

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

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| <b>COMMONWEALTH</b>     | <b>: No. CR-17-2013</b>                       |
|                         | <b>: CR-35-2013</b>                           |
| <b>vs.</b>              | <b>: CR-63-2013</b>                           |
|                         | <b>: CR-1382-2013</b>                         |
|                         | <b>:</b>                                      |
| <b>REUBEN McDOWELL,</b> | <b>: Notice of Intent to Dismiss PCRA and</b> |
| <b>Defendant</b>        | <b>: Order Granting Counsel's Motion to</b>   |
|                         | <b>: Withdraw</b>                             |

**OPINION AND ORDER**

This matter came before the court on Reuben McDowell's Post Conviction Relief Act (PCRA) petition.

In CR-17-2013, Trooper Matthew Sweet filed a criminal complaint against Reuben McDowell (hereinafter "McDowell") on December 20, 2012, charging McDowell with assault, burglary, robbery, criminal trespass, stalking, theft, receiving stolen property, simple assault, recklessly endangering another person and harassment.

The charges relate to an incident involving J.H., an 86 year old female. On December 12, 2012, she went to the Giant Shopping Center in Loyalsock to buy groceries. She returned to her house at approximately 1:00 p.m. While in the process of bringing her groceries into the house from her car, she noticed the handle on the front door being moved. Thinking it was the mailman, she went to open the door, but was pushed back and fell on the floor. McDowell kicked her several times, located her purse, took her wallet and an envelope containing cash, and then left the home. Through the use of a photo lineup or array on December 20, 2012, the victim identified McDowell as the individual who robbed her.

In CR-35-2013, Trooper Sweet filed a criminal complaint against McDowell on December 21, 2012, charging McDowell with forgery, identity theft, theft from a motor

vehicle, access device fraud, and theft by unlawful taking. Under this Information, P.E., an 86 year old female, was grocery shopping at Aldi's in Loyalsock Township on December 12, 2012. While she was returning the shopping cart, McDowell stole her purse from her vehicle. Among the items taken from the purse was a credit card, which was subsequently used at Weis Markets. The surveillance video from Weis Markets showed an African American individual with sunglasses, a black hat and black coat. Similar clothing was eventually seized from a vehicle McDowell was operating. Furthermore, a subsequent search of McDowell's residence, pursuant to a search warrant, yielded items that were purchased on December 13 with the victim's credit card. Moreover, when McDowell was taken into custody, he admitted to the crimes. Specifically, he told police officers that while the victim was returning her cart, he saw an opportunity to take the purse. He removed it from the car and ultimately used the credit card at various locations.

In CR-62-2013, Agent Raymond Kontz, III, of the Williamsport Bureau of Police, filed a criminal complaint against McDowell on December 31, 2012, charging him with robbery, theft by unlawful taking, receiving stolen property, recklessly endangering another person, simple assault, and theft from a motor vehicle. The crimes arose out of an incident on December 7, 2012. On December 7, 2012, while returning from grocery shopping, eighty-two year old M.M. stopped to check the movie times at the Williamsport Cinema Center. She came in contact with McDowell as she was getting into her car. A struggle ensued while he was attempting to take the purse. He eventually obtained the purse after pressing a pressure point on the victim's hand. On December 22, 2012, the victim identified McDowell as the perpetrator from a photo array.

While subsequently in custody, McDowell admitted that he saw the victim in

the parking lot area and acknowledged that she was older. He thought that he could take her purse without having to confront her but was surprised when she fought.

In CR-1382-2013, the police filed a criminal complaint against McDowell on February 13, 2013, charging him with robbery, stalking, theft by unlawful taking, receiving stolen property, harassment, burglary, criminal trespass, access device fraud and theft from a motor vehicle. The crimes occurred between December 9, 2012 and December 16, 2012. During that span of time, four more women in their eighties had their purses stolen from their person or their residence after shopping at either the Wegman's, Aldi's or Giant grocery stores.

The first was A.F. In December of 2012 after returning to her home from the library and while trying to get into her apartment McDowell grabbed her purse, stole it, ran to his car and drove away. A.F. was 85 years old and resided in Williamsport. She had previously been shopping at the Wegman's grocery store in Williamsport.

On December 11, 2012 at approximately noon, M.C., then 83 years old was unloading groceries. She had been previously shopping at the Giant in Loyalsock. While putting away her groceries, she placed her purse on a chair inside her front door. After she had put all of the groceries on the table, she started looking for her purse, but it was gone. It was eventually returned to her a few hours later by a third party who indicated that it was found on the road "not too far." The cash in the purse had been taken.

A few hours later, at approximately 4:30 in the afternoon, McDowell entered the residence of M.E., an 84 year old female who also resided in the Loyalsock area, shortly after she returned home from the Giant grocery store. He stole money from M.E.'s purse, which was on the kitchen counter.

On December 16, 2012 at approximately 4:00 in the afternoon D.M., an 82 year old female, had her purse stolen from out of her vehicle at the Aldi's parking lot. She was returning her cart to the designated cart collection area. She observed the actor removing her purse and fleeing in a vehicle. Her purse was found nearby her residence and returned to her. Her credit cards had been used.

McDowell waived his right to counsel and represented himself during the litigation of pretrial motions. He did, however, have the assistance of standby counsel. Just before trial commenced, McDowell asked to be represented by counsel. At that point, the court appointed standby counsel to represent McDowell.

A jury trial was held March 14-18, 2016.

Under information 17-2013, the jury found McDowell guilty of burglary, robbery, criminal trespass, stalking, theft by unlawful taking, receiving stolen property, simple assault and recklessly endangering another person.

Under information 35-2013, the jury found McDowell guilty of forgery, identity theft, theft from a motor vehicle, access device fraud, and theft by unlawful taking.

Under information 63-2013, the jury found McDowell guilty of robbery, theft by unlawful taking, receiving stolen property, recklessly endangering another person, simple assault, and theft from a motor vehicle.

Under information 1382-2013, the jury found McDowell guilty of one count of robbery, three counts of theft by unlawful taking, three counts of receiving stolen property, one count of burglary, one count of criminal trespass, one count of access device fraud, and one count of theft from a motor vehicle.

On July 6, 2016, the court sentenced McDowell to an aggregate period of

incarceration in a state correctional institution, the minimum of which was 26 years and the maximum of which was 64 years.

McDowell appealed. Among the issues asserted on appeal, McDowell challenged the court's denial of his motion to dismiss pursuant to Rule 600 and its denial of his omnibus pretrial motion. The Pennsylvania Superior Court affirmed McDowell's judgment of sentence in a decision issued on January 22, 2018. The Pennsylvania Supreme Court denied McDowell's petition for allowance of appeal on July 31, 2018.

McDowell filed a timely PCRA petition. The court appointed counsel to represent McDowell and directed counsel to file either an amended PCRA petition or a *Turner/Finley*<sup>1</sup> no merit letter. Counsel filed a no merit letter.

After an independent review of the record, the court finds that McDowell's claims are previously litigated, waived or lack merit and that he is not entitled to relief as a matter of law.

Most of McDowell's claims are an attempt to re-litigate his Rule 600 claims. In order to be eligible for relief, McDowell must plead and prove that the allegation of error has not been previously litigated or waived. 42 Pa. C.S.A. §9543(a)(3). An issue has been previously litigated if the highest court in which the petitioner could have had review as a

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<sup>1</sup> *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988); *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988)(en banc).

matter of right has ruled on the merits of the issue. 42 Pa.C.S.A. §9544(a)(2). The Pennsylvania Superior Court is the highest court in which the petitioner could have review as a matter of right. McDowell pursued his Rule 600 claim on direct appeal and the Superior Court rejected it. Therefore, McDowell's claims that the court abused its discretion or otherwise erred in deciding his Rule 600 have been previously litigated.

To the extent that McDowell attempts to assert new or different legal theories for his Rule 600 claims, those claims are waived. An issue is 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 postconviction proceeding. 42 Pa. C.S.A. §9544(b). It must be remembered that McDowell represented himself during the litigation of his Rule 600 motions. Therefore, it was incumbent upon McDowell to properly raise and litigate these claims prior to trial.<sup>2</sup>

Even assuming for the sake of argument that the Rule 600 claims were not previously litigated or waived, McDowell still would not be entitled to relief. With respect to McDowell's complaints regarding the time frame from March 1, 2013 to May 31, 2013, in addition to the email between the prosecutor and defense counsel, the court notes that during this time frame the last set of charges were awaiting a preliminary hearing. The preliminary hearing was continued twice –once at the request of MDJ Whiteman and once at the request of the Commonwealth due to the unavailability of a prosecution witness. At one of the hearings on McDowell's motions, the prosecutor explained that one of the victims was

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<sup>2</sup>The court also notes that a defendant who waives his right to counsel and represents himself cannot later seek to revive defaulted claims by alleging his own ineffectiveness or the ineffectiveness of his standby counsel. *Commonwealth v. Blakeney*, 631 Pa. 1, 108 A.3d 739, 749 (2014); *Commonwealth v. Spatz (IV)*, 610 Pa. 17, 18 A.3d 244, 270 (2011).

unavailable because she had broken her hip. As these circumstances were not within the Commonwealth's control, the time attributable to these continuances would be excludable or excusable delay regardless of whether defense counsel agreed to them. *Commonwealth v. Bradford*, 616 Pa. 122, 46 A.3d 693 (2012)(delay caused by Magisterial District Judge's failure to transmit papers to the court of common pleas was judicial delay beyond the Commonwealth's control and not as a result of a lack of due diligence by the Commonwealth); *Commonwealth v. Weaver*, 525 A.2d 785, 788 (Pa. Super. 1987)(the Commonwealth cannot be held to be acting without due diligence when a witness becomes unavailable due to illness, vacation or other reason not within the Commonwealth's control).

McDowell also attempts to fault appellate counsel for waiver of the theory related to defense counsel's unauthorized decisions with respect to continuance requests that the Superior Court found was being raised for the first time in the appellate brief. However, in addition to finding waiver, the Superior Court noted that it was duty-bound to follow binding decisions issued by the Pennsylvania Supreme Court which have held that counsel may exercise his or her sound discretion and make informed choices for a defendant with respect to Rule 600 without obtaining the specific permission of clients for continuance requests before they are granted. *Commonwealth v. McDowell*, 2062 MDA 2016, at 10 n.3. In his PCRA petition, McDowell contends the trial court erred in relying on the same or similar decisions. The trial court is duty-bound to follow not only the decisions of the Pennsylvania Supreme Court but also the decisions of the Pennsylvania Superior Court and Commonwealth Court. Therefore, this claim lacks merit and McDowell did not suffer any prejudice from appellate counsel's failure to include this issue in the concise statement of matters complained of on appeal.

McDowell also claims that trial counsel was ineffective and his performance fell below the standards of adequate representation due to his lack of trial experience and failure to adjourn the criminal proceedings until he had an opportunity to review the police reports, the victims' statements and the identification procedures utilized by the police.

Counsel is presumed effective, and a petitioner must plead and prove otherwise. To do so, a petitioner must show that (1) the underlying claim has arguable merit; (2) counsel had no reasonable basis for his or her action or inaction; and (3) the petitioner suffered prejudiced, i.e., there is a reasonable probability the outcome of the proceedings would have been different but for counsel's error. *Commonwealth v. Isaac*, 205 A.3d 358, 362-363 (Pa. Super. 2019), citing *Commonwealth v. Reyes-Rodriguez*, 111 A.3d 775, 779 (Pa. Super. 2015) (en banc). Mere inexperience of counsel is not equivalent to ineffectiveness. *Commonwealth v. Rollins*, 558 Pa. 532, 738 A.2d 435, 441 (1999); *see also Commonwealth v. Martin*, 607 Pa. 165, 5 A.3d 177, 192 (2010).

McDowell's claims are belied by the record. In an attempt to delay the trial in this case, McDowell refused to change out of his prison clothes and waited until the morning of trial to notify the court that he no longer wished to represent himself and wanted to reinstate his right to counsel. Trial Transcript, 3/14/2016, at 5-35. The court appointed standby counsel to represent McDowell. Rather than continue a trial for which a jury and witnesses were already present at the courthouse, the court merely delayed the start of the trial for several hours until the afternoon. The prosecutor named the witnesses she would call that afternoon and counsel indicated he would be prepared to cross-examine them. Trial Transcript, 3/14/2016, at 31-33. During the discussions regarding the appointment of counsel and when trial would commence, counsel specifically stated that he had reviewed the



evidence and he would be prepared to start the trial that afternoon. Trial Transcript, 3/14/2016, at 14, 31, 34. The court also noted that counsel had a “fairly good handle on the case.” Trial Transcript, 3/14/2016, at 34.

The record also shows that trial counsel appropriately questioned the witnesses. J.H. passed away prior to trial. The court permitted the Commonwealth to introduce her testimony from the preliminary hearing. Trial Transcript, 3/14/2016, at 135-138. J.H. described her assailant as clean shaven and she explained how she identified her assailant through a photo array prepared by the police. Trial Transcript, 3/14/2016, at 151, 154.

Trial counsel cross-examined the troopers regarding McDowell’s appearance and the procedures utilized during J.H.’s identification her assailant. Trooper Matthew Sweet testified that McDowell did not have facial hair but he may have had some stubble on the date he was arrested. Trial Transcript, 3/15/2016, at 55. Trooper James Wool testified that McDowell had facial hair and he did not appear clean shaven in the photograph used in the photo array. Trial Transcript, 3/15/2016, at 118. Trial counsel also questioned Trooper Wool about the manner in which he showed J.H. the photographs and whether his procedures followed federal or Department of Justice guidelines. Trial Transcript, 3/15/2016, at 114-118.

McDowell’s complaints about counsel failing to question the troopers about his arrest or whether he had actually attempted a wrongful act at the time of his arrest are also unfounded. These issues related to McDowell’s pretrial motions, not the issues the jury was deciding at his trial. McDowell was not charged with any offenses relating to his arrest or the events leading up to his arrest. Instead, the troopers’ actions in following and stopping McDowell’s vehicle prevented McDowell from committing any additional crimes.

Finally, in light of McDowell's statements to the police in which he admitted committing most of the offenses in these cases, McDowell cannot establish that trial counsel's alleged acts or omissions prejudiced him.

**ORDER**

AND NOW, this \_\_\_ day of January 2020, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the parties are hereby notified of this court's intention to dismiss McDowell's petition without holding an evidentiary. McDowell may respond to this proposed dismissal within twenty (20) days. If no response is received within that time period, the court will enter an order dismissing the petition.

The court also grants PCRA counsel's motion to withdraw. McDowell may represent himself or hire private counsel to represent him, but the court will not appoint counsel to represent McDowell.

By The Court,

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Marc F. Lovecchio, Judge

cc: Ryan Gardner, Esquire (DA)  
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