



two bundles of heroin as well as numerous cell phones in the room where the Defendant predominately stayed. Id. at 20-21.

Defendant was originally represented at trial by Attorney Ravi Marfatia. On January 21, 2016, the Defendant hired Attorney Andrea Pulizzi. The only pretrial motion filed on behalf of the Defendant was a motion for discovery. Attorney Pulizzi filed a Motion to Continue the trial on the grounds that she did not have adequate time to prepare for the trial, but this motion was denied.

On January 26, 2016 the Defendant was found guilty on all counts by a jury before the Honorable J. Michael Williamson, Senior Judge. On March 29, 2016, Defendant was sentenced to a minimum of twenty-five (25) months to a maximum of sixty (60) months in a state correctional facility for the Possession with Intent to Deliver charge. No sentence was imposed for the Possession of a Controlled Substance charge, as the Court found that it merged with the first count. Defendant was additionally sentenced to a concurrent term of six (6) months to twelve (12) months for the Possession of Drug Paraphernalia charge.

Defendant filed no direct appeal to the Pennsylvania Superior Court. On June 13, 2016, Attorney Pulizzi filed a Post-Conviction Relief Act Petition on behalf of the Defendant. In the Petition, Attorney Pulizzi alleged that Attorney Marfatia provided ineffective assistance of counsel for failing to file a Motion to Suppress the evidence of the search of the Defendant's home as unconstitutional.

On September 14, 2016, this Court entered an Order appointing Attorney Trisha Hoover Jasper as PCRA Counsel for Defendant in accordance with Pa. R. Crim. P. 904(C). In its Order, this Court directed Attorney Hoover Jasper to file either

an Amended PCRA Petition or a Turner/Finley “no merit” letter. On December 7, 2016, Attorney Hoover Jasper filed an Amended PCRA Petition, incorporating Attorney Pulizzi into the alleged ineffective assistance of counsel claim.

Attorney Hoover Jasper then filed a Turner/Finley letter on March 15, 2017, averring that the Defendant would be unsuccessful in a PCRA petition that alleged that prior counsel lacked a reasonable basis for not pursuing a suppression claim. After thorough review, this Court finds that there are no genuine issues of material fact, that the Defendant is not entitled to post-conviction collateral relief, and that no purpose would be served by any further proceedings.

## **Discussion**

### ***1) Timeliness of Amended PCRA Petition.***

Under the Post Conviction Relief Act, a defendant has one (1) year after his judgment of sentence becomes final to request Post Conviction Relief unless circumstances exist that prevented the defendant from filing within one year, in which case he must file within sixty (60) days of when his claim could have been presented. 42 Pa.C.S. §§ 9545(b)(1)(i)-(iii). Defendant was sentenced on March 29, 2016 and filed no direct appeal to the Pennsylvania Superior Court. Because the Defendant had a period of thirty (30) days to file a Notice of Appeal with the Pennsylvania Superior Court<sup>4</sup>, his judgment of sentence became final on April 28, 2016. Therefore, the PCRA Petition filed November 4, 2016, is timely<sup>5</sup>.

---

<sup>4</sup> Pa. R.A.P. 903

<sup>5</sup> 42 Pa.C.S. § 9545(b)(3).

## **2) Eligibility for Relief Under the PCRA.**

Incarcerated defendants, or those on probation or parole for a crime, are eligible for relief under the PCRA when they have pled and proved by a preponderance of the evidence the following four components:

- 1) Defendant has been convicted of a crime under the laws of PA and is at the time relief is granted currently serving a sentence of imprisonment, probation or parole for the crime.
- 2) Conviction or sentence resulted from one or more of the following
  - i. Violation of the US or PA Constitution that so undermined the truth determining process that no reliable adjudication of guilt or innocence could have taken place.
  - ii. Ineffective assistance of counsel – same undermining the truth determining process standard as above “undermined the truth determining process that no reliable adjudication of guilt or innocence could have taken place”.
  - iii. Plea of guilty induced where inducement caused Defendant to plead guilty when he is innocent.
  - iv. Improper obstruction by government officials of petitioner’s appeal right where a meritorious appealable issue was properly preserved in the Trial Court.
  - v. The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial had it been introduced.
  - vi. Imposition of sentence greater than the lawful maximum.
  - vii. Proceeding in a tribunal without jurisdiction.
- 3) Allegation of the error has not been previously litigated or waived; and
- 4) Failure to litigate the issue prior to or during trial, during unitary review or on direct appeal could not have been the result of any rational, strategic, or tactical decision by counsel<sup>6</sup>.

Here, the Defendant avers, pursuant to 42 Pa.C.S. § 9543(2)(ii) *supra*, that both his trial counsel, Attorneys Marfatia and Pulizzi, provided assistance of counsel which was so ineffective that the truth-determining process was undermined such that no reliable adjudication of guilt could have taken place. Defendant contends that this

---

<sup>6</sup> 42 Pa.C.S. § 9543.

ineffectiveness was the result of Attorneys Marfatia and Pulizzi's failure to file a Motion to Suppress the evidence of the search of the Defendant's home on the grounds that the search was unconstitutional. Further, the Defendant avers, pursuant to 42 Pa.C.S. § 9543(4) *supra*, that the failure to pursue a motion to suppress was not the result of any rational, strategic, or tactical decision by counsel.

**3) *Ineffective Assistance of Counsel for Failure to Raise a Claim on a Motion to Suppress.***

The Court's standard of review when evaluating a claim of ineffective assistance of counsel is unambiguous and has remained relatively unaltered since its promulgation in Commonwealth v. Pierce, 527 A.2d 973 (Pa. 1987), in which the Supreme Court of Pennsylvania adopted the standard of review developed by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668 (1984). The court in Commonwealth v. Sneed, 899 A.2d 1067, 1076 (Pa. 2006) held, in relevant part:

[T]he constitutional ineffectiveness standard requires the defendant to rebut the presumption of professional competence by demonstrating that: (1) his underlying claim is of arguable merit; (2) the particular course of conduct pursued by counsel did not have some reasonable basis designed to effectuate his interests; and (3) but for counsel's ineffectiveness, there is a reasonable probability that the outcome of the proceedings would have been different.

Id. (citations omitted). If any of the three prongs necessary to succeed on a claim of ineffective assistance of counsel is not satisfied, the claim must be rejected as a whole. Id. (citing Pierce, 786 A.2d at 221-23). Further, trial counsel is presumed effective, and the burden of proving otherwise is on the defendant. Commonwealth v. Rollins, 738 A.2d 435 (Pa. 1999).

As the three prongs for ineffective assistance of counsel apply specifically to the failure to file a suppression motion, the Pennsylvania Superior Court has held, regarding merit, that “[t]he failure to file a suppression motion under some circumstances may be evidence of ineffective assistance of counsel. However, if the grounds underpinning that motion are without merit, counsel will not be deemed ineffective for failing to so move.” Commonwealth v. Metzger, 441 A.2d 1225, 1228 (Pa. Super. 1981). Regarding the ‘reasonable basis’ and ‘prejudice’ prongs, the Superior Court has held that “the defendant must establish that there was no reasonable basis for not pursuing the suppression claim and that if the evidence had been suppressed, there is a reasonable probability the verdict would have been more favorable.” Commonwealth v. Arch, 654 A.2d 1141, 1143 (Pa. Super. 1995) (citing Commonwealth v. Melson, 556 A.2d 836, 839 (Pa. Super. 1989)).

***a. Arguable Merit of the Claim.***

As indicated *supra*, a claim of ineffective assistance of counsel pursuant to the Post Conviction Relief Act will have merit if the underlying suppression motion would have been merited. Metzger, 441 A.2d at 1228. As such, the analysis in the present case turns to whether the underlying suppression motion sought by the Defendant would have been merited.

Pursuant to 61 Pa.C.S. § 6153(d)(2), a property search of a parolee’s home “may be conducted by an agent if there is reasonable suspicion to believe that the real or other property in the possession of or under the control of the offender contains contraband or other evidence of violations of the conditions of supervision.”

Id. The existence of reasonable suspicion, in accordance to 61 Pa.C.S. §§ 6153(d)(6)(i)-(viii), is determined by taking into account the following factors:

- (i) The observations of agents.
- (ii) Information provided by others.
- (iii) The activities of the offender.
- (iv) Information provided by the offender.
- (v) The experience of agents with the offender.
- (vi) The experience of agents in similar circumstances.
- (vii) The prior criminal and supervisory history of the offender.
- (viii) The need to verify compliance with the conditions of supervision.

Id.

In his Amended PCRA Petition, Defendant alleges that “[o]ther than the statement that [the Defendant’s] name was on the money orders, there was no testimony at trial that the officers could actually connect the money orders to Mr. Cooley.” Amended PCRA Petition (“Petition”), 12/7/2016, at 4. Therefore, the Petition continues, pursuant to the eight factors listed *supra*, the Parole Officers who effected the search did not have the requisite reasonable suspicion to conduct a property search. Id.

In her Turner/Finley letter, however, Attorney Hoover Jasper conceded that following the Defendant’s first PCRA conference, Attorney Hoover Jasper contacted Agent Frederick. Id. at 6. Agent Frederick advised Attorney Hoover Jasper that what precipitated the search of the Defendant’s home was not simply the fact that money orders were found made out to him in another parolee’s home. Id. Agent Frederick knew that the parolee whose house the money orders were found in was a drug user and drug dealer. Id. Agent Frederick wanted to investigate where the money was coming from, as he was not employed, had prior drug use, and was on supervision for drug dealing. Id.

Simply finding money orders made out in a parolee's name would independently be insufficient to conclude that reasonable suspicion existed to search that parolee's house. This Court is not convinced, however, that reasonable suspicion to search a parolee's home does not exist when money orders in large sums to a parolee known to deal drugs are found in the home of a parolee known to use drugs.

As the aforementioned facts apply to the factors under 61 Pa.C.S. §§ 6153(d)(6), the agents involved in the search observed high-value money orders made out by a known drug user to a known drug dealer. Information regarding transactions between two parolees was therefore provided, inadvertently or otherwise, by the parolee whose home contained the money orders. The Defendant was known to deal drugs, and in fact was being supervised because of a history of drug dealing. Turner/Finley letter, 3/15/17, at 6. Agent Frederick had experience with the Defendant, having been his supervising parole officer from his date of release relating to another charge until his arrest in the present case. Jury Trial, 1/26/2016, at 19. Finally, the agents' need to verify compliance is buttressed by the fact that the location of the search which yielded the contraband in the present case was the Defendant's "approved residence." *Id.* at 20.

This Court finds that the particular circumstances surrounding the search of the Defendant's home, including the known backgrounds of both the sender and recipient of the money orders, would have been sufficient to result in the denial of a motion to suppress had it been filed on the Defendant's behalf. Because the Defendant avers that Attorneys Marfatia and Pulizzi were ineffective for failing to file a motion to suppress on the grounds that the search was unconstitutional when such an



argument would have been fruitless, this Court finds that the Defendant's claim of ineffective assistance of counsel has no merit, and the sought post-conviction relief must be denied on these grounds.

***b. Reasonable Basis Designed to Effectuate Client's Interests.***

In order to satisfy the 'reasonable basis' prong in an assertion of ineffective assistance of counsel as it relates to the failure to file a suppression motion, Defendant's counsel must have had no reasonable basis whatsoever for not pursuing the suppression claim. Arch, 654 A.2d at 1143. The Pennsylvania Supreme Court has often premised its ineffective assistance of counsel analysis on the fact that the reasonable basis prong uses an objective reasonableness standard rather than a subjective standard. See, e.g., Commonwealth v. Tharp, 101 A.3d 736, 778 (Pa. 2014); Commonwealth v. Champney, 65 A.3d 386, 386 (Pa. 2013); Commonwealth v. Koehler, 36 A.3d 131, 132 (Pa. 2012). This proposition lends generously to the conclusion reached by in Koehler that "[w]ith regard to the reasonable basis prong, we will conclude that counsel's chosen strategy lacked a reasonable basis *only if* the petitioner proves that the alternative strategy not selected offered a potential for success substantially greater than the course actually pursued." Id. (emphasis added).

These two propositions considered in tandem lead to the conclusion that if a defendant is not prejudiced by the decision (i.e. if there is not a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," Strickland, 466 U.S. at 694) then counsel must have had an objective reasonable basis underlying its strategy. As analyzed *infra*, the

Defendant was not prejudiced by his counsel's failure to bring a state due process argument that a showing of bad faith was not needed. Therefore, the recent language in Koehler tying the prejudice and reasonable basis prongs inextricably together requires the conclusion that Attorneys Marfatia and Pulizzi had an objective reasonable basis upon which they did not file a suppression motion more specifically pursuing a state due process claim. Koehler, 36 A.3d at 132.

***c. Prejudice of the Defendant's Right to a Fair Trial.***

As identified in Arch, 654 A.2d at 1143, prejudice exists in an ineffective assistance of counsel claim with regards to the suppression of evidence if, had the claim been brought originally, "there is a reasonable probability the verdict would have been more favorable." Id. (citing Melson, 556 A.2d at 839). However, in the present case, there is not a reasonable probability that the verdict would have been more favorable for the Defendant if, as he is positing, his trial counsel had filed a motion to suppress the evidence of the search of the Defendant's home as unconstitutional. This is because, as identified in the analysis for the 'merit' prong *supra*, a motion to suppress would have had no merit in the present case and would not have succeeded even if filed. As such, the Defendant was not prejudiced by his counsel's failure to file a motion to suppress the evidence of the search of the Defendant's home as unconstitutional.

***4) Whether Failure to Pursue a Motion to Suppress was the Product of a Rational, Strategic, or Tactical Decision by Counsel***

In accordance with 42 Pa.C.S. § 9543(4), the fourth requisite element which must be pled and proved by a preponderance of the evidence is that "[f]ailure to litigate the issue prior to or during trial, during unitary review or on direct appeal *could*

*not have been* the result of any rational, strategic, or tactical decision by counsel.” Id. (emphasis added). However, in the present case, there is certainly a significant probability that either or both of the Defendant’s counsel at trial rationally based their decision not to file a motion to suppress on their confidence that the motion would be denied when information regarding the background of both parolees arose during the suppression hearing.

Nothing in the record indicates with certainty that either trial counsel did, in fact, know of these background facts about the parolees that could have arisen during a suppression hearing. However, the Request for Pretrial Discovery which was served by the Defendant’s first counsel, Attorney Marfatia, to the District Attorney’s office on June 26, 2015 lends to the conclusion that Defendant’s counsel was aware that a motion to suppress would have been fruitless, and therefore made a rational decision not to file one. Therefore, this Court finds that the Defendant has failed to satisfy 42 Pa.C.S. § 9543(4), and his sought post-conviction relief must be denied on these grounds as well.

**ORDER**

**AND NOW**, this 13th day of July, 2017, it is hereby ORDERED and DIRECTED as follows:

1. Defendant is hereby notified pursuant to Pennsylvania Rule of Criminal Procedure No. 907(1), that it is the intention of the Court to dismiss his PCRA petition unless he files an objection to that dismissal within twenty (20) days of today's date.
2. The **Motion to Withdraw as Counsel** filed **March 15, 2017**, is hereby **GRANTED** and Trisha Hoover Jasper, Esq. may withdraw her appearance in the above captioned matter.

BY THE COURT,

Nancy L. Butts, P.J.

cc: DA  
Trisha Hoover Jasper, Esq.  
Stacey T. Cooley [#LE3503]  
SCI-Huntingdon  
1100 Pike St.  
Huntingdon, PA 16654  
Law clerk (S. Roinick)