denial of counsel); Pa.R.A.P. 126(b) (stating we may rely on unpublished decisions of this Court filed after May 1, 2019 for their persuasive value). Here, the record does not support a claim that Attorney Popovich's representation fell within the narrow category of circumstances in which prejudice would be presumed.

of these circumstances, the record supports the PCRA court's conclusion that Appellant is not entitled to relief. ***See Allen, supra. See also Beatty, 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: 10/23/2026