NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. LAWRENCE MURRELL, JR., Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1862 MDA 2012

Appeal from the Order of October 9, 2012,
in the Court of Common Pleas of Dauphin County,
Criminal Division at No. CP-22-CR-0005102-2006

BEFORE: PANELLA, ALLEN and COLVILLE*, JJ.

MEMORANDUM BY COLVILLE, J.: **FILED JUNE 11, 2013**

This matter is an appeal from the order dismissing Appellant's petition under the Post Conviction Relief Act ("PCRA"). There are numerous issues before us. We affirm the order.

This Court previously summarized the case facts as follows:

> During late 2005, [Appellant], Co-Defendant [ ] Justin Glover and the [decedent], Wesley ("Sonny") Person, were involved in a loan scheme whereby they, with the participation of a Karyn Jackson and others, fraudulently applied for loans with Pennsylvania State Employees Credit Union ("PSECU"). With no intention to repay the loans, Jackson would receive and deposit loan checks, share the proceeds, and default on the loans.

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* Retired Senior Judge assigned to the Superior Court.

In December, 2005, having obtained a fraudulent loan with Glover, Jackson withdrew $20,000 in separate transactions. In the initial transaction in early December, Jackson withdrew $9,000, and gave it to . . . Person, although Jackson had filled out the loan application with Glover. Glover was not present when Jackson withdrew $9,000 of the loan proceeds. Within a few days of Christmas, 2005, Jackson withdrew another $6,000 in cash and gave the majority of the proceeds to Person. In both transactions, Jackson kept a few hundred dollars for herself. When Jackson last saw [Person] on December 23, 2005, he had over $8,000 cash with him.

On the same day, December 23, 2005, Steven Aikens [Person's cousin] and another friend, Abdul McCauley, known as "Koppo[,]" went to Sneaker Villa in Harrisburg. Koppo drove, and dropped off the other two to shop. Person bought two pairs of sneakers, two coats and a hat. Person became inpatient [sic] when he finished shopping, and wanted to be picked up. Aikens called Justin Glover to ask for a ride; Glover inquired as to what they were doing. Aikens replied that Person was shopping. Glover responded that he was not available to pick them up. Person asked Aikens to call Koppo to pick them up. While waiting for their ride, Aikens and [Person] ordered pizza at a nearby pizza shop.

Within a few minutes[,] McCauley arrived and Person put his packages in the trunk of McCauley's car. Unexpectedly, [Appellant] and Glover pulled up in an Accura Legend, and asked for Person[.] McCauley and [Appellant] spoke for a few minutes about real estate; McCauley said he had a cousin interested in real estate, but [Appellant] told him not to call that evening, that he "would be busy." Aikens got into the car with [Appellant]. Aikens attempted to engage [Appellant] in conversation, but [Appellant] gave him an "evil look". Glover and [Person] were outside the car standing near the trunk. Although he had not planned to do so, Person told Aikens that he was going to go to Steelton, and needed to retrieve his things from McCauley's trunk. Aikens asked [Person] if he could have $20. [Person] took out a "wad" of money consisting of a 2½ to 3 inch roll of $50 and $100 bills, and gave Aikens . . . $50. Person, then . . . got into the car with [Appellant] and Glover, with [Appellant] driving. Neither McCauley nor Aikens saw [Person] again.

Later that afternoon, Aikens expected Person to be at home, but he was not. Aikens continued to call Person the rest of the day, but Person did not answer. Nor had [Person's] girlfriend heard from him. In checking Person's house, they saw that the items Person purchased that day had been dropped off, as if hurriedly thrown down. Aikens did not see or hear from [Person] for the remainder of the day.

The next evening, December 24, 2005, while out at a club, Aikens saw Glover. Aikens observed a small split on Glover's lip, which Glover explained as a cold sore.

Having not seen Person since December 23rd, by December 25th, Aikens became very concerned, and believed that something must have happened to Person.

In the early morning hours of December 24, 2005, volunteer firefighter Ashton Chilcoat responded to a call of a reported brush fire along Route 83, between Middletown and Mount Carmel, Maryland. Approaching the area, Mr. Chilcoat saw a car sitting on the side of the road, and a couple standing nearby. Chilcoat could see small flames down a hill off the roadway, which he believed to be a tree stump on fire. He told the couple they could leave, and went down the hill, intending to stomp out the small fire. When he walked closer, he realized that the burning form was a body. When Police and firefighters arrived, the firefighters doused the flames with a small extinguisher so as not to disturb the scene.

Forensic Technician Kathi Michael, with the Baltimore County Police Department[,] was called to the scene to sketch the area and collect evidence to be taken to the lab for analysis. Among the items of evidence retrieved were remnants of drywall, drywall screws, plastic and other construction debris.

The body was transported to the Medical Examiner's office where a forensic examination was conducted, including fingerprinting. On December 28, 2005, the [body] was identified as . . . Person. The autopsy revealed that [Person] sustained multiple gunshot wounds. A gunshot wound sustained to the head was sufficient to cause death within minutes. The examination revealed that

the fire was started after [Person's] death, in that there was no soot in the airways, and the carbon monoxide level was normal.

After identifying the [body] as Person, on December 28, 2005, police contacted Person's girlfriend and friends who had responded to a sketch of Person released to the media. Several of those friends gathered as police came to Steelton to make notification of the death. McCauley and Glover were among those present when police arrived. At the meeting, McCauley told police that he learned of the bank scheme involving Person. Glover appeared nervous and agitated and left.

Police conducted an in depth cellular telephone investigation. Records of phone numbers attributed to [Appellant] and Glover were merged to indicate the timing of phone use, and the location of towers utilized during the calls. The merged records depicted what phones [sic] calls were made at certain locations and at various times. During the period in question, phone calls between Glover and [Appellant's] phones began at approximately noon on December 23, 2005 in Harrisburg and continued throughout the afternoon into December 24th. The sequence and timing of signals received at towers demonstrated a pattern moving in a southerly direction along Route 83 from Harrisburg to Maryland.

Police further investigated by focusing upon a house in Harrisburg being renovated by [Appellant]. [Appellant] owned the house, located at 441 South 13th Street in Harrisburg. From that vacant house, police collected plastic from a basement wall, insulation, a piece of ductwork, drywall screws and debris from the basement. Inspection of the house revealed that the basement floors and walls had been freshly painted. A heating unit was wrapped in clear plastic with duct tape. Crime lab technicians at the scene "luminated" the basement[ ] by applying a liquid spray to walls and ductwork. When illuminated in the dark, blood evidence, if any, would reflect a florescent looking light. Using this method, the ductwork in the basement at 441 South 13th Street demonstrated a strong positive reaction of evidence of blood.

Cassandra Burke, a forensic chemist with the Baltimore County Police Department[,] conducted [a] laboratory examination of

> items of evidence obtained in the investigation. Ms. Burke analyzed materials recovered from the scene where Person's body was found, and compared those with materials obtained from [Appellant's] house at 441 South 13th Street in Harrisburg. Paint chips found near the body and recovered from 441 South 13th Street were chemically, elementally and microscopically consistent with each other, ("consistent" meaning originating from a common source.) The drywall recovered from the body scene and 441 South 13th Street had consistent single and multiple layers of paint. Ms. Burke also tested chunks of plaster present in samples from the body location and from the 13th Street location. The plaster from both locations was a type of animal hair plaster used in construction from the 1930's and 1940's. Plaster from the scene of the body and 441 South 13th Street were microscopically, chemically and elementally consistent with each other.
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> In addition, Baltimore Forensic Biologist Laura Pawlowski examined evidence obtained in the homicide investigation of . . . Person. Ms. Pawlowski conducted an examination of sample stains found on ductwork submitted by police to determine if the stains were blood; Ms. Pawlowski determined they were blood stains. Ms. Pawlowski sent those blood samples, samples of . . . Person's blood obtained during the autopsy, and cell samples from a lighter, to a technology group, Bode Technology, for specialized analysis.
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> Julie Kowalewski, from Bode Technology performed DNA analysis of the forensic evidence samples. Based upon the DNA profile, the blood sample from . . . Person matched the sample stain from the ductwork.

Commonwealth v. Murrell, 996 A.2d 551 (Pa. Super. 2010) (unpublished memorandum at 1-5.)

Appellant was arrested in connection with Person's death. A jury later convicted Appellant of first-degree murder, conspiracy and abuse of a corpse. He was sentenced and then filed post-sentence motions. The court

denied the motions. On direct appeal, this Court affirmed Appellant's judgment of sentence. ***Murrell***, 996 A.2d 551 (unpublished memorandum). The Pennsylvania Supreme Court denied his petition for allowance of appeal. ***Commonwealth v. Murrell***, 8 A.3d 898 (Pa. 2010). Appellant then filed a timely PCRA petition. Proceeding under Pa.R.Crim.P. 907, the PCRA court issued notice of its intent to dismiss the petition. Appellant filed a response to that notice. Thereafter, the court dismissed the petition without a hearing. Appellant lodged this timely appeal in which he contends the court erred by dismissing his petition without holding a hearing on his various PCRA claims, each of which involve allegations that his trial counsel was ineffective.

Several legal principles are relevant to our resolution of this appeal. To establish ineffectiveness of counsel, a PCRA petitioner must show the underlying claim has arguable merit, counsel's actions lacked any reasonable basis, and counsel's actions prejudiced the petitioner. ***Commonwealth v. Cox***, 983 A.2d 666, 678 (Pa. 2009). Prejudice means that, absent counsel's conduct, there is a reasonable probability the outcome of the proceedings would have been different. ***Id.*** The law presumes counsel was effective, and the burden to prove otherwise rests with the petitioner. ***Id.***

To obtain a PCRA remedy, a PCRA petition must allege, *inter alia*, the facts supporting each theory of relief. Pa.R.Crim.P. 902(A)(12). The petition must point to the place in the record where those facts exist or, if they are not in the record, the petition must identify and include the

affidavits, witness certifications, documents, and/or other evidence showing those facts. 42 Pa.C.S.A. § 9545(d)(1); Pa.R.Crim.P. 902(A)(12), (15).

Indeed, if the petitioner seeks an evidentiary hearing, the PCRA petition must contain, *inter alia*, signed certifications identifying the intended PCRA witnesses and revealing the substance of the evidence the petitioner intends to adduce from them. 42 Pa.C.S.A. § 9545(d)(1); Pa.R.Crim.P. 902(A)(15). The certifications may be signed by the witnesses themselves or they may be signed by the petitioner, the petitioner's counsel or by counsel for the intended witnesses. ***Commonwealth v. Brown***, 767 A.2d 576, 582-583 (Pa. Super. 2001); 42 Pa.C.S.A. § 9545(d)(1).

The signed certifications help to demonstrate to the PCRA court that a petitioner's claim of being able to present evidence at a PCRA hearing is not made frivolously. ***Brown***, 767 A.2d at 583. At the same time, allowing certifications to be signed by the petitioner, the petitioner's counsel or counsel for the witnesses, relieves the petitioner of what may be an onerous task of obtaining sworn affidavits, or even unsworn certifications, directly from witnesses who may not be cooperative. ***Id.***

Accordingly, the PCRA contemplates that a petition, by virtue of the petitioner's personal knowledge and/or via information obtained through investigation (*e.g.*, witness interviews by an investigator), must identify what facts the petitioner intends to offer at the PCRA hearing and must proffer those facts, at least in summary form, in the PCRA petition.

Commonwealth v. Faulk, 21 A.3d 1196, 1203 (Pa. Super. 2011); ***Brown***, 767 A.2d at 582-83; 42 Pa.C.S.A. § 9545(d)(1); Pa.R.Crim.P. 902(A)(12), (15).

If a PCRA court determines, based on a review of the PCRA pleadings and the relevant portions of the record, that there are no genuine issues of material fact, that the petitioner is not entitled to relief, and that no purpose would be served by any further proceedings, the court may dismiss the petition without a hearing after providing appropriate notice. Pa.R.Crim.P. 907(1).

Our standard for reviewing a PCRA order is to determine whether the court's ruling is supported by the record and free of legal error. ***Cox***, 983 A.2d at 679. It is an appellant's burden to persuade us that the PCRA court erred and that relief is due. ***Commonwealth v. Wrecks***, 931 A.2d 717, 722 (Pa. Super. 2007).

Appellant argues trial counsel was ineffective when he failed to request a curative jury instruction of some type after the Commonwealth elicited certain testimony about Glover and Appellant each having possessed a gun, apparently at a time prior to the killing. More particularly, testimony from McCauley indicated that Glover had a gun at some point and that Glover had been in altercations involving the gun. Glover's counsel objected to the testimony about the altercations, and the court sustained the objection. The Commonwealth then elicited testimony from McCauley that he was aware

Appellant, too, possessed a gun at some point. Shortly after that testimony, the court then instructed the jury to ignore the earlier testimony about Glover being in prior altercations with a gun. The court also advised the jury that the parties stipulated Glover had a license to carry a firearm.

Appellant's position is that his trial counsel should have sought a specific instruction telling the jurors that any reference to any altercations with a gun involved Glover only, not Appellant. The PCRA court rejected this claim because the testimony itself was clear that Glover, not Appellant, was the person who, to McCauley's knowledge, had been in some type of prior altercations with a firearm. The PCRA court thus reasoned that, had trial counsel asked for a jury instruction on this point, no such instruction would have been in order because McCauley's testimony simply did not link Appellant to any prior altercations. That is, the PCRA court found there was no merit to the claim that Appellant's counsel should have asked the trial court for any type of instruction.

Appellant does nothing to refute the PCRA court's reasoning. The trial transcript is clear: McCauley's comments about the altercations referenced Glover, not Appellant. Thus, there is no merit to Appellant's claim that his counsel should have sought a curative jury instruction clarifying that McCauley's comments about altercations involved only Glover. Additionally, as we have already noted, the trial court told the jury to ignore the testimony about the prior altercations. We presume the jurors followed the court's instruction. ***Commonwealth v. Busanet***, 54 A.3d 35, 65 (Pa.

2012). Appellant has not convinced us the PCRA court committed error when it rejected this ineffectiveness claim.

Appellant also seems to suggest that counsel should have objected and requested a curative instruction of some type after McCauley testified about Appellant having simply possessed a gun. The PCRA court determined that this testimony was not objectionable and that no jury instruction would have been required, even if one had been sought. Appellant offers us no legal analysis as to why the testimony was improper. Thus, he does not show arguable merit to his claim that trial counsel should have objected and requested a curative instruction. Accordingly, Appellant has not demonstrated that we should disturb the PCRA court's ruling.

Next, Appellant claims trial counsel was ineffective in not cross-examining McCauley about favorable treatment (*e.g.*, a reduced sentence on one or more unrelated charges) that he received in return for testifying as a Commonwealth witness against Appellant. The PCRA court found Appellant's PCRA petition did not proffer any factual basis for the claim that McCauley had, indeed, received a reduced sentence or other favorable treatment. Accordingly, the court determined there was no reason to convene a hearing on this claim. In his brief, Appellant does not refute the PCRA court. He does not point to any evidence he proffered to substantiate his claim regarding McCauley having received favorable treatment from the Commonwealth. Having not persuaded us that he pled facts sufficient to

warrant a hearing, Appellant has not shown the PCRA court's decision was wrong.

Appellant maintains trial counsel was ineffective for not requesting a mistrial after the Commonwealth made three references to God in closing argument. In the first reference, the Commonwealth was arguing its theory that Person's killer had set fire to Person's body to destroy evidence of his murder. The Commonwealth remarked:

> If there are powers in this universe that watch over us and that protect, that fire there was not just a signal to passers[-]by that this was . . . Person and his body to be found. It also in its peculiarity was a way to help identify who brought him there.

N.T., 02/11/08, at 1072.

In the second reference, the Commonwealth was presenting its argument that someone had moved Person's body, consisting of relatively heavy dead weight, from Appellant's basement, into a car, out of the car and down a slope. When referencing Person's body, the Commonwealth stated:

> This getting it out of the car is a two-man job. 180 pounds, 200 pounds, 175, whatever. Getting it in a car, getting it out—God, I'm sorry for calling . . . Person it. It's a guy, a guy with loved ones and family.

Id. at 1090-91.

The PCRA court reasoned that the first of the aforesaid references was no more than oratorical flair and, as such, would not have merited a mistrial had counsel objected. As to the second reference, the court determined the

Commonwealth was not making a reference to religion but, instead, merely correcting its own word choice of having referred to Person as "it." Once again, the court found this reference would not have warranted a mistrial. Thus, the court effectively found no merit to Appellant's claim that his trial counsel should have made a mistrial request.

Appellant's brief does not set forth and, as such, does not apply, any law regarding mistrial requests and/or the concept of permissible oratorical flair. Consequently, he has not shown arguable merit to the claim that counsel should have moved for a mistrial. Thus, Appellant has not demonstrated the PCRA court reached an incorrect decision.

As to Appellant's claim that the Commonwealth made a third reference to God, the PCRA court noted the trial transcript does not reflect any additional reference. The court also observed the following in its 907 notice: To the extent Appellant was claiming trial counsel for Appellant's codefendant (Glover) could testify, at a PCRA hearing, that there was, in fact, a third reference to God, Appellant had not provided an affidavit to that effect.

On this appeal, Appellant argues he tried to obtain an affidavit of intended testimony from Glover's counsel but counsel would not provide one. This argument does not show error by the PCRA court. If, in fact, Appellant had reason to believe Glover's counsel would actually provide such testimony at a PCRA hearing, Appellant could have proffered the intended

testimony of Glover's trial counsel through a witness certification. That certification did not need to be signed by Glover's counsel himself. Appellant or his counsel could have executed the certification. We see no indication that Appellant offered such a certification. He has not shown us the PCRA court erred in finding he did not proffer sufficient facts to warrant a hearing.

The next allegation of ineffectiveness is that trial counsel failed to call character witnesses. Appellant names two such witnesses, McMurray and Spriggs, and maintains that counsel knew of additional persons who also could have provided character testimony. The PCRA court found Appellant had not pled that counsel knew of McMurray and Spriggs at the time of trial. As to the alleged additional witnesses, the court determined Appellant had not identified them and had not proffered the substance of their testimony so as to warrant a PCRA hearing.

We recall this law:

> . . . [I]in the particular context of the alleged failure to call witnesses, counsel will not be deemed ineffective unless the PCRA petitioner demonstrates: (1) the witness existed; (2) the witness was available; (3) counsel knew of, or should have known of the existence of the witness; (4) the witness was willing to testify for the defense; and (5) the absence of the testimony was so prejudicial to petitioner to have denied him or her a fair trial.

Commonwealth v. Miner, 44 A.3d 684, 687 (Pa. Super. 2012).

In his brief to us, Appellant repeats his claim that McMurray and Spriggs would have offered admissible character testimony if called to testify at trial. However, Appellant does not answer the court's finding that Appellant's PCRA petition did not allege trial counsel knew of those witnesses. Therefore, Appellant has not demonstrated the PCRA court erred when finding he had not alleged sufficient facts to necessitate a PCRA hearing.

As to the unnamed character witnesses, Appellant likewise fails to respond to the PCRA court's determination that he failed even to name those witnesses in his PCRA petition. Appellant has thus given us no cause to disturb the PCRA court's determination on this issue.

Appellant contends trial counsel was ineffective for not engaging and offering a DNA expert to refute the Commonwealth's DNA evidence. The PCRA court rejected this claim and opined that Appellant had not proffered any expert theory that would have been presented by a defensive expert. On this appeal, Appellant continues to maintain trial counsel should have secured an expert to counter the Commonwealth's forensic testimony, but Appellant does not identify any expert or any particular scientific theory that could have been presented on his behalf. He has, therefore, not established the PCRA court was wrong.

Appellant raises the claim that his trial counsel failed to present exculpatory testimony demonstrating that one of Person's girlfriends, Keisha

Walker, had a motive to kill him. As examples of the allegedly exculpatory evidence, Appellant claims there were voicemail messages received by another woman, Kendra Jordan, who was also Person's girlfriend. Appellant asserts Jordan received the messages from an unknown female caller after Person's death. Additionally, Appellant claims the female caller said words to the effect that that Person had gotten what he deserved for having given the caller herpes and for messing around with the wrong girl. The caller allegedly stated that Jordan would be next if she did not mind her own business. According to Appellant, the female also left additional rude and/or vulgar messages of some kind for Jordan. Appellant's position is that the caller may have been Walker.

Appellant also claims that, at some point before Person's death, Walker had argued with Person, yelling words to the effect that "You burned me, that's why you're burning. You see this bump on my lip[?]." N.T., 02/11/08, at 903-04.[1]

Appellant further claims Walker had followed Person to check on his actions while the two of them were in Baltimore in the fall of 2005.

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[1] This statement was proffered at trial but the court sustained the Commonwealth's objection thereto on the bases of hearsay and lack of relevance. ***Id.*** Nevertheless, Appellant points to the statement as being evidence that could have somehow been introduced at a PCRA hearing.

Additionally, Appellant contends Walker made statements to police about details of Person's death (*e.g.*, his having been shot in the head) when those details had not yet been released to the public.

Appellant argues trial counsel should have introduced evidence of the foregoing facts at trial, either by calling Walker and/or Jordan as witnesses, or by some other means, in order to prove Walker had a motive to kill Person.[2] The PCRA court essentially found the foregoing alleged facts amounted to nothing more than speculative evidence that Walker had a motive to kill Person. The PCRA court then concluded that those facts, if proffered at trial, would therefore have been excluded on relevance grounds. To some extent, the court also noted that parts of Appellant's intended evidence would not have been admissible at trial because of hearsay concerns. In short, the PCRA court concluded Appellant's PCRA petition had not proffered evidence warranting a PCRA hearing.

Appellant's brief does not set forth any legal authority governing considerations of speculative evidence, relevance, hearsay, or any other aspect of evidence law. Additionally, the brief does not discuss the manner in which this Court is to evaluate evidentiary decisions by lower courts. As such, the brief does not apply the law of evidence to his factual proffer(s) in order to demonstrate the PCRA court erred in concluding he did not proffer admissible evidence that would have established his PCRA claim regarding

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[2] Neither Walker nor Jordan testified at trial.

Walker's alleged motive to kill Person. That is, Appellant fails to show error in the PCRA court's reasoning that his position regarding Walker rested on speculative, irrelevant and/or otherwise inadmissible evidence. Accordingly, Appellant has not persuaded us there was any genuine issue of material fact warranting a PCRA hearing.

Appellant's next ineffectiveness claim is that trial counsel was ineffective for not introducing evidence that McCauley had a motive to kill Person. More particularly, Appellant argues counsel should have questioned McCauley at trial so as to demonstrate that Walker had damaged a car owned by McCauley and that McCauley expected Person to pay for the damage done by Walker.

The PCRA court reasoned that trial counsel did ask McCauley about the damage to the aforesaid car and that McCauley indicated the car did not belong to him. Thus, in essence, the court determined the underlying premise of Appellant's claim (*i.e.*, that counsel failed to examine McCauley) was inaccurate.

In an apparent effort to demonstrate to us that counsel could have impeached McCauley concerning his testimony that he did not own the car in question, Appellant claims a police report showed that Walker broke the lights of a car belonging to McCauley. The police report is not in the certified record, though a purported copy of such a report is in the reproduced record ("RR"). We first note that the citation in Appellant's brief points us to an RR

page (R.68a) that mentions nothing about the ownership of the vehicle. Nonetheless, we have found that another page (R.73a) contains a typed entry listing McCauley as the car owner. The report includes no additional information explicating the source or accuracy of this information. In any event, it is an appellant's duty to ensure that the certified record includes all the items necessary for appellate review. ***Wrecks,*** 931 A.2d at 722. This Court does not rely on documents that are in the reproduced record and not in the certified record. ***Commonwealth v. Montalvo***, 641 A.2d 1176, 1183 (Pa. Super. 1994). Accordingly, Appellant's reliance of the purported report does not convince us counsel's examination of McCauley was defective in any particular way.[3] Therefore, Appellant has not proven the PCRA court erred in dismissing his ineffectiveness claim without a hearing.

In closing, we note that the tenor of Appellant's brief, at least in part, appears to reveal a perspective that, upon Appellant having made various allegations, the PCRA court should have afforded him an evidentiary hearing so that he could uncover much of the facts supporting his claims. For example, early in his brief, he remarks, " . . . [B]ecause neither Keisha Walker nor Kendra Jordan were called at trial, we don't know what evidence they would present if they had been called at a PCRA hearing." Appellant's Brief at 9. He also suggests in his brief that an evidentiary hearing was in order to determine if one or more criminal charges against McCauley were

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[3] In his testimony, McCauley agreed that Walker had crashed a different vehicle that McCauley did, in fact, own. Appellant does not claim counsel was ineffective in his examination of McCauley regarding that car.

expunged as part of favorable treatment to McCauley in return for his testimony. Thus, Appellant appears to believe, at least somewhat, that a PCRA hearing serves a discovery purpose. This view is incorrect. To be sure, a PCRA hearing is the time when evidence is actually adduced and offered into the PCRA record. Facts, unless already of record, are not proven until the hearing. However, prior to a hearing, a PCRA petitioner needs to identify and collect the admissible evidence that will be offered at the hearing. The petitioner then needs to plead and proffer the substance of the admissible facts in the PCRA petition. As we have discussed, the failure to proffer sufficient evidence played a significant role in the PCRA court's decision to deny relief without a hearing.

In this case, Appellant has not shown us the PCRA court erred factually or legally in reaching its conclusion that, based on its review of the PCRA pleadings and the relevant portions of the record, there were no genuine issues of material fact, Appellant was not entitled to relief, and no purpose would be served by any further proceedings. Consequently, we are not convinced the court was wrong to dismiss the PCRA petition without a hearing. Therefore, Appellant has not demonstrated entitlement to any remedy. We therefore affirm the order dismissing Appellant's PCRA petition.

Order affirmed.

Judgment Entered.

Mary A. Kraybill

Deputy Prothonotary

Date: 6/11/2013