

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : **No. CR-467-2016**
:
vs. :
:
:
RASHEED BOND, : **Notice of Intent to Dismiss PCRA**
Defendant : **Without Holding An Evidentiary Hearing**

OPINION AND ORDER

On February 8, 2016, Defendant was charged with possession with intent to deliver a controlled substance and related counts. Following a non-jury trial on August 24, 2018, Bond was found guilty of Count 1, possession with intent to deliver, Count 2, possession of a controlled substance, Count 3, possession of a small amount of marijuana and Count 4, possession of drug paraphernalia. On October 31, 2018, Bond was sentenced to 12 ½ months to 3 years on Count 1 and a consecutive period of one-year probation on Count 4.

Bond appealed and by decision dated July 2, 2020, his appeal was denied and the judgment of sentence was affirmed. On January 4, 2021, Bond filed a pro se PCRA petition. Counsel was appointed. On March 9, 2021, counsel filed a petition to withdraw as well as a “Turner/Finley No Merit Letter.”

While Bond generally claims eligibility for relief under the PCRA because of ineffective assistance of counsel and the unavailability at the time of trial of exculpatory evidence, Bond’s specific claim is that he is entitled to relief under the “after-discovered evidence” provision of the PCRA. Specifically, Bond claims that subsequent to his trial, Officer Eric Derr of the Williamsport Bureau of Police, was criminally charged with unsworn falsification to authorities, tampering with public records and obstruction of law.

Bond claims that because Officer Derr was charged with making false statements, he is dishonest, and he lied in this case, Bond's charges should be dismissed.

Preliminarily, a PCRA petitioner is not automatically entitled to an evidentiary hearing. *Commonwealth v. Williams*, 244 A.3d 1281, 1287 (Pa. Super. 2021).

The right to an evidentiary hearing on a post-conviction is not absolute. It is within the PCRA court's discretion to decline to hold a hearing if the petitioner's claim is patently frivolous and has no support either in the record or in evidence. It is the responsibility of the reviewing court on appeal to examine each issue raised in the PCRA petition in light of the record certified before it in order to determine if the PCRA court erred in its determination that there were no genuine issues of material fact in controversy and in denying relief without conducting an evidentiary hearing.

Id., quoting *Commonwealth v. Miller*, 102 A.3d 988, 992 (Pa. Super. 2014) (citations omitted).

To be eligible for relief under the PCRA, the petitioner must plead and prove by a preponderance of the evidence that his conviction or sentence resulted from one or more of the seven specifically enumerated circumstances listed in 42 Pa. C.S.A. § 9543(a)(2). *Commonwealth v. Hawkins*, 2020 PA Super 280, 2020 WL 7251072, *4 (December 10, 2020).

The "after-discovered evidence" provision of the PCRA states that a claim alleging "the unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced" is cognizable. 42 Pa. C.S.A. § 9543(a)(2)(vi). In order to establish such a claim, a petitioner must prove that "(1) the evidence has been discovered after trial and it could not have been obtained at or prior to trial through reasonable diligence; (2) the evidence is not cumulative;

(3) it is not being used solely to impeach credibility; and (4) it would likely compel a different verdict.” *Commonwealth v. Cox*, 146 A.3d 221, 228 (Pa. 2016).

During the trial in this matter, Officer Derr testified that on February 8, 2016, he was on duty in full uniform, alone and in a marked patrol unit. While on duty, he observed a sedan with heavily tinted windows. He continued through the parking lot and positioned his vehicle on 6th Avenue about 80 to 100 yards away. He could not see the driver of the vehicle and suspected the driver was inside the convenience store outside of which the vehicle was parked.

When the vehicle pulled out of the parking lot, the driver did not use his turn signal before he drove onto another street. Officer Derr believed the driver had committed a turn signal violation, and he was certain that the window tint was a violation. The vehicle only traveled on the roadway for a short distance before the driver pulled the vehicle over to the curb as if to park. Officer Derr then activated his lights to conduct a traffic stop for the window tint and failure to use a turn signal.

Officer Derr approached the vehicle and made contact with Bond. Based upon his observations as well as Bond’s statement that he had smoked “weed” within an hour of driving, Derr decided to conduct field sobriety tests to determine if Bond was under the influence of marijuana. Officer Derr removed Bond from the vehicle and conducted a pat down for weapons.

During the pat down, Derr felt an item that he immediately recognized as narcotics packaging in Bond’s groin area. Derr immediately took Bond into custody. Derr eventually removed a cigar package from Bond which contained marijuana. He also observed

seven bundles of heroin inside a plastic sandwich bag on the rear passenger floor board of the patrol car. Officer Derr subsequently searched Bond's vehicle and discovered a total of eight cell phones and \$348.00.

On or about December 15, 2020, Officer Derr was criminally charged for incidents that allegedly occurred in June of 2015. See CP-41-CR-222-2021. The charges include unsworn falsification to authorities, tampering with public records and obstruction of law. Bond asserts that because Derr was charged with making false statements for an incident that occurred approximately a year prior to his charges, that his charges should be dismissed. Bond also asserts that the fact that Officer Derr has these types of charges means he is dishonest and lied in this case.

The *Turner/Finley* decisions provide the manner for post-conviction counsel to withdraw from representation. The holdings of those cases mandate an independent review of the record by competent counsel before a PCRA court or appellate court can authorize an attorney's withdrawal. The necessary independent review requires counsel to file a "no merit" letter detailing the nature and extent of counsel's review and list each issue the petitioner wishes to have examined explaining why these issues are meritless. The PCRA court, then must conduct its own independent evaluation of the record and agree with counsel that the petition is without merit. *Commonwealth v. Widgens*, 29 A.3d 816, 817-18 (Pa. Super. 2011).

Additionally, counsel is required to contemporaneously serve upon counsel's client the no merit letter and application to withdraw along with a statement that if the trial court grants counsel's withdraw request, the client may proceed pro se or with a privately

retained attorney. *Commonwealth v. Mazzy*, 141 A.3d 509, 511 (Pa. Super. 2016).

In this case, the pleadings do not raise material issues of fact. The court is certain of the total lack of merit of the petition.

The evidence of Officer Derr's arrest could not have been obtained prior to the conclusion of trial by the exercise of reasonable diligence.

However, the evidence is likely inadmissible. Pennsylvania's Rules of Evidence provide that evidence of a crime, wrong, or other act may be admissible to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident", but "in a criminal case, this evidence is admissible only if the probative value of the evidence outweighs its potential for unfair prejudice." Pa. R.E. 404(b)(2).

The pertinent case law permits a police witness to be cross-examined about misconduct as long as the wrongdoing is related to the defendant's underlying criminal charges and establishes a motive to fabricate. *Commonwealth v. Peetros*, 535 A.2d 1026, 1031-33 (Pa. 1987); *Commonwealth v. Dawson*, 405 A.2d 1230 (Pa. 1979); *Commonwealth v. Sullivan*, 402 A.2d 1019 (Pa. 1979); *Commonwealth v. Shands*, 487 A.2d 973 (Pa. Super. 1985).

If the prior police behavior is unrelated to the present matter and irrelevant, the trial court may restrict or preclude questioning on the prior incident. *Commonwealth v. Boczkowski*, 846 A.2d 75, 96 (Pa. 2004); *Commonwealth v. Guilford*, 861 A.2d 365, 369-70 (Pa. Super. 2004); *Commonwealth v. Bright*, 420 A.2d 714, 715-16 (Pa. Super. 1980).

In this particular case, there is no evidence that Officer Derr was convicted of any criminal act. His alleged crimes took place approximately a year prior to Bond's stop and

years before his conviction. Bond has not proffered any probative value to the alleged misconduct of Derr. See *Commonwealth v. Murray*, -- A.3d --, 2021 WL 1046551, *11 (Pa. Super., March 19, 2021).

Moreover, said evidence if admitted would be used solely to impeach Officer Derr's credibility. Bond admits such in his PCRA petition. See *Commonwealth v. Felder*, -- A.3d ---, 2021 WL 610163, (Pa. Super., February 17, 2021).

ORDER

AND NOW, this ____ day of April 2021, upon review of the record in this matter, the parties are hereby notified of this court's intention to dismiss the Petition without holding an evidentiary hearing. Petitioner Rasheed Bond may respond to this proposed dismissal within twenty (20) days. If the court does not receive a response within that time, the court will enter an order dismissing the petition.

By The Court,

Marc F. Lovecchio, Judge

cc: District Attorney
Trisha Hoover Jasper, Esquire
Judge Marc F. Lovecchio
Gary Weber, Esquire
Rasheed Bond, No. QG5924
c/o SCI – Camp Hill
P.O. Box 8837
2500 Lisburn Road
Camp Hill, PA 17001