NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
JOSE AMBIORIX ABREU	:	
Appellant	:	No. 926 EDA 2023

Appeal from the PCRA Order Entered March 17, 2023
In the Court of Common Pleas of Monroe County Criminal Division at No(s): CP-45-CR-0000613-2018

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
JOSE AMBIORIX ABREU	:	
Appellant	:	No. 927 EDA 2023

Appeal from the PCRA Order Entered March 17, 2023
In the Court of Common Pleas of Monroe County Criminal Division at No(s): CP-45-CR-0000657-2018

BEFORE: BOWES, J., NICHOLS, J., and KING, J.

MEMORANDUM BY NICHOLS, J.: **FILED JANUARY 23, 2024**

In these consolidated appeals, Jose Ambiorix Abreu appeals from the order denying his timely first Post Conviction Relief Act[1] (PCRA) petition. Appellant claims that his guilty plea counsel at trial court Docket No. 657-

[1] 42 Pa.C.S. §§ 9541-9546.

2018 and *nolo contendere* plea counsel at trial court Docket No. 657-2018 were ineffective. After review, we affirm.

The record reveals that at trial court Docket No. 613-2018, Appellant entered a plea of *nolo contendere* to endangering the welfare of a child (EWOC) and corruption of a minor.[2] At trial court Docket No. 657-2018, Appellant plead guilty to attempted murder, aggravated assault, and recklessly endangering another person (REAP).[3] On direct appeal, a prior panel of this Court summarized the relevant facts and procedural history as follows:

> Appellant was arrested and charged with multiple counts of aggravated indecent assault, several counts of indecent assault, endangering the welfare of a child ("EWOC"), corruption of a minor, and unlawful contact with a minor for sexually abusing his daughter, A.A., between October 1, 2015 and November 17, 2017. The abuse came to light on November 17, 2017 when A.A. was taken to the hospital after attempting to kill herself. A.A. reported that she made the attempt because of the assaults.
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> In addition to the criminal investigation that concluded with the sex offense charges, Appellant's abuse of A.A. gave rise to parallel child welfare investigations which resulted in A.A., and later her brother, being adjudicated dependent, and Appellant's wife [who is also] A.A.'s mother [(Ivette)], being indicted for failing to protect A.A. The undersigned presided over the hearing at which A.A.'s brother was adjudicated dependent. However, another judge of this court adjudicated A.A. dependent. . . . The attempted murder case has its Genesis in the sexual assault case. When A.A. first disclosed the sexual abuse, [Ivette] did not believe her. In fact, she aligned herself with Appellant against A.A. However, in late February, 2018, a letter from A.A. caused

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[2] 18 Pa.C.S. §§ 4304(a)(1), and 6301(a)(1)(ii), respectively.

[3] 18 Pa.C.S. §§ 901(a), 2702(a)(1), and 2705, respectively.

[Ivette] to briefly believe the allegations. On February 23, 2018, Appellant was confronted by [Ivette], [and] an altercation ensued. During the altercation, Appellant assaulted [Ivette] and threatened [Ivette's] father and friend who were also present.

[Ivette] did not want charges filed against Appellant. She did, however, go to the courthouse to obtain a temporary Protection From Abuse (PFA) order. When [Ivette] was too late to obtain a PFA that afternoon, she contacted the police for an escort to the family's residence so that she could retrieve some items, including her son's medicine.

While [Ivette], her father, and her friend were in her car waiting for the police escort, Appellant violently crashed his vehicle into them. All three occupants were injured. Appellant's father-in-law sustained the most severe injuries. [Ivette] and her friend were trapped in the car. Appellant approached the car and said to the entrapped occupants, "I'm glad you're dead, killed you all." As a result, Appellant was arrested and charged with multiple counts of attempted homicide, aggravated assault, simple assault, and [REAP].

Subsequently, [Ivette] re-aligned herself with Appellant and reverted back to disbelieving her daughter. [Ivette] was not cooperative with authorities. In fact, she made affirmative efforts to obtain Appellant's release from jail by attempting, through harassment, threats, and verbal abuse, to get the friend who was with her during Appellant's in-person assault and the vehicular assault to change her story. As a result, [Ivette] was charged with intimidation of a witness and solicitation to commit perjury. Up through the time Appellant [entered his pleas], was sentenced, and filed post-sentence motions, [Ivette] remained distanced from the Commonwealth. This was especially true after [Ivette] pled *nolo contendere* to one of the charges filed against her following Appellant's entry of pleas in both [cases.]

On February 4, 2019, Appellant pleaded guilty to attempted homicide, aggravated assault and REAP in the attempted murder case. On February 4, 2019, Appellant also pleaded *nolo contendere* to child endangerment and corruption of a minor in

> the child endangerment case.[4] As a part of the negotiations, Appellant and the Commonwealth agreed that Appellant's aggregate minimum sentence in both docket numbers was to fall between 10 and 17 years and the maximum sentence was delegated to the discretion of the trial court. Appellant was represented by counsel, Brandon R. Reish, Esq., in the former case and by [David Skutnik, Esq. of the Public Defender's Office] in the latter case. A sentencing hearing was scheduled for April 30, 2019. On February 22, 2019, Attorney Earl Raynor, Jr.[5] entered his appearance on behalf of Appellant in both docket numbers.
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> On March 18, 2019, prior to sentencing, Appellant filed a motion to withdraw his [pleas] in both docket numbers. In the attempted murder case, Appellant argued that he was innocent of the charges and had evidence to support his assertion. In the child endangerment case, Appellant argued that he was innocent of the charges and offered evidence challenging the credibility of A.A.'s allegations.[6] The trial court set a consolidated hearing on both motions for April 30, 2019. On April 30, 2019, after the hearing, the trial court denied Appellant's motions to withdraw his . . . pleas and proceeded to sentencing on both docket numbers.
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> In the attempted murder case, Appellant was sentenced to 7.5 to 20 years' incarceration on the attempted murder charge, and 4 to 10 years' incarceration on the aggravated assault charge, to run

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[4] We note that "in terms of its effect upon a case, a plea of *nolo contendere* is treated the same as a guilty plea." ***Commonwealth v. Prieto***, 206 A.3d 529, 533–34 (Pa. Super. 2019)(citation omitted). "Generally, upon entry of a guilty plea, a defendant waives all claims and defenses other than those sounding in the jurisdiction of the court, the validity of the plea, and what has been termed the legality of the sentence imposed." ***Id.*** (citation and quotation marks omitted).

[5] Attorney Raynor remains Appellant's counsel of record.

[6] In his pre-trial motions to withdraw his pleas, Appellant alleged that Ivette wrote a letter exonerating him and that there was a witness who allegedly claimed that Ivette caused the automobile collision in the attempted murder case. ***See*** Motion at 657-2018, 3/18/19, at 2-3. In the child endangerment case, Appellant sought to withdraw his plea because he had no history of abuse and claimed that A.A. had a history of making false allegations. ***See*** Motion at 613-2018, 3/18/19, at 2-4.

> consecutive to the attempted murder charge. Appellant was sentenced to 6 months' to 2 years' incarceration on the REAP charge, to run consecutive to the attempted murder and aggravated assault charge. Appellant was sentenced to an aggregate sentence of 12 to 32 years' incarceration in the attempted murder case.
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> On the same date, Appellant was sentenced in the child endangerment case. Appellant was sentenced to 16 months to 4 years' incarceration on the child endangerment charge and 16 months to 4 years' incarceration on the corruption of minors charge, to run consecutive to the child endangerment charge. Appellant's aggregate sentence in the child endangerment case is 32 months to 96 months' incarceration. Appellant's sentence in the child endangerment case is to run consecutive to the sentence in the attempted murder case. Appellant's aggregate sentence on both docket numbers is 14 years 8 months to 40 years' incarceration.
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> On May 9, 2019, Appellant filed post-sentence motions in both docket numbers challenging the discretionary aspects of his sentence and argued that the trial court erred in failing to recuse itself. . . . On May 10, 2019, Appellant filed a motion for reconsideration of denial of motion to withdraw [his pleas] in both cases.[7] On July 23, 2019, the trial court denied Appellant's post-sentence motions, including the motions to reconsider. On August 12, 2019, Appellant filed timely notices of appeal at both docket numbers.

Commonwealth v. Abreu, 2021 WL 212283 at *1–3, 2379 EDA 2019 (Pa. Super. filed Jan. 21, 2021) (unpublished mem.) (citations and footnotes omitted and formatting altered). On direct appeal, Appellant alleged, *inter alia*, that the trial court abused its discretion in denying Appellant's pre-sentence motion to withdraw his pleas and motion for reconsideration. ***See***

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[7] Appellant's post-sentence motions included post-sentence motions to withdraw his pleas. ***See*** Post-Sent. Mot. at 657-2018, 5/10/19; Post-Sent. Mot. at 613-2018, 5/10/19.

id. at *3. Following review, this Court affirmed Appellant's judgments of sentence. ***See id.*** at *16. On August 4, 2021, our Supreme Court denied allowance of appeal. ***Commonwealth v. Abreu***, 78 MAL 2021, 260 A.3d 79 (Pa. filed Aug. 4, 2021).

Appellant timely filed the instant PCRA petitions on October 12, 2021. After conducting an evidentiary hearing, the PCRA court denied Appellant's PCRA petitions. These timely appeals followed. Appellant filed a concise statement of errors complained of on appeal at both trial court dockets pursuant to Pa. R.A.P. 1925(b), and the PCRA court filed Pa.R.A.P. 1925(a) opinions.[8]

On appeal, Appellant presents the following issue:

> Whether Appellant's judgment of sentence should be vacated because the representation of both of his guilty plea counsels was wholly ineffective, where they both disregarded exculpatory evidence in unlawfully inducing Appellant to plead guilty, thereby prejudicing . . . [Appellant's] right to fair trials, resulting in Appellant's conviction as an innocent man in both cases?

Appellant's Brief at 4 (formatting altered).[9]

Appellant argues that guilty plea counsel, Brandon Reish, Esq. (Attorney Reisch), and *nolo contendere* plea counsel, David Skutnik, Esq. (Attorney

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[8] The Rule 1925(a) opinion relied upon the rationale set forth in the PCRA court's March 17, 2023 opinion, which included both trial court dockets and was filed in support of the orders denying Appellant's PCRA petitions. ***See*** Rule 1925(a) Op., 4/28/23.

[9] The Commonwealth did not file a brief.

Skutnik), were ineffective. Appellant contends that Attorney Reisch and Attorney Skutnik disregarded exculpatory evidence and unlawfully induced Appellant to enter his pleas.[10] ***See id.*** at 29-32.

In reviewing Appellant's claims, we are guided by the following principles:

> [O]ur standard of review from the denial of a PCRA petition is limited to examining whether the PCRA court's determination is supported by the evidence of record and whether it is free of legal error. The PCRA court's credibility determinations, when supported by the record, are binding on this Court; however, we apply a de novo standard of review to the PCRA court's legal conclusions.
>
> Furthermore, to 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) (citations omitted and formatting altered).

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[10] Appellant's allegedly exculpatory evidence was raised in support of his pre-trial motions to withdraw his pleas, including the letter from Ivette, a witness statement, a claim that Appellant had no history of abusing A.A., and an assertion that A.A. had a history of lying. ***Compare*** Appellant's Brief at 29-32 ***with*** Motion at 657-2018, 3/18/19, at 2-3, Motion at 613-2018, 3/18/19, at 2-4.

"Allegations of ineffectiveness in connection with the entry of a guilty plea will serve as a basis for relief only if the ineffectiveness caused the defendant to enter an involuntary or unknowing plea." ***Commonwealth v. Kelley***, 136 A.3d 1007, 1013 (Pa. Super. 2016) (citation omitted). "Where the defendant enters his plea on the advice of counsel, the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." ***Id.*** (citation omitted).

> The standard for post-sentence withdrawal of guilty pleas dovetails with the arguable merit/prejudice requirements for relief based on a claim of ineffective assistance of plea counsel, ... under which the defendant must show that counsel's deficient stewardship resulted in a manifest injustice, for example, by facilitating entry of an unknowing, involuntary, or unintelligent plea. This standard is equivalent to the "manifest injustice" standard applicable to all post-sentence motions to withdraw a guilty plea.

Id. (citation omitted and emphasis added).

> Our law is clear that, to be valid, a guilty plea must be knowingly, voluntarily and intelligently entered. There is no absolute right to withdraw a guilty plea, and the decision as to whether to allow a defendant to do so is a matter within the sound discretion of the trial court. To withdraw a plea after sentencing, a defendant must make a showing of prejudice amounting to "manifest injustice." "A plea rises to the level of manifest injustice when it was entered into involuntarily, unknowingly, or unintelligently." A defendant's disappointment in the sentence imposed does not constitute "manifest injustice."

Commonwealth v. Pollard, 832 A.2d 517, 522 (Pa. Super. 2003).

> Thus, to establish prejudice, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. The reasonable probability test is not a stringent one; it merely

> refers to a probability sufficient to undermine confidence in the outcome.

Commonwealth v. Barndt, 74 A.3d 185, 192 (Pa. Super. 2013) (citations omitted and formatting altered). "A defendant is permitted to withdraw his guilty plea under the PCRA if ineffective assistance of counsel caused the defendant to enter an involuntary plea of guilty." ***Commonwealth v. Rathfon***, 899 A.2d 365, 369 (Pa. Super. 2006) (citation omitted). Moreover, "[o]ur law presumes that a defendant who enters a guilty plea was aware of what he was doing[, and the defendant] bears the burden of proving otherwise." ***Pollard***, 832 A.2d at 523 (citations omitted).

> The longstanding rule of Pennsylvania law is that a defendant may not challenge his guilty plea by asserting that he lied while under oath, even if he avers that counsel induced the lies. A person who elects to plead guilty is bound by the statements he makes in open court while under oath and he may not later assert grounds for withdrawing the plea which contradict the statements he made at his plea colloquy.

Id. (internal citation omitted).

In its March 17, 2023 opinion, the PCRA court provides two alternate rationales for dismissing Appellant's PCRA petition. The PCRA court initially opines that Appellant's claim is previously litigated and/or waived because Appellant challenged his pleas on direct appeal. ***See*** PCRA Ct. Op., 3/17/23, at 16-18. We are constrained to disagree with this conclusion. Herein, Appellant's challenge to the validity of his pleas is presented as an ineffective assistance of counsel claim. Accordingly, we conclude that the issue is not previously litigated or waived, because "an ineffective assistance of counsel

claim is a separate legal issue distinct from the underlying substantive claim for which counsel allegedly had provided ineffective assistance." ***Commonwealth v. Derk***, 913 A.2d 875, 883 n.6 (Pa. Super. 2006) (citing ***Commonwealth v. Collins***, 888 A.2d 564, 573 (Pa. 2005)). However, the PCRA court also concludes that Appellant's claim of ineffective assistance of plea counsel lacks merit. ***See*** PCRA Ct. Op., 3/17/23, at 18. After review, we agree.

Following our review of the record, Appellant's brief, and the well-reasoned conclusions of the PCRA court, we affirm based on the PCRA court's analysis of this issue. Specifically, we agree with the PCRA court's conclusion that Appellant's ineffective assistance of counsel claim is meritless. ***See*** PCRA Ct. Op., 3/17/23, at 18-27. Therefore, Appellant is not entitled to relief. Accordingly, we affirm.

Order affirmed. Jurisdiction relinquished.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 1/23/2024

COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	**Nos. 613 CRIMINAL 2018**
	:	**657 CRIMINAL 2018**
v.	:	
	:	
JOSE ABREU,	:	**PCRA**
	:	
Defendant	:	

OPINION AND ORDER DENYING P.C.R.A. PETITIONS

In each of the captioned cases, Defendant, Jose Abreu ("Petitioner"), filed a petition seeking relief under the Post-Conviction Relief Act ("PCRA"), 42 Pa. C.S.A. §§ 9541-9546. Petitioner alleges that his *nolo contendere* plea in Case No. 613 Criminal 2018 and his guilty plea in Case No. 657 Criminal 2018 were unknowing and involuntary due to the ineffective assistance of the attorneys who represented him when the pleas were entered. Specifically, Defendant contends that his attorneys improperly induced him to plead and ignored exculpatory evidence. As a result, Petitioner asks that the pleas and corresponding judgments of sentence be vacated and that the cases proceed to trial. For the reasons that follow, we will deny both petitions.[1]

BACKGROUND

The history of these cases, from Defendant's arrest through the Superior Court's issuance of a memorandum opinion affirming the judgments of sentence, are recited in the following:

[1] At the end of the PCRA hearing, we indicated that we would convene a hearing at which we would announce our decision. (N.T. 7/7/2022, pp. 80-81; Order dated 7/7/2022). However, since the proceeding was not intended to be an evidentiary proceeding, neither party has asked to present additional evidence, and the parties' briefs sufficiently address the legal issues, we have elected instead to issue our decision in writing through this opinion.

1. Opinion In Support of Order Pursuant to Pa. R.A.P. 1925(a) ("Appeal Opinion") we issued on October 24, 2019; and

2. Memorandum Opinion issued by the Superior Court on January 21, 2021, at Appeal Docket Nos. 2379 and 2414 EDA 2029, 2021 WL 212283, that affirmed the judgments of sentence.

We incorporate both opinions (the "Prior Opinions") into this opinion by reference. In summary:

In case No. 613, Petitioner was arrested and charged with multiple counts of Aggravated Indecent Assault, several counts of Indecent Assault, Endangering the Welfare of a Child ("EWOC"), Corruption of a Minor, and Unlawful Contact With a Minor for sexually abusing his daughter, A.A., between October 1, 2015 and November 17, 2017.

In addition to the criminal investigation that led to Case No. 613, Petitioner's abuse of A.A. gave rise to parallel child welfare investigations which resulted in A.A., and later her brother, being adjudicated dependent, and Petitioner's wife, A.A.'s mother, being indicated by Monroe County Children & Youth Services for failing to protect A.A.

Case No. 657 has its Genesis in the sexual assault case. When A.A. first disclosed the sexual abuse, A.A.'s mother did not believe her. In fact, she aligned herself with Petitioner against A.A. However, in late February, 2018, a letter from A.A. caused her mother to briefly believe the allegations. When Petitioner was confronted by his wife, an altercation ensued. During the altercation, Petitioner assaulted his wife and threatened his wife's father and friend who were also present.

Petitioner's wife did not want charges filed against him. She did, however, go to the courthouse to obtain a temporary Protection From Abuse (PFA) order. When Petitioner's wife was too late to obtain a PFA that afternoon, she contacted the police for an escort to the family's residence so that she could retrieve some items, including her son's medicine.

While Petitioner's wife, her father, and her friend were in her car waiting for the police escort, Petitioner violently crashed his vehicle into them. All three occupants were injured. Petitioner's father in-law sustained the most severe injuries. His wife and her friend were trapped in the car. Petitioner approached the car and said to the entrapped occupants, "I'm glad you're dead, killed you all." As a result, Petitioner was arrested and charged with multiple counts of Attempted Homicide, Aggravated Assault, Simple Assault, and Recklessly Endangering Another Person ("REAP").

Subsequently, Petitioner's wife re-aligned herself with Petitioner and reverted back to disbelieving her daughter. She was not cooperative with authorities. In fact, she made affirmative efforts to obtain Father's release from jail by attempting, through harassment, threats, and verbal abuse, to get the friend who was with her during Petitioner's in-person assault and the vehicular assault to change her story. As a result, Petitioner's wife was charged with Intimidation of a Witness and Solicitation to Commit Perjury. Up through the time Petitioner pled, was sentenced, and filed post-sentence motions in these cases, his wife remained distanced from the Commonwealth. This was especially true after his wife pled *nolo contendere* to one of the charges filed against her following Petitioner's entry of the pleas he now seeks to challenge.

On February 4, 2019, Defendant pled *nolo contendere* in case No. 613 to EWOC and Corruption of a Minor, felonies of the third degree. In case No. 657, Defendant pled guilty to Attempted Homicide and Aggravated Assault, first-degree felonies, and REAP, a misdemeanor of the second degree. The negotiated pleas included a negotiated sentencing framework, accepted by this Court, pursuant to which Petitioner's aggregate minimum sentence would be not less than 10 years, nor more than 17 years, with the specific minimum and the maximum sentence to be determined by the Court. The pleas were entered based on written guilty plea forms signed by Petitioner and both of his defense attorneys after a comprehensive oral colloquy conducted by the Court.

In case No. 613, Petitioner was represented by David Skutnik, Esq., a public defender, from the beginning of the case through entry of his plea. Attorney Skutnik and the public defender's office also represented him in the dependency proceedings.

In case No. 657, Attorney Skutnik represented Petitioner, and spoke with him about the incident immediately after it happened, at the beginning of the proceeding. However, early on Petitioner privately retained Brandon Reish, Esq. to represent him. Attorney Reish represented Petitioner from that point through entry of the guilty plea.

After the pleas were entered, Petitioner retained a new attorney, Earl Raynor, Esq., to represent him. Attorney Raynor has represented Petitioner from that point on, and is the attorney who filed the instant PCRA petitions.

Prior to sentencing, Petitioner through Attorney Raynor filed motions to withdraw both pleas. In Case No. 613, Petitioner argued that he was innocent of the charges and offered evidence challenging the credibility of A.A.'s allegations. In Case No. 657,

Petitioner argued that he was innocent of the charges and had evidence to support his assertion.

On April 30, 2019, we convened a hearing on the motions. During the hearing, both parties presented evidence. Petitioner and a witness called by the Commonwealth testified. At the end of the hearing, we denied both motions, broadly summarizing our reasoning. (N.T., 4/30/2019, pp. 26-27, 65-72). We incorporate our on-record statements and reasoning into this opinion by reference.

We then immediately convened the sentencing hearing. Petitioner was sentenced to an aggregate of 14 years, 8 months to 40 years' incarceration, a sentence within both the framework of the negotiated pleas and the standard guideline range. Thereafter, Petitioner filed as separate motions in each case a post-sentence motion, a motion for reconsideration of our denial of the pre-sentence motion to withdraw plea, and a post-sentence motion to withdraw plea.

A hearing on the motions was convened on May 31, 2019. During the hearing, the parties presented evidence and argument. At the conclusion of the hearing, we informed the parties that we would be issuing an order denying the motions, briefly stating some of our reasons for the denials on the record. In addition, we handed out a hearing Addendum that comprehensively summarized the law on which we relied. (N.T., 5/31/2019, pp. 18-34 and Addendum). We incorporate our on-record statements and the Addendum into this opinion by reference.[2]

On July 22, 2019, we issued orders denying all of Defendant's post-sentence motions. Thereafter, Petitioner filed the appeals which led to the Superior Court's

[2] The Addendum was attached to the prior Appeal Opinion.

Memorandum Opinion affirming the judgments of sentence. In those appeals, Petitioner assigned as errors our denial of his pre-sentence motions to withdraw pleas and his motions for reconsideration of those decisions. However, he did not challenge the denials of his post-sentence motions to withdraw pleas.

After the Superior Court affirmed the judgments of sentence, Petitioner filed in the Supreme Court of Pennsylvania petitions for allowance of appeal. On August 4, 2021, at Nos. 78 and 79 MAL 2021, 260 A.3d 2021 (Pa. 2021), the petitions were denied.

On October 12, 2021, through Attorney Raynor, Defendant timely filed the instant PCRA Petitions. After several continuances, including continuances requested by Petitioner, a hearing on the petitions was convened on July 7, 2022. During the hearing, Attorney Skutnik, Attorney Reish, Petitioner, and Petitioner's brother testified and a briefing schedule was set.

Subsequently, for the second time in these cases, Petitioner failed to pay for transcripts and had to be promoted to remedy the error.[3] As a result, briefing was delayed. Briefs having now been filed, we are ready to rule on the petitions.

DISCUSSION

1. The Standards

(a) *PCRA Eligibility – Claims Previously Litigated or Waived*

PCRA relief is not available for alleged errors that have been "previously litigated" or waived. 42 Pa.C.S.A. § 9543(a)(3); *Commonwealth v. Fowler*, 930 A.2d 586 (Pa. Super. 2007) Accordingly, "[t]o be entitled to PCRA relief, a petitioner must plead and

[3] See Appendix A, Appeal Opinion, pp. 8-11; Superior Court's Order dated April 6, 2020, at Appeal Docket Nos. 2414 and 2379 EDA 2019; N.T., 7/7/2022, pp. 76-78; Order dated July 7, 2022; Order dated August 5, 2022

prove, *inter alia,* that the allegation of error has not been previously litigated or waived." *Commonwealth v. Berry,* 877 A.2d 479, 482 (Pa. Super. 2005) (*en banc*), *appeal denied,* 917 A.2d 844 (Pa. 2007). An issue has been previously litigated if "the highest appellate court in which the petitioner could have had review as a matter of right has ruled on the merits of the issue." 42 Pa.C.S.A. § 9544(a)(2); *Commonwealth v. Keaton*, 45 A.3d 1050, 1060 (Pa. 2012). An issue is waived if it could have been raised prior to the filing of the PCRA petition, but was not. *Commonwealth v. Williams*, 900 A.2d 906 (Pa. Super. 2006) (*en banc*); *Commonwealth v. Berry*, *supra*. Specifically, "an issue is considered waived if the petitioner could have raised it but failed to do so before trial, at trial, during unitary review, on appeal or in a prior state post-conviction proceeding." *Fowler,* 930 A.2d at 594 (citing 42 Pa.C.S.A. § 9544(b) and *Commonwealth v. Williams,* 900 A.2d 906, 908–09 (Pa. Super. 2006) (*en banc*)). *See also Commonwealth v. Ligons*, 971 A.2d 1125 (Pa. 2009).

In more expanded terms, the previously litigated provision of Section 9543(a)

> prevents the relitigation of the same legal ground under alternative theories or allegations. *Commonwealth v. Collins,* 585 Pa. 45, 56, 888 A.2d 564, 570 (2005); *Commonwealth v. Derk,* 913 A.2d 875, 882 (Pa.Super.2006). Additionally, an issue is not cognizable under the PCRA where the petitioner simply attempts to relitigate, without couching in terms of ineffective assistance, a claim that has already been deemed reviewed on direct appeal. *See Commonwealth v. Jones,* 590 Pa. 202, 217, n. 10, 912 A.2d 268, 277, n. 10 (2006). If the claims upon which a petitioner seeks relief were previously litigated, then our inquiry ends and the petitioner is not entitled to relief. 42 Pa.C.S.A. § 9543(a)(3). An issue is considered waived if the petitioner could have raised it but failed to do so before trial, at trial, during unitary review, on appeal or in a prior state post-conviction proceeding. 42 Pa.C.S.A. §

> 9544(b); *Commonwealth v. Williams,* 900 A.2d 906, 908–09 (Pa. Super. 2006) (*en banc*).

Fowler, 930 A.2d at 594. *See also Commonwealth v. Ligons*, 971 A.2d 1125 (Pa. 2009).

(b) *Ineffective Assistance of Counsel – Basic Standard*

Petitioner's ineffective assistance of counsel claims implicate *Strickland v. Washington,* 466 U.S. 668 (1984), as adopted in Pennsylvania by *Commonwealth v. Pierce,* 527 A.2d 973 (Pa. 1987), which requires a defendant alleging ineffectiveness to demonstrate that he was prejudiced by an act or omission of his attorney. In cases where the *Strickland/Pierce* test applies, the analysis begins with

> the presumption that counsel rendered effective assistance. *Commonwealth v. Basemore,* 560 Pa. 258, 277 n. 10, 744 A.2d 717, 728 n. 10 (2000). To obtain relief on a claim of ineffective assistance of counsel, a petitioner must rebut that presumption and demonstrate that counsel's performance was deficient, and that such performance prejudiced him. *Strickland v. Washington,* 466 U.S. 668, 687–91, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In our Commonwealth, we have rearticulated the *Strickland* Court's performance and prejudice inquiry as a three-prong test. Specifically, a petitioner must show: (1) the underlying claim is of arguable merit; (2) no reasonable basis existed for counsel's action or inaction; and (3) counsel's error caused prejudice such that there is a reasonable probability that the result of the proceeding would have been different absent such error. *Commonwealth v. Pierce,* 515 Pa. 153, 158–59, 527 A.2d 973, 975 (1987).

Commonwealth v. Dennis, 17 A.3d 297, 301 (Pa. 2011). *See Commonwealth v. Tedford,* 960 A.2d 1, (Pa. 2008); *Commonwealth v. Dennis*, 950 A.2d 945, 953 (Pa. 2008); *Commonwealth v. Gwynn*, 943 A.2d 940, 945 (Pa. 2008); *Commonwealth v. Mallory,* 941 A.2d 686 (Pa. 2008), *cert. denied,* 555 U.S. 884 (2008).

A corollary to the first element, counsel cannot be found ineffective for failing to pursue a baseless or meritless claim. *Commonwealth v. Roney*, 79 A.3d 595, 604 (Pa.

2013); *Commonwealth v. Washington*, 927 A.2d 586, 603 (Pa. 2007); Commonwealth *v. Harvey*, 812 A.2d 1190, 1199 (Pa. 2002). With regard to the second, the

> reasonable basis element, we do not question whether there were other more logical courses of action which counsel could have pursued; rather, we must examine whether counsel's decisions had any reasonable basis." [*Commonwealth v.*] *Hanible,* [30 A.3d 426,] 439 [(Pa. 2011)] (citation omitted). We will conclude that counsel's strategy lacked a reasonable basis only if the petitioner proves that a foregone alternative "offered a potential for success substantially greater than the course actually pursued." [Commonwealth v.] *Spotz,* [18 A.3d 244] 260 [Pa. 2011] (citation omitted). To establish the third, the prejudice element, the petitioner must show that there is a reasonable probability that the outcome of the proceedings would have been different but for counsel's action or inaction. *Id.*

Roney, 79 A.3d at 604.

Since a petitioner must prove all three prongs of the *Strickland/Pierce* test, if he or she fails to prove any one of the prongs, the ineffectiveness claim may be dismissed on that basis alone without the need to determine whether the other two prongs have been met. *Commonwealth v. Basemore*, 744 A.2d 717 (Pa. 2000).

Additionally, trial counsel has broad discretion to determine the course of defense tactics and strategy. *See Commonwealth v. Fowler*, 670 A.2d 153 (Pa. Super. 1996); *Commonwealth v. Mizell,* 425 A.2d 424 (Pa. 1981). Where matters of strategy and tactics

> are concerned, counsel's assistance is deemed constitutionally effective if he chose a particular course that had some reasonable basis designed to effectuate his client's interests. A finding that a chosen strategy lacked a reasonable basis is not warranted unless it can be concluded that an alternative not chosen offered a potential for success substantially greater than the course actually pursued. To demonstrate prejudice, the petitioner must show that there is

> a reasonable probability that, but for counsel's error or omission, the result of the proceeding would have been different.

Commonwealth v. Colavita, 993 A.2d 874, 887 (Pa. 2010) (citations omitted).

(c) *Ineffectiveness of Plea Counsel*

A criminal defendant has the right to effective counsel during a plea process as well as during a trial. *Hill v. Lockhart,* 474 U.S. 52 (1985). *See Commonwealth v. Hickman*, 799 A.2d 136 (Pa. Super. 2002). An attempt to establish that a plea was unknowing or involuntary due to deficient legal advice sounds in ineffectiveness. *Commonwealth v. Kehr*, 180 A.3d 754 (Pa. Super. 2018); *Hickman*, *supra*.

The PCRA permits a collateral challenge to a guilty plea when the plea is unlawfully induced or ineffective assistance of counsel causes a defendant to enter an involuntary or unknowing plea. *See Commonwealth v. Brown*, 48 A.3d 1275 (Pa. Super. 2012); *Commonwealth v. Yager*, 685 A.2d 1000 (Pa. Super. 1996) (and cases cited therein); 42 Pa. C.S. § 9543(a)(2)(iii). However, the PCRA may not be used or abused to raise questions regarding the validity of a guilty plea which are repetitive or have been fully litigated. *See Commonwealth v. Conard*, 240 A.2d 388 (Pa. Super. 1968) (and cases cited therein) (interpreting the Post-Conviction Hearing Act, the predecessor to the PCRA). Therefore, where a claim that a guilty plea was not knowingly and voluntarily entered is finally litigated in a prior appeal or a prior PCRA proceeding, the challenge may not be re-litigated in a second or subsequent PCRA petition. *See Commonwealth v. Brown*, 412 A.2d 529 (Pa. 1980); *Fowler, supra*; *Commonwealth v. Crowder*, 389 A.2d 630 (Pa. Super. 1978). *See also, Commonwealth v. Williams, supra; Commonwealth v. Conard, supra.*

In more expanded terms,

> Allegations of ineffectiveness in connection with the entry of a guilty plea will serve as a basis for relief only if the ineffectiveness caused the defendant to enter an involuntary or unknowing plea. *Commonwealth v. Allen,* 557 Pa. 135, 732 A.2d 582 (1999). Where the defendant enters his plea on the advice of counsel, "the voluntariness of the plea depends on whether counsel's advice 'was within the range of competence demanded of attorneys in criminal cases.' " *Hill,* 474 U.S. at 56, 106 S.Ct. 366, 88 L.Ed.2d 203 (quoting *McMann v. Richardson,* 397 U.S. 759, 771, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970)); *See also Tollett v. Henderson,* 411 U.S. 258, 267, 93 S.Ct. 1602, 36 L.Ed.2d 235 (1973) (holding that a defendant who pleads guilty upon the advice of counsel "may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within the standards set forth in *McMann*.").

Hickman, 799 A.2d at 141. *See also Kehr, supra*. Additionally,

> Because 'a plea of guilty effectively waives all non-jurisdictional defects and defenses,' *Commonwealth v. Gibson,* 385 Pa. Super. 571, 561 A.2d 1240 (1989), *appeal denied,* 525 Pa. 642, 581 A.2d 568 (1990), after sentencing, allegations of ineffectiveness of counsel in this context provide a basis for withdrawal of the plea only where there is a causal nexus between counsel's ineffectiveness, if any, and an unknowing or involuntary plea. *Commonwealth v. Turiano, supra; Commonwealth v. Vance, supra.* The guilty plea hearing becomes *the* significant procedure under scrutiny. *Commonwealth v. Turiano, supra.* The focus of the inquiry is whether the accused was misled or misinformed and acted under that misguided influence when entering the guilty plea. *Commonwealth v. Broadwater,* 330 Pa. Super. 234, 243, 479 A.2d 526, 531 (1984).

Commonwealth v. Flood, 627 A.2d 1193, 1199 (Pa. Super. 1993).

(d) *Entry of Guilty Pleas*

A defendant may plead guilty or *nolo contendere* prior to trial. The Pennsylvania Rules of Criminal Procedure mandate that

> pleas be taken in open court and require the court to 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, 765 (Pa.Super. 2002) (*citing* Pa.R.Crim.P. 590). Under Rule 590, the court should confirm, *inter alia,* that a defendant understands: (1) the nature of the charges to which he is pleading guilty; (2) the factual basis for the plea; (3) he is giving up his right to trial by jury; (4) and the presumption of innocence; (5) he is aware of the permissible ranges of sentences and fines possible; and (6) the court is not bound by the terms of the agreement unless the court accepts the plea. *Commonwealth v. Watson*, 835 A.2d 786 (Pa. Super. 2003). The reviewing [c]ourt will evaluate the adequacy of the plea colloquy and the voluntariness of the resulting plea by examining the totality of the circumstances surrounding the entry of that plea. *Commonwealth v. Muhammad*, 794 A.2d 378 (Pa.Super. 2002)."

Commonwealth v. Kpou, 153 A.3d 1020, 1023–24 (Pa. Super. 2026). A written plea colloquy may be used to supplement the oral colloquy of the defendant. Pa. R.Crim.P. 590, note.

A guilty plea is 'the defendant's consent that judgment of conviction may be entered without a trial.' *Brady v. United States*, 397 U.S. 742, 748, 90 S.Ct. 1463, 1469, 25 L.Ed.2d 747 (1970). *See also Commonwealth. v. Starr*, 301 A.2d 592, 594 (1973). Established law in Pennsylvania presumes a defendant that entered a guilty plea was aware of what he was doing and the burden to satisfy the manifest injustice requirements is upon the defendant. *Commonwealth v. Hart*, 174 A.3d 660 (Pa. Super. 2017); *Kpou, supra.*

Additionally,

> [t]he law does not require that an appellant be pleased with the results of the decision to enter a guilty plea; rather '[a]ll that is required is that the defendant's decision to plead guilty be knowingly, voluntarily and intelligently made.'

> *Commonwealth v. Moser,* 921 A.2d 526, 528–29 (Pa. Super. 2007).
>
> A defendant is bound by the statements made during the plea colloquy, and a defendant may not later offer reasons for withdrawing the plea that contradict statements made when he pled. *Commonwealth v. McCauley,* 797 A.2d 920, 922 (Pa. Super. 2001). Claims of counsel's ineffectiveness in connection with a guilty plea will provide a basis for relief only if the ineffectiveness actually caused an involuntary or unknowing plea. *Id.*

Commonwealth v. Brown, 48 A.3d at 1277-78. *See also Commonwealth* v. *Pollard*, 832 A.2d 517, 523 (Pa. Super. 2003). In *Brown*, the defendant claimed that his guilty plea was invalid because he was pressured by his attorney into taking the plea. Applying the principles quoted above, the Superior Court rejected the defendant's claim, finding that the defendant was bound by the statements he made during the plea colloquy that he had not been coerced into pleading guilty. The same reasoning and law applies here.

(d) *Withdrawal of Guilty Pleas*

There is no absolute right to withdraw a guilty plea. Pa. R.Crim. P. 591. It is well-settled that,

> the decision whether to permit a defendant to withdraw a guilty plea is within the sound discretion of the trial court. *Commonwealth v. Unangst*, 71 A.3d 1017, 1019 (Pa. Super. 2013) (quotation omitted); *see Commonwealth v. Broaden*, 980 A.2d 124, 128 (Pa. Super. 2009) (noting that we review a trial court's order denying a motion to withdraw a guilty plea for an abuse of discretion), *appeal denied*, 606 Pa. 644, 992 A.2d 885 (2010). Although no absolute right to withdraw a guilty plea exists in Pennsylvania, the standard applied differs depending on whether the defendant seeks to withdraw the plea before or after sentencing.

Commonwealth v. Hart, 174 A.3d at 664-65.

(i) Pre-Sentence Withdrawal of Guilty Pleas

A trial court may in its discretion grant a motion for withdrawal of a guilty plea at any time before the imposition of sentence. Pa. R.Crim.P. 591(A). The official comment to Rule 591 provides: "After the attorney for the Commonwealth has had an opportunity to respond, a request to withdraw a plea made before sentencing should be liberally allowed." Similarly, our Supreme Court has long held that, "Although there is no absolute right to withdraw a guilty plea, properly received by the trial court, it is clear that a request made *before* sentencing ... should be liberally allowed." *Commonwealth v. Forbes,* 299 A.2d 268, 271 (Pa. 1973) (emphasis in original). The Court in *Forbes* went on to explain:

> [I]n determining whether to grant a pre-sentence motion for withdrawal of a guilty plea, the test to be applied by the trial courts is fairness and justice. If the trial court finds "any fair and just reason", withdrawal of the plea before sentence should be freely permitted, unless the prosecution has been "substantially prejudiced."

Id.

Therefore, if the defendant provides a fair and just reason for wishing to withdraw his or her plea, the trial court should grant it unless it would substantially prejudice the Commonwealth. *Id*. *See also Commonwealth v. Carrasquillo*, 115 A.3d 1284, 1287 (Pa. 2015); *Commonwealth v. Tennison*, 969 A.2d 572 (Pa. Super. 2009). The rationale for liberal allowance of withdrawal before sentencing is well-established:

> The trial courts in exercising their discretion must recognize that before judgment, the courts should show solicitude for a defendant who wishes to undo a waiver of all constitutional rights that surround the right to trial—perhaps the most devastating waiver possible under our constitution.

Commonwealth v. Elia, 83 A.2d 254, 262 (Pa. Super. 2013) (quoting *Commonwealth v. Santos*, 450 Pa. 492, 301 A.2d 829, 830 (1973)) (internal citation and quotations omitted).

In *Carrasquillo* and the companion case of *Commonwealth v. Hvizda*, 116 A.3d 1103 (Pa. 2015), our Supreme Court reaffirmed but clarified the *Forbes* liberal-allowance standard. The Supreme Court reiterated that

> there is no absolute right to withdraw a guilty plea; trial courts have discretion in determining whether a withdrawal request will be granted; such discretion is to be administered liberally in favor of the accused; and any demonstration by a defendant of a fair-and-just reason will suffice to support a grant, unless withdrawal would work substantially prejudice to the Commonwealth.

Carrasquillo, at 1291–92 (footnote omitted).

However, The Supreme Court departed from prior precedent which held that a defendant's mere claim of innocence required that the defendant be permitted to withdraw his guilty plea. The Court held that a "mere, bare, or non-colorable" assertion of innocence is not enough to support withdrawal of a plea. *Carrasquillo* at 1285, 1190 n. 6. The Supreme Court instructed that a defendant's

> innocence claim must be at least plausible to demonstrate, in and of itself, a fair and just reason for presentence withdrawal of a plea. More broadly, the proper inquiry on consideration of such a withdrawal motion is whether the accused has made some colorable demonstration, under the circumstances, such that permitting withdrawal of the plea would promote fairness and justice. The policy of liberality remains extant but has its limits, consistent with the affordance of a degree of discretion to the common pleas courts.

Id. at 1292 (internal citation omitted). *See also Commonwealth v. Islas*, 156 A.3d 1185 (Pa. Super. 2017).

(ii) Post-Sentence Withdrawals

Post-sentence motions for withdrawal of a guilty plea "are subject to higher scrutiny since courts strive to discourage entry of guilty pleas as sentence-testing devices."

Commonwealth v. Broaden, 980 A.2d 124, 129 (Pa. Super. 2009) (quoting Commonwealth v. *Flick,* 802 A.2d 620, 623 (Pa. Super. 2002)). In more comprehensive terms:

> When a defendant seeks to withdraw a plea after sentencing, he 'must demonstrate prejudice on the order of manifest injustice.' *Commonwealth v. Yeomans*, 24 A.3d 1044, 1046 (Pa. Super. 2011). In *Commonwealth v. Prendes*, 97 A.3d 337, 352 (Pa. Super. 2014), *impliedly overruled on other grounds by Commonwealth v. Hvizda*, 632 Pa. 3, 116 A.3d 1103, 1106 (2015), we explained that a defendant may withdraw his guilty plea after sentencing 'only where necessary to correct manifest injustice.' *Prendes*, 97 A.3d at 352 (citation omitted). Thus, 'post-sentence motions for withdrawal are subject to higher scrutiny since the courts strive to discourage the entry of guilty pleas as sentence-testing devices.' *Commonwealth v. Flick*, 802 A.2d 620, 623 (Pa. Super. 2002).
>
> 'Manifest injustice occurs when the plea is not tendered knowingly, intelligently, voluntarily, and understandingly.' *Commonwealth v. Kpou*, 153 A.3d 1020, 1023 (Pa. Super. 2016) (citation omitted). In determining whether a plea is valid, the court must examine the totality of circumstances surrounding the plea. *Id.*

Commonwealth v. Hart, 174 A.3d at 664-65 (footnote omitted). *See also Commonwealth v. Gunter*, 771 A.2d 767 (Pa. 2001) (plurality); *Starr, supra*; *Commonwealth v. Culbreath*, 264 A.2d 643 (Pa. 1970); *Kpou, supra*; *Commonwealth v. Kelly*, 5 A.3d 370, 377 (Pa. Super. 2010), *appeal denied*, 32 A.3d 1276 (Pa. 2011).

2. The Plea-Based Claims Were Previously Litigated or Have Been Waived

Initially, we believe that Petitioner's claims were previously litigated or have been waived. Accordingly, Petitioner is not eligible for relief under the PCRA.

Petitioner previously filed in this Court pre-sentence motions to withdraw, motions to reconsider, and post-sentence motions to withdraw (collectively the "Direct Withdrawal Requests"). We denied all motions under the law and standards recited above. Petitioner

appealed the denials of his pre-sentence requests to withdraw. However, he did not appeal the denial of his post-sentence motions to withdraw. Even a quick comparison of the Direct Withdrawal Requests, direct appeal filings, and Prior Opinions, with Petitioner's PCRA filings (petitions, initial memoranda, and supplemental memoranda) demonstrates that the PCRA claims challenging the validity of his pleas closely align with those raised in the Direct Withdrawal Requests. Similarly, and significantly, the "exculpatory" evidence presented in these PCRA proceedings is the same "exculpatory" evidence he introduced in the proceedings on the Direct Withdrawal Requests to support his claim of innocence. Thus, Petitioner's overarching challenges to the pleas and the evidence he believes is "exculpatory" have already been assessed and found wanting by this Court and the Superior Court under the less stringent pre-sentence withdrawal standards. There seems little reason to revisit the claims and evidence under the more stringent post-sentence withdrawal standards.

In short, the claims Petitioner now raises were previously litigated. Similarly, his "exculpatory" evidence of innocence has already been reviewed and found wanting. At minimum, claims that mirror those litigated in the post-sentence motions to withdraw are waived because the claims could have been but were not included in Petitioner's direct appeals, and there is no allegation of ineffective assistance of counsel with respect to the Direct Withdrawal Requests.

We are cognizant that in these PCRA proceedings Petitioner has couched his claims in terms of attorney ineffectiveness and that in the proceedings on the Direct Withdrawal Requests he likely would not have been permitted to raise attorney ineffectiveness because, with limited exceptions not relevant here, ineffectiveness claims

must await collateral review. *See Commonwealth v. Holmes*, 79 A.3d 562 (Pa. 2013) and *Commonwealth v. Grant*, 813 A.2d 726 (Pa. 2002). *See also Commonwealth v. Bradley*, 261 A.3d 381 (Pa. 2021); *Commonwealth v. Delgros*, 183 A.3d 352 (Pa. 2018); *Commonwealth v. Perez*, 93 A.3d 829 (Pa. 2014), *cert. den.*, 135 S. Ct. 480 (U.S. 2014); *Commonwealth v. Arrington*, 86 A.3d 831 (Pa. 2014); *Commonwealth v. Stollar,* 84 A.3d 635 (Pa. 2014). At the same time, however, as the cited cases teach, the PCRA may not be used or abused to raise questions regarding the validity of a guilty plea which are repetitive or have been fully litigated. *See Brown, supra; Fowler, supra; Conard*, *supra; Crowder, supra*. By baldly recasting his withdrawal of plea claims as ineffective assistance of counsel claims, that is exactly what Petitioner is attempting to do in these cases.

3. Petitioner's Ineffectiveness Claims Lack Merit

Alternatively, and for many of the same reasons, Petitioner's contention that Plea Counsel improperly induced him to plead guilty are meritless.

Initially, as is clear from the record and detailed in the Prior Opinions, Petitioner's pleas were entered on written plea forms, signed by Petitioner, Plea Counsel, and the assistant district attorney, after a comprehensive oral colloquy administered by the Court, with the assistance of a certified Spanish interpreter, for which both Plea Counsel were present. During the colloquy, in the plea forms, or both, Defendant confirmed, among other things, that he: entered the pleas knowingly, voluntarily, and intelligently; reviewed the plea forms, as well as the terms of the pleas, with Plea Counsel with the assistance of an interpreter before he signed them; understood the forms and the questions asked by the Court; understood the charges to which he pled, the maximum penalties for each

charge, and the negotiated sentencing framework; and believed that the pleas were in his best interest. (N.T., 2/4/2019, pp. 2-28; Guilty Plea Colloquies, filed February 5, 2019 (both cases)).

In case No. 657, Petitioner admitted to the following facts:

> On February 3, 2018, in Stroud Township, Monroe County I attempted to kill my wife. I drove my SUV at a high rate of speed into her vehicle, which was also occupied by Manuel Bueno and Peggy Lieb, and in doing so I also risked serious bodily injury or death to the occupants. The impact of the collision caused bodily injury to Peggy Lieb and risked serious bodily injury to Ivette Abreu. [At is was read to him and then Defendant confirmed that the words had been translated to him before also when he went over the form with his atty.

(N.T., 2/4/2022, pp. 25-27; Guilty Plea Colloquy, filed February 5, 2019).

In Case No. 613, in pleading no contest Petitioner acknowledged that if the case were to proceed to trial the Commonwealth would be able to show that:

> between October 1, 2015 and November 17, 2017 in Stroud Township, Monroe County the defendant by a course of conduct had engaged in corrupting the morals of a minor being A.A. who was the defendant's daughter by engaging in Chapter 31 offenses which are sexually related offenses.

(N.T., 2/4/2019, p. 23-24).

Notwithstanding the above, Petitioner argues that his pleas were involuntary and unknowing because he was "induced" or pressured into entering them by Plea Counsel, both of whom ignored "exculpatory evidence." Neither aspect of Petitioner's argument holds water.

As noted, the evidence Petitioner contends his attorneys ignored is the same evidence he proffered in the proceedings on his Direct Withdrawal Requests. The evidence did not support Petitioner's claims of innocence in prior direct attacks on the

pleas. For the same reasons, the evidence does not support his claim of innocence in these collateral proceedings.

Further, as to case No. 657, Petitioner's "exculpatory" evidence includes his testimony that the collision was his wife's fault. However, this evidence in general and Petitioner's testimony in particular is completely contrary to both what Petitioner admitted during the guilty plea hearing and what he told Attorney Skutnik on the day the collision occurred. The admissions on which Defendant pled guilty are quoted above. During the PCRA hearing, Attorney Skutnik credibly testified that, on the day the collision occurred, Petitioner told him that he "intentionally plowed into the vehicle." (N.T., 7/7/2022, p. 22). Specifically, on questioning by Attorney Raynor, Attorney Skutnik testified:

> Q Did you discuss the attempted murder case with Mr. Abreu?
>
> A I discussed that case with him the night he called me.
>
> Q And did he tell you that it wasn't his fault, his wife was in the middle of the street?
>
> A No.
>
> Q What did he tell you?
>
> A He told me that he intentionally plowed into the vehicle.
>
> Q He told you that he intentionally plowed into the vehicle?
>
> A Yes. And he told me he left.
>
> Q He told you that he intentionally rammed into the car?
>
> A Yes.

> Q He didn't tell that you that the car was in his right-of-way, that he was surprised?
>
> A No.
>
> Q He told you -- so let me get this right. He told you that he tried to kill his wife and ran into her. Is that what you are saying?
>
> A He told me he intentionally ran into the vehicle. He knew his wife and his father-in-law was injured. He didn't know what their status was. He sounded like he had sustained injuries. I urged him to get himself to the hospital. I urged him not to talk to the police.

(*Id*. at 22-23).

Likewise, as to case No. 613, Petitioner's "exculpatory" evidence is contrary to what he acknowledged the Commonwealth would be able to show if the case went to trial. The specific acknowledgment is set forth above.

Additionally, as to both cases, the "exculpatory" evidence was not, as Petitioner implies, exoneration evidence. At best, it was evidence by which, if admitted, Petitioner might counter the Commonwealth's evidence or question the credibility of some of the Commonwealth's witnesses. However, as discussed in the Prior Opinions and during the hearings on the Direct Withdrawal Requests, the Commonwealth had substantial incriminating evidence, especially regarding Case No. 657. Further, Petitioner himself has called into question the credibility of his wife, to whom he pointed as a witness with "exculpatory" testimony or information. Finally, Petitioner boldly assumes that his evidence would be admissible. At least with respect to the evidence he believes might undermine the credibility of his daughter in Case No. 613, admissibility would have been a contested matter.

The "inducement" component of Petitioner's argument is based only on the self-serving testimony of Petitioner with an assist from his brother. Petitioner testified that he did not tell Attorney Skutnik that he intestinally plowed into his wife's car. Petitioner also testified that signed the plea forms and entered the pleas only because he was rushed and pressured and "threatened" into doing so by both Plea Counsel who ignored his claims of innocence and told him he would die in jail and never see his family again if he did not "take the deal." (N.T., 7/7/2022, pp. 51, 55-57, 59, 62-63). Additionally, Petitioner testified that at the time the pleas were entered he was taking medications that affected his ability to understand what he was pleading guilty to. (*Id*. at 56-58). Petitioner's brother, who was in court but did not actually speak with Petitioner on the day the pleas were entered, generally testified that Petitioner was pressured by Plea Counsel who told that he might get 90 years in jail if he did not plead. Petitioner's brother also said that Defendant was "angry" because he was on medication. *(Id*. at 70-73).

However, we do not find the testimony of either Petitioner or his brother to be credible. Indeed, their unconvincing version of events runs contrary to what we saw and heard during the plea hearings and is contradicted by the credible testimony of Attorney Skutnik and Attorney Reish.

The claim that Petitioner did not understand what he was pleading guilty to is completely belied by the record and the personal observations of the undersigned.

During the plea colloquy, Petitioner was specifically asked whether he was taking any medications and, if so, whether the medications interfered with his ability to understand the pleas. Petitioner informed the Court that he was taking medications. However, he assured the Court that he was taking only medications prescribed for and

administered to him by medical professionals from the jail. He then affirmatively stated that the medicine did not interfere with his ability to understand. The following is part of the colloquy:

> THE COURT: Mr. Abreu, are you under the influence of drugs or alcohol today?
>
> MR. ABREU: No.
>
> THE COURT: Are you taking any medicines or medication?
>
> MR. ABREU: Yes.
>
> THE COURT: What are you taking
>
> MR. ABREU: Seroquel. I forgot the name of the other one, I don't remember. I think it's Ativan.
>
> THE COURT: Are you taking those because they've been prescribed for you by a doctor?
>
> MR. ABREU: Yes.
>
> THE COURT: Are the medicines being given to you by the medical personnel at the jail?
>
> MR. ABREU: They give it to me because I suffer from sleeping paralysis.
>
> THE COURT: But my question was, is it the medical personnel at the jail who are giving you those medications?
>
> MR. ABREU: Yes.
>
> THE COURT: How long have you been taking those medications?

MR. ABREU: Since I've been in jail.

THE COURT: Which now I believe is more than a year, correct?

MR. ABREU: Yes.

THE COURT: When you take those medicine are you able to hear and understand people when they talk to you?

MR. ABREU: Yes.

THE COURT: Don't tell me what was said; but I know that we gave you a large amount of time today to speak with your attorneys to finalize these matters. When you spoke with Mr. Reish and Mr. Skutnik were you able to hear and understand them when they spoke to you through the interpreter?

MR. ABREU: Yes.

THE COURT: And as we're talking, again through the interpreter, are you able to hear and understand me?

MR. ABREU: Yes.

(N.T., 2/4/2019, pp. 6-7).

Relatedly, at the time the pleas were entered Petitioner assured the Court he was not being pressured or threatened and was entering the pleas voluntarily (*Id*. at 6-8). His contrary testimony during the PCRA hearing was not believable.

Along similar lines, counsel for Petitioner raised the specter of deportation, calling or appearing to call into question whether Plea Counsel informed Petitioner that he would be deported if he pled guilty. To the extent the sufficiency of what Petitioner was told

about deportation remains part of his contention that his pleas were unknowing and involuntary, it is clear from the record that he was advised about the collateral consequence of deportation. During the plea hearing, the Court colloquied Petitioner about collateral consequences in general and deportation in particular. (*Id*. at 15-16, 21). Further, Attorney Skutnik and Attorney Reish each credibly testified that, before the pleas were entered, the consequence of deportation was discussed with Petitioner. (N.T., 7/7/2022, pp. 19-21, 28, 41-42). Finally, Petitioner acknowledged that Plea Counsel spoke with him about deportation. (*Id*. at 57).

Simply, as with the "exculpatory evidence" component of his ineffectiveness claims, the evidence Petitioner presented in support of his "inducement" claim is belied by the record and not believable.

After hearing the PCRA testimony, weighing and considering that testimony in light of the plea colloquy, the plea forms, the evidence presented during the proceedings on the Direct Withdrawal Challenges, and our in-court observations of Petitioner, we find that Plea Counsel did not ignore evidence, unlawfully induce Petitioner to plead, or otherwise render ineffective assistance of counsel. As both Plea Counsel credibly testified, they presented Petitioner with the facts and their professional assessments of the evidence, his sentencing exposure if he went to trial and lost, and the global plea offered by the Commonwealth. Far from "ignoring" the evidence, Plea Counsel discussed with Petitioner the strengths and weaknesses of the Commonwealth's evidence as well as his own. Likewise, they advised Defendant that he very well might spend the rest of his life in jail if he went to trial and was convicted of all or even most of the charges. That information was not presented as a threat but, rather, as an accurate statement of Defendant's

outside exposure if he "rolled the dice" and lost. Petitioner could not have made a knowing, voluntary, and intelligent decision regarding the pleas without the information and opinions he was given.

With respect to the lead-up to the pleas, the credible testimony of both Plea Counsel, as well as the plea colloquy conducted by the Court, completely debunks Petitioner's contention that he was rushed, pressured, and threatened into pleading. On the contrary, Petitioner was given ample time to think about the pleas, review the plea forms, and voluntarily make his own decision to plead.

What happened in these cases is clear: In case No. 613, Petitioner had a potentially defensible case, but nonetheless had substantial exposure if he went to trial and was convicted. In Case No. 657, Petitioner had a much less defensible case and far greater exposure. The Commonwealth offered a global "all or nothing" plea that minimized and capped Petitioner's sentencing exposure. Plea Counsel thoroughly and properly discussed the pleas with Petitioner and left the final decision to him. Petitioner accepted the deal, voluntarily and intelligently entered the pleas, was sentenced in accordance with the agreed upon sentencing structure, and is now experiencing sentence remorse. However, sentencing remorse does not permit withdrawal of valid pleas. In fact, it is exactly what the post-sentence manifest injustice standard is designed to prevent.

In sum, Petitioner's ineffectiveness claims lack merit. Plea Counsel neither ignored evidence nor unlawfully induced unknowing and involuntary pleas. On the contrary, Petitioner's pleas were entered knowingly, voluntarily, and intelligently. Manifest injustice has not been demonstrated.

For these reasons, we enter the following

COURT OF COMMON PLEAS OF MONROE COUNTY

FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	**Nos. 613 CRIMINAL 2018**
	:	**657 CRIMINAL 2018**
v.	:	
	:	
JOSE ABREU	:	**PCRA**
	:	
DEFENDANT	:	

ORDER DENYING P.C.R.A. PETITIONS

AND NOW, this 17th day of March, 2023, it is **ORDERED** that in each of the captioned cases Defendant's petition for relief under the Post-Conviction Relief Act, 42 Pa. C.S.A. Sections 9541-9546, is **DENIED**.

Defendant is advised that in each case he has thirty (30) days from the date this Order is entered on the docket in which to file an appeal to the Superior Court.

BY THE COURT

JONATHAN MARK, J.

Filed
03/17/2023 11:43AM
Court of Common Pleas

cc: District Attorney (MTR)
Earl Raynor, Esq.