

3. At trial, the Commonwealth presented several of Mr. Payne's acquaintances to whom he had independently confessed his involvement over the intervening years, and he admitted to them that the murder weapon had been the victim's telephone. A fact that even the police had not been aware of prior to the confessions as the phone had been cleaned of prints and material and the police were only able to categorize the murder as blunt force trauma. The defendant's direct involvement with the brutal murder in furtherance of the robbery earned the defendant a sentence of Life Imprisonment. As explained in the Commonwealth's closing N.T. Trial 684-695, and supported by the preceding transcript.
4. The Commonwealth hereby provides its initial answer.

KING'S BENCH INTERVENTION IS PREMATURE AT THIS TIME

5. The Petitioner/Defendant asks the court to short-circuit both the Legislative Process, AND the legal process.
6. The court has already recognized that this issue is best addressed by the legislature, and set an initial delay in the effective date of Commonwealth v. Lee 357 A.3d 356, 397 (Pa. 2026).

However, cognizant of the impact our decision today will have, we will stay our mandate for 120 days in order to provide a reasonable amount of time for the General Assembly to consider appropriate remedial measures. *See Neiman*, 84 A.3d at 616 (staying order to provide General Assembly time to consider appropriate remedial

measures); City of Philadelphia, 838 A.2d at 594 (staying mandate to allow legislature time to act)

Order reversed, judgment of sentence vacated, and case remanded.
This mandate is stayed for 120 days.

Commonwealth v. Lee, 357 A.3d 356, 397 (Pa. 2026)

7. While both the Pennsylvania House and Senate have created statutory language to address the issue, the house and the senate did not concur on their language (see S.B. 1400, & the H.B. 1042 prior to senate amendments (The 2nd degree murder language remains present as of today, but is stricken out)
8. The election process came at a time where it interrupted the legislature from completing the normal process of discussion and negotiation between the two branches of the legislature and their differing approaches to remedying the issue. While the Senate adopted much of HB 1042 but rejected the specific language pertaining to the House's structure for Second Degree Murder, and the House has not yet acted upon the Senate's language.
9. King's Bench authority can be exercised by this Honorable Court at any time, but it is within the discretion of the court to allow the court proceedings to play out at the Common Pleas level unless there is a matter of public importance requiring timely intervention of the court of last resort.

This Court has observed that "our King's Bench authority is generally invoked to review an issue of public importance that requires timely intervention by the court of last resort to avoid

the deleterious effects arising from delays incident to the ordinary process of law.” *Commonwealth v. Williams*, 634 Pa. 290, 129 A.3d 1199, 1205–06 (2015); *see also In re Bruno*, 627 Pa. 505, 101 A.3d 635, 670 (2014). We may “exercise King's Bench powers over matters where no dispute is pending in a lower court.”⁸ *186 *Williams*, 129 A.3d at 1206 (citing *In re Assignment of Avellino*, 547 Pa. 385, 690 A.2d 1138, 1140 (1997)).

Friends of Danny DeVito v. Wolf, 658 Pa. 165, 185–86, 227 A.3d 872, 884 (2020)

10. In this case, there are numerous PCRA petitions filed in York County that are working their way through the PCRA process towards the inevitable Supreme Court review of issues raised.
11. The Commonwealth believes that as these issues will be addressed through normal process there is no pressing basis to short circuit the legislative process at this time.
12. Needless to say, if the legislature fails to take action after the election or after the new legislators are sworn in, the court has the option to reach down and advance one of the existing cases sua sponte, or simply wait for the cases to arrive in normal course.
13. Allowing the PCRA petitions that have been filed (and there are numerous petitions already pending before the Court of Common pleas) to play out through normal court process will allow for proper records to be built and the legal arguments refined while at the same time allowing the legislature

the time needed to learn the outcome of the election, and what elements of the enate and house bills have more support by the people of Pennsylvania.

14. That being said, should the court wish to invoke King's Bench, the Commonwealth is available to research brief any issue the court wishes to explore.) Though the York County DA's Office is still understaffed with several vacancies for individuals who are interested in a fast-paced career in Criminal Prosecution and victim rights support.)²
15. However, the defendant's claims appear to be issues that can be dealt with in the normal course of criminal litigation through the standard PCRA process, and PCRA appeal and the Commonwealth does NTO believe that the Petitioners/Defendants are entitled to relief.
16. A review of Petitioners' claims shows that petitioner conflates "unconstitutional procedure" for sentencing with "unconstitutional sentence" there is a key difference under the law. Thus the Commonwealth has identified the claims and responded as follows:

² The decrease in recruiting was directly affected by COVID at both the Law school AND the undergraduate level, and this past summer was the first full recruiting summer since COVID-19 Instant counsel believes that the 2028 graduating class of lawyers will be the first full class of lawyers to reinforce the legal industry in many years.

I. PETITIONER’S CLAIM 1: That *Lee* is fully retroactive to all defendants serving mandatory life without parole sentences for felony murder.

17. **DENIED**, The Pennsylvania Supreme Court specifically declined to make the matter retroactive at the time *Commonwealth v. Lee* was issued.

18. The fact is that the court held that the mechanism of the imposition of the sentence was unconstitutional, but NOT that the sentence of Life without Parole was unconstitutional.

19. Petitioner conflates “Illegal mechanism for imposing a sentence” with “Illegal sentence” However the caselaw in Pennsylvania has long drawn a clear distinction between mechanism vs. sentence. Notably. Post Conviction Claims regarding “Mechanism of sentence (failure by the court to allow allocution, improper consideration of factors to be weighed) has long been held to be subject to the jurisdictional deadlines of the Post Conviction Relief Act.

20. The Pennsylvania Supreme Court explored retroactivity for cases on direct appeal and held that that absent an express holding of retroactivity by the court, a defendant who wishes to raise the claim must have preserved the claim previously. The relevant excerpt of *Commonwealth v. Hays*, 655 Pa. 690, 699–701, 218 A.3d 1260, 1266–67 (2019) reads as follows:

Prior to addressing the merits of Appellant's retroactivity claim, our review necessarily begins with a discussion of *Cabeza*, the seminal case relied on by the Superior Court here *700 and in *Moyer*.⁷ In *Cabeza*, this Court was asked to determine whether a rule it announced in *Commonwealth v. Scott*, 496 Pa. 188, 436 A.2d 607, 611 (1981), applied to Cabeza's case which was pending on appeal at the time the decision in *Scott* was rendered. The *Cabeza* Court noted, “[i]n *Scott* we rejected the rule that allowed a prosecutor to cross-examine character witnesses as to mere arrests of the accused.” *Cabeza*, 469 A.2d at 147. The Court went on to note, “[i]n both [*Cabeza* and *Scott*], a defense challenge to the ruling was raised during trial and the issue preserved and argued in post trial motions and on appeal. The only noteworthy difference between *Scott* and [*Cabeza*] is that *Scott* was argued and decided first.” *Id.* at 148. The Court noted that *Cabeza* could just as easily have been the case that overruled the prior law if *Scott* had not been decided first. Therefore, because the two appellants were similarly situated, this Court concluded that where “an appellate decision overrules prior law and announces a new principle, unless the decision specifically declares the ruling to be prospective only, the new rule is to be applied retroactively to cases where the issue in question is properly preserved at all stages of adjudication up to and including any direct appeal.” *Id.*

Despite the Superior Court's reliance on the holding of *Cabeza*, Appellant declined to address *Cabeza*, or argue that its holding should not apply in the instant matter. Likewise, the Defender Association of Philadelphia seems to acknowledge *Cabeza*'s applicability but argues under its holding “very few litigants will see relief.” Amicus Brief at 17. Amicus urges this Court to adopt the view of a concurring opinion in *Commonwealth v. Napold*, 170 A.3d 1165 (Pa. Super. 2017), which acknowledged *Cabeza* controlled but advocated for a new rule which would “consider an issue preserved when it is raised in a timely fashion **after** the creation of the new rule on which it is grounded.” *Id.* at 1170 (emphasis in original).

*701 4

While this invitation has some appeal, Appellant has failed to argue or persuade this Court that *Cabeza* should be overruled, and this Court declines to revisit this well-established law at this time.

Instantly, Appellant failed to assert at or before trial that his consent was coerced. In *Cabeza*, Cabeza took the same steps Scott did to preserve his issue for appellate review. Likewise, Appellant could have taken the steps Beylund took to preserve his challenge at all phases of litigation, and thus would have been similarly situated. Appellant is not entitled to retroactive application of *Birchfield* based on his failure to preserve the issue below. *See Cabeza*, 469 A.2d at 148 (“where an appellate decision overrules prior law and announces a new principle, unless the decision specifically declares the ruling to be prospective only, the new rule is to be applied retroactively ****1267 to cases where the issue in question is properly preserved at all stages of adjudication up to and including any direct appeal.**”) (emphasis added); *see also*  *Commonwealth v. Sneed*, 587 Pa. 318, 899 A.2d 1067, 1076 (2006) (“[i]t is well-settled that in order for a new rule of law to apply retroactively to a case pending on direct appeal, the issue had to be preserved at all stages of adjudication, including at trial and on direct appeal.”); *Commonwealth v. Tilley*, 566 Pa. 312, 780 A.2d 649, 652 (2001) (“[c]ase law is clear, however, that in order for a new rule of law to apply retroactively to a case pending on direct appeal, the issue had to be preserved at “all stages of adjudication up to and including the direct appeal.”)

Commonwealth v. Hays, 655 Pa. 690, 699–701, 218 A.3d 1260, 1266–67 (2019)

21. Conversely, an actual “Illegal sentence” a sentence that could never have been legally imposed, can be raised at any time as the violation of the constitution is continuing and unending.

22. Applying *Commonwealth v. Hayes* and a classic “Teague” analysis, a new procedural rule that doesn’t remove the defendant from the class eligible to receive the sentence received does not constitute a rule subject to mandatory retroactivity where not preserved by the defendant.

II. PETITIONER’S CLAIM 2: The sentence of Life Without Parole constitutes cruel punishment to continue to be served after Commonwealth v. Lee.

23.**DENIED.** The sentence of life imprisonment without parole is a legal sentence pursuant to Commonwealth v. Lee. But it was imposed by a procedural mechanism that Commonwealth Lee has found unconstitutional under Pennsylvania Law on direct appeal. The court expressly holds:

On remand, the sentencing court must, after consideration of Appellant's individual culpability, determine whether he should be resentenced to **life imprisonment without the possibility of parole**; or to a maximum sentence of life imprisonment, as required by 18 Pa.C.S. § 1102(b), accompanied by a minimum sentence determined by the court.

Commonwealth v. Lee, 357 A.3d 356, 397 (Pa. 2026)(Emphasis added)

24. Clearly the court has rejected the defendant’s argument that Life Without Parole for Second Degree Murder is Unconstitutional as the exact same sentence may be imposed after the sentencing court’s review of the factors noted by the Supreme Court.

25. Thus, the defendant’s argument that the sentence constitutes Cruel and Unusual Punishment is incorrect and merely becomes a question of abuse of discretion by the sentencing court.

26. The court in Commonwealth v. Reid, 661 Pa. 207, 269–70, 235 A.3d 1124, 1162 (2020) further explored what makes a new constitutional, ruling substantive vs. procedural.

27. The court explains that if the defendant can receive the sentence and the same sentence/continued confinement can still be lawful, then this does not constitute a substantive decision requiring retroactivity but rather a procedural decision that is only retroactive to cases that have jurisdiction and not waived the issues. The relevant excerpt reads as follows:

“Substantive rules include rules forbidding criminal punishment of certain primary conduct, as well as rules prohibiting a certain category of punishment for a class of defendants because of their status or offense.” *Id.* at 728 (citations and internal quotations omitted). By contrast, procedural rules “are designed to enhance the accuracy of a conviction or sentence by regulating ‘the **manner of determining** the defendant’s culpability.’ ” *Id.* at 730, quoting *Schriro v. Summerlin*, 542 U.S. 348, 353, 124 S.Ct. 2519, 159 L.Ed.2d 442 (2004) (emphasis in original). “They do not produce a class of persons convicted of conduct the law does not make criminal, but merely raise the possibility that someone convicted with *270 use of the invalidated procedure might have been acquitted otherwise.” *Schriro*, 542 U.S. at 352, 124 S.Ct. 2519. So whereas a conviction or sentence may still be accurate and, by extension, a defendant’s continued confinement may still be lawful, even if a procedural error has infected a trial, “[t]he same possibility of a valid result does not exist where a substantive rule has eliminated a State’s power to proscribe the defendant’s conduct or impose a given punishment.”

Commonwealth v. Reid, 661 Pa. 207, 269–70, 235 A.3d 1124, 1162 (2020)

28.As a result, it is clear that the Petitioner/Defendant's conviction for second degree murder resulting in a sentence of life, is not unconstitutional due to sentence imposed.

CONCLUSION:

29.Based upon the specific language of Commonwealth v. Lee, holding that Life Without parole may be issued as a legal sentence, AND the fact that these cases are being molded and working their way through the normal appellate process where attorneys can refine their arguments, the Commonwealth believes that King's Bench review should be denied WITHOUT PREJUDICE that the normal appellate process already underway in countless cases state-wide be allowed to proceed so that the parties may develop their arguments.

WHEREFORE, the Commonwealth of Pennsylvania respectfully requests that the Pennsylvania Supreme Court deny the instant petition for King's Bench and allow the cases to proceed through normal process. If in the alternative the Court wishes to review an issue, the Commonwealth of Pennsylvania: York County District Attorney's Office is available to brief or research any issues that the court wishes to explore.

Respectfully submitted,

/s/ James Zamkotowicz
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APPENDIX

A

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COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
:
v. :
:
:
JOHN M. PAYNE, III, :
:
:
APPELLANT : NO. 413 HARRISBURG 1987

Appeal from the Judgment of Sentence entered
March 23, 1987 in the Court of Common Pleas
of York County, Criminal Division, at No.
291 CA 1986 and 977 CA 1985.

BEFORE: OLSZEWSKI, DEL SOLE AND JOHNSON, JJ.

MEMORANDUM:

FILED: FEBRUARY 29, 1988

This is an appeal from the judgment of sentence imposed for Appellant's conviction of second degree murder, aggravated assault, burglary and conspiracy. By his appellate brief, Appellant raises the following issues:

1. Was the evidence presented at trial legally sufficient to support the jury's verdict;
2. Was the admission into evidence of testimony of prior drug use and sales by the Defendant to third parties unduly prejudicial in the present case such as to require reversal; and,
3. Was it unduly prejudicial to allow evidence of a twelve year old robbery conviction to impeach the credibility of a crucial defense witness?

We affirm.

Initially, we note that Appellant's issue concerning the sufficiency of the evidence has been waived for appellate review. It is well-established that post-verdict motions alleging insufficient evidence shall specify in what respect the evidence

was insufficient. Instantly, Appellant's issue was raised in the following manner: "[t]he evidence was insufficient to sustain the verdict." We find that this presentation of the issue is "boiler plate" and is inadequate to preserve the issue for appellate review. Commonwealth v. Whiteman, 336 Pa. Super. 120, 485 A.2d 459 (1984); Commonwealth v. Holmes, 315 Pa. Super. 256, 461 A.2d 1268 (1983). See Pa.R.Crim.P. 1123.

The second argument presented for our consideration charges that irrelevant and prejudicial testimony concerning prior drug use and sales by Appellant was erroneously admitted into evidence. Our scope of review in such evidentiary matters dictates that the admission and exclusion of evidence are matters committed to the sound discretion of the trial judge. Absent an abuse of discretion, these decisions will not be reversed on appeal. Commonwealth v. Underwood, 347 Pa. Super. 256, 500 A.2d 820, 823 (1985). Upon review of the record, we do not find an abuse of discretion.

During cross-examination, Appellant refuted the testimony of Deborah Wallick, a Commonwealth witness, who testified that Appellant confided in her that he was involved in the incidents surrounding Ms. Elsie S. Rishel's death. Appellant related that Ms. Wallick was deeply involved with drugs at the time he allegedly made the incriminating statements. The prosecuting attorney then pursued Appellant's comment by asking him whether or not he had ever given Ms. Wallick any drugs. Appellant replied that he had given the witness marijuana in the past and had smoked it with her. After establishing the fact that Appellant and Ms.

Wallick were close enough acquaintances to participate in such conduct together, the prosecutor abandoned that line of questioning and moved on to other areas of Appellant's defense (N.T., Vol.II, 629-630). We find no evidence that Appellant was unduly prejudiced by these statements. Clearly, the prosecutor's questions were designed only to establish the relationship between the two witnesses and not to divert the jury's attention to issues irrelevant to the case being tried. Moreover, Appellant does not contend in his brief that a cautionary instruction concerning this testimony was ever requested and denied by the trial court.

Appellant's final argument is that the trial court erred in permitting the Commonwealth to introduce evidence of a prior robbery conviction of a defense witness, Daniel Everett, for impeachment purposes. Appellant argues that the 12 year old conviction was too remote in time to be of any assistance in determining credibility and that it was unreasonably prejudicial to the defense. Instead, it is alleged that the Commonwealth could have chosen other unprejudicial means by which to impeach the witness' testimony.

In support of this contention, Appellant relies upon the balancing test provided in Commonwealth v. Bighum, 452 Pa. 554, 307 A.2d 255 (1973) which sets forth factors to be used in assessing the admissibility of prior convictions. However, we must point out that "[w]hen the Commonwealth seeks to use a prior conviction to impeach the testimony of a defense witness other than the defendant himself, the discretionary balancing test of Commonwealth v. Bighum, supra, does not apply, and the only

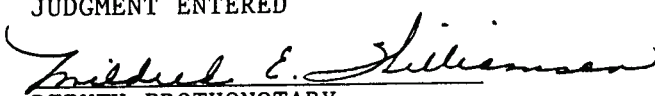
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relevant inquiry is whether the convictions were for crimes involving dishonesty or false statements." Commonwealth v. Gordon, 355 Pa. Super. 25, 512 A.2d 1191, 1192 (1986).¹ Since robbery is a crime involving dishonesty or false statement, the defense witness' robbery conviction was properly admitted to impeach his testimony. Commonwealth v. Kearse, 326 Pa. Super. 1, 473 A.2d 577 (1984).

Judgment of sentence affirmed.

DATED: FEBRUARY 29, 1988

JUDGMENT ENTERED


DEPUTY PROTHONOTARY

¹The vitality of Bighum and Commonwealth v. Roots, 482 Pa. 33, 393 A.2d 364 (1978) has been modified by our Supreme Court in Commonwealth v. Randall, ___ Pa. ___, 528 A.2d 1326 (1987).

APPENDIX

B

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COMMONWEALTH OF PENNSYLVANIA

v.

JOHN M. PAYNE,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Harrisburg Office

No. 00581 Harrisburg, 1992

Appeal from the P.C.R.A. of the Court of
Common Pleas, York County, Criminal Division,
at No. 291 C.A. 1986.

BEFORE: McEWEN, POPOVICH and BROSKY, JJ.

MEMORANDUM:

FILED APR 30 1993

John Payne appeals, pro se, from the June 25, 1992 trial court order denying his petition under the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S. §§9541 et seq. On August 22, 1986 appellant was convicted by a jury of second degree murder, aggravated assault, burglary and conspiracy regarding the killing of a ninety year-old woman on December 17, 1981. The evidence that led to appellant's conviction essentially came from three witnesses to whom appellant offered varying confessions regarding the instant crimes.

Appellant told Deborah Wallick, a friend for eight years, that he "and two other people had gone in to rob this house and there was a noise from the bedroom and he went to see what was happening and his lady was being beaten with the telephone." N.T., 8/18-22/86, at 481. Appellant stated that he believed the woman had

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been killed. Appellant told Ms. Wallick that Danny Everett was one of the men involved in the killing. Id. at 501.

Sonny Oglesby, who was imprisoned at the same time as appellant, testified that appellant volunteered information that he he had gone, with Danny Everett or Edwards and appellant's girlfriend, Melody, to an elderly woman's house "to rob the lady." Id. at 525. Mr. Oglesby stated that appellant admitted to beating to death the elderly woman. Id. Appellant told Oglesby where the victim lived, where she shopped during the day and that she utilized a wheelchair that was located in the house on the night of the murder.

Christopher Gibson, another fellow inmate of appellant's, testified that appellant approached him and told him that "he and his lawyer were going to make this look like this lady's [the instant victim] grandson might have" killed her. Id. at 546. Appellant asked Gibson's opinion of that proposed theory regarding the instant crimes. Gibson asked appellant who actually committed the crimes. Appellant told Gibson that he and two other individuals, one named Danny, committed the crimes but there was nothing linking them to the crimes except the proposed testimony of Deborah Wallick and Sonny Oglesby. Id. at 546-47. Appellant told Gibson that the killing occurred in Springettsbury Township, that he did not anticipate that the woman would be home -- the original plans were only to burglarize the house, he encountered the victim

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in her bedroom and that "the lady was killed...when he hit her with the telephone." Id. at 547, 548.

Another witness, police officer Daniel Garber, testified that in March, 1983 appellant was assisting police with an investigation regarding a robbery at a United States postal facility. After Garber and appellant finished discussing the robbery appellant stated that, "[A] state trooper is accusing him of beating a 90-year old woman to death with a telephone and [appellant] seemed annoyed at this and I got the impression that he wanted me to somehow get this trooper off his back if that was the case." Id. at 471.

The defense attempted to impeach the credibility of the three civilian witnesses through evidence regarding plea bargains, prior crimes and drug usage.

On April 22, 1987 appellant filed a direct appeal to our Court; on February 29, 1988 a panel of this Court affirmed appellant's judgment of sentence. Commonwealth v. Payne, ___ Pa. Super. ___, ___ A.2d ___ (No. 413 Harrisburg 1987, Filed February 29, 1988). On January 23, 1991 appellant's petition for allowance of appeal to our Supreme Court was denied. On June 7, 1991 appellant filed a pro se PCRA petition. After an evidentiary hearing the trial court denied appellant's PCRA petition; the instant appeal followed.

Appellant's issues on appeal are as follows.

1. Whether appellant was denied his Sixth Amendment right to the effective assistance of counsel on direct appeal?

2. Whether appellant was denied his Sixth Amendment right to the effective assistance of counsel at trial?

(a). Failing to object to the prosecutor's misstatement of the evidence.

(b). Failing to move to quash the conspiracy charge as being beyond the statute of limitations.

(c). Failing to object to testimony of incarceration prior to arrest for the case at bar and/or contributing to such evidence.

(d). Not requesting cautionary instructions for references to criminal acts and/or criminal disposition.

(e). Failing to object to the prosecutor's evidence of [Danny] Everett's prior conviction resulting from a jury trial.

(f). Failing to object to, or request curative instructions for, the prosecutor's impermissible remarks.

(g). Failure to request cautionary instructions pertaining to the use of informants.

(h). Counsel's actions concerning appellant's palm prints.

3. Whether appellant was subjected to double jeopardy where he was sentenced to consecutive sentences for charges that merged with the felony murder conviction?

4. Whether the use of Sonny Oglesby was a violation of appellant's United States and Pennsylvania Constitutional rights?

5. Whether appellant's sentence is illegal and improper without a minimum sentence?

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Appellant's Brief at 3, 10, 11, 12 15, 17, 20, 25, 27, 29, 32, 36, 39, 44. We affirm in part, reverse in part and remand to the trial court with directions consistent with this Memorandum.

Our scope of review, when examining a post-conviction court's grant or denial of relief is limited to determining whether the court's findings were supported by the record and the court's order is otherwise free of legal error. Commonwealth v. McClucas, 378 Pa. Super. 202, 548 A.2d 573 (1988). The findings of the post-conviction court will not be disturbed unless they have no support in the record. Id.

To be eligible for relief under the Post Conviction Relief Act, an appellant must plead and prove by a preponderance of evidence that his conviction resulted from 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. Commonwealth v. Dukeman, 388 Pa. Super. 469, 565 A.2d 1204 (1989); 42 Pa.C.S. §9543(a)(2)(ii).

In establishing a claim of ineffectiveness an appellant must initially demonstrate that the issue underlying the claim of ineffectiveness has arguable merit. Commonwealth v. Smith, 380 Pa. Super. 619, 552 A.2d 1053 (1988). Next, if appellant's claim does have arguable merit, we must determine whether counsel's failure to pursue the matter had some reasonable basis designed to serve the interests of his client. Id. Finally, if the record reveals that

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counsel was ineffective, it must be determined whether appellant has demonstrated that counsel's ineffectiveness so prejudiced the appellant's case that it is likely that the result would have been different absent the errors. Commonwealth v. Tyson, 363 Pa. Super. 380, 526 A.2d 395, appeal denied at 541 A.2d 745 (1987).

The burden of establishing ineffective assistance of counsel rests upon the appellant since counsel's representation is presumed to be effective. Commonwealth v. Jones, 389 Pa. Super. 159, 566 A.2d 893 (1989). Appellant must demonstrate that counsel's omission or commission was arguably ineffective and the likelihood that appellant was prejudiced as a result thereof. Id.

A claim of ineffectiveness of trial counsel must be raised at the first opportunity at which the counsel whose ineffectiveness is being challenged no longer represents the defendant. Commonwealth v. Miller, 388 Pa. Super. 7, 564 A.2d 975 (1989). "For the purposes of [the PCRA], an issue is waived if the petitioner failed to raise it and if it could have been raised ... on ... appeal or [in any] other proceeding actually conducted or in a prior proceeding actually initiated under [the PCRA]." 42 Pa.C.S. §9544(b). Appellant must also prove by a preponderance of the evidence that the allegation of error has not been previously litigated. 42 Pa.C.S. §9543(a)(3).

Appellant first avers that his trial counsel was ineffective for filing boilerplate post-trial motions which led to this Court failing to address appellant's sufficiency of the

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evidence claim raised in his direct appeal to this Court. Appellant now asks this Court to address his sufficiency of the evidence claim.

Our Court stated in Commonwealth v. Frometa, 398 Pa. Super. 110, 580 A.2d 865 (1990),

In reviewing a challenge to the sufficiency of the evidence, we view all the evidence, together with all reasonable inferences therefrom, in the light most favorable to the Commonwealth, which has won the verdict, and determine whether it was sufficient in law to permit a jury to find that each element of the offense charged was proved beyond a reasonable doubt.

Id. at 112, 580 A.2d at 866.

The question of a witness's credibility is reserved exclusively for the trier of fact. Commonwealth v. Purcell, 403 Pa. Super. 342, 589 A.2d 217 (1991).

Appellant has made nothing more than a bald allegation that "the evidence was insufficient to prove that he was a participant in the" instant crimes. Appellant's Brief at 10. Appellant has not alleged in what context the evidence was insufficient, he has not discussed any examples of alleged insufficient evidence and he failed to cite to the seven hundred and fifty page trial transcript; in sum, he completely failed to discuss his claim that the evidence was insufficient to sustain his convictions. Appellant has simply not plead and proven by a preponderance of the evidence that his conviction resulted from

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ineffective assistance of counsel which so undermined the truth determining process that no reliable adjudication of guilt or innocence could have taken place. Commonwealth v. Dukeman, supra. Hence, this issue is without merit.

Arguendo, even if the issue would have been properly raised we would also have found it to be without merit. The trial testimony of Deborah Wallick, Sonny Oglesby and Christopher Gibson, as well as the testimony of pathologist Joan Gible, who stated that the victim could have been beaten and killed with an object shaped like a telephone receiver, was sufficient to permit the jury to find that appellant was guilty of second-degree murder, aggravated assault, burglary and conspiracy. Commonwealth v. Frometa, supra; Commonwealth v. Purcell, supra. Hence, appellant was not prejudiced by his trial counsel's failure to properly raise the issue.

Appellant's issue 2(a) is that his trial counsel was ineffective for failing to object to the prosecutor's closing statement that pathologist Dr. Joan Gible stated at trial that the killer in the instant case used a pillow to muffle the blows administered to the victim's head by a telephone receiver.

We affirm this issue based upon our independent review of the record and the June 25, 1992 trial court opinion, at pages 4-6, of President Judge Joseph E. Erb of the Court of Common Pleas of York County.

Appellant's issue 2(b) is that his trial counsel was ineffective for failing to move to quash the conspiracy charge

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against appellant since the statute of limitations had expired on that crime prior to appellant being charged. We agree and reverse that portion of the trial court's order that found this issue to be meritless.

The instant crimes occurred on December 17, 1981. The applicable statute of limitations for conspiracy was two years. 42 Pa.C.S. §5552(a). On December 14, 1984 42 Pa.C.S. §5551 was amended to provide that if a murder occurred and a defendant conspired to commit that murder then there is no statute of limitations regarding a conspiracy charge. The amendment did not apply to appellant since his crimes occurred three years prior to the amendment. Appellant was not charged until January, 1986 with the instant crimes. Hence, the statute of limitations had run on the conspiracy charge. His trial counsel was ineffective for failing to raise this issue and we find that the trial court erred in finding that counsel was effective.

Appellant's overall sentence would not be affected. He received a life-sentence for second-degree murder; two to four years each for the burglary and conspiracy convictions, to run consecutive to the sentence for homicide; and, two to four years for robbery,¹ to run concurrent to the sentences for burglary and conspiracy. Hence, even with the conspiracy sentence vacated appellant would still be serving two to four years in addition to his life sentence.

¹Appellant's robbery conviction was unrelated to the instant crimes (second-degree murder, burglary and conspiracy).

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We remand to the trial court so that it may vacate appellant's judgment of sentence for conspiracy.

We affirm appellant's issue 2(c) based upon our independent review of the record and President Judge Erb's trial court opinion, at pages 9-10.

We affirm appellant's issue 2(d) based upon our independent review of the record and pages 10-13 of the trial court opinion.

Appellant's issue 2(e) is that his trial counsel was ineffective for failing to object when the prosecutor, in impeaching defense witness Daniel Everett using a prior robbery conviction, elicited that Everett was convicted by a jury. Appellant avers that he was prejudiced by the prosecutor's focus on the fact that Mr. Everett was convicted by a jury since appellant, as did Mr. Everett in his criminal case, alleged that he was not guilty of the charges and requested a jury trial. Appellant contends that the instant jury likely inferred that since Mr. Everett apparently lied about the crimes he committed, then he was being untruthful as a defense witness in the instant case, and, that appellant was being untruthful regarding his alleged commission of the instant crimes.

In cross-examining Mr. Everett the prosecutor did elicit that Everett had been convicted by a jury of robbery and criminal conspiracy in Butler County. N.T., 8/18-22/86, at 663. In his closing argument the prosecutor implied that Mr. Everett was less credible than Commonwealth witness Christopher Gibson, who pled

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guilty to his prior crimes as opposed to Mr. Everett, who plead not-guilty and was subsequently convicted by a jury.

Our Court stated in Commonwealth v. Fromal, 392 Pa. Super. 100, 572 A.2d 711 (1990),

It is elemental that a lawyer's comments to a jury will not be reviewed in isolation, but will be assessed in the context in which they were spoken. A prosecutor, as well as a defense attorney, must be afforded reasonable latitude in presenting a case to the jury, and must be allowed to present his or her arguments with logical force and vigor. Further, counsel's remarks to the jury may include fair deductions and legitimate inferences from the evidence presented. Moreover, comments by a prosecutor do not constitute reversible error unless the unavoidable effect of such comments would be to prejudice the jury, forming in their minds fixed bias and hostility toward the defendant so that they could not weigh the evidence objectively and render a true verdict. [Citations omitted.]

Id. at 116, 572 A.2d at 719. The prosecutor can respond to remarks made by defense counsel in his closing. Commonwealth v. McKendrick, 356 Pa. Super. 64, 514 A.2d 144 (1986).

Evidence of a prior conviction for impeachment purposes should be limited to the name, time and place and punishment received in the prior offense so as to minimize distraction from the issue. Commonwealth v. Washington, 274 Pa. Super. 560, 418 A.2d 548 (1980).

In the instant case the prosecutor should not have emphasized that Mr. Everett was convicted by a jury as opposed to

Commonwealth witness Gibson pleading guilty to his prior crimes. Id. However, Mr. Gibson was extensively cross-examined in the instant case regarding his prior crimes and his cooperation with the prosecutor in testifying in the instant case. Id. at 551-562. Under these circumstances we do not find that the prosecutor's comments prejudiced the jury to the extent that they could not objectively weigh the evidence against appellant, and, we do not find that trial counsel's omission, in failing to object to the prosecutor's comments, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place. Commonwealth v. Fromal, supra; Commonwealth v. Dukeman, supra. Hence, this issue is meritless.

Appellant's issue 2(f) is that his trial counsel was ineffective for failing to object or request a curative instruction when the prosecutor enhanced the credibility of Commonwealth witness Christopher Gibson [See appellant's issue 2(e)].

As we have already determined, in appellant's issue 2(e), that the prosecutor's remarks regarding Mr. Gibson and Mr. Everett would not entitle appellant to PCRA relief we find this issue to be without merit.

Appellant's issue 2(g) is that his trial counsel was ineffective for failing to request cautionary instructions relating to informant testimony. Appellant avers that jail inmates Sonny Oglesby and Christopher Gibson, two of the three witnesses who provided extremely damaging testimony against appellant, were

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informants since they received reduced sentences in return for their testimony against appellant.

Appellant cites Commonwealth v. Donnelly, 233 Pa. Super. 396, 336 A.2d 632 (1975), for the proposition that a cautionary charge should have been given regarding the testimony of Oglesby and Gibson. In Donnelly an informant, acting in concert with law enforcement authorities, used a hidden microphone to tape a conversation with that defendant. Our Court held that no special cautionary instruction was necessary regarding that informant's testimony since the informant was not paid by the government, there was no indication that he harbored vindictive motives toward that defendant, he was not requesting immunity from punishment and his testimony was corroborated by the tapes and by physical evidence.

In the instant case Oglesby and Gibson were not paid by the Commonwealth, there was no indication that they harbored vindictive motives toward appellant, they did not request immunity from punishment for their unrelated crimes and their testimony was corroborated by each other's testimony and by the testimony of Deborah Wallick. Oglesby and Gibson do not even fit into the category of informant since they were not recruited by the Commonwealth and appellant approached them and voluntarily offered information; the two witnesses merely passed the information on to the Commonwealth in return for reduced sentences regarding crimes unrelated to those committed by appellant. Even if we assumed for the sake of argument that they were informants, we would have found

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that no special cautionary charge was necessary pursuant to Commonwealth v. Donnelly, supra. Hence, this issue is meritless.

Appellant's issue 2(h) is that his trial counsel was ineffective regarding evidence concerning a palm print on the telephone receiver that was the alleged instrument utilized to beat and kill the victim. On cross-examination appellant's trial counsel elicited from Officer Robert Harman that the palm print on the receiver was not identified as belonging to appellant or Danny Everett. Appellant's counsel then stated,

Q. Now in fairness, the palm print that you had of [appellant] that was submitted to the FBI, was it a full palm print?

A. [Officer Harman] No, sir, it was not.

Q. Was it just a partial palm print of his?

A. Yes, sir.

N.T., 8/18-22/86, at 467. Appellant avers that his counsel confused the jury in that it might have inferred that had appellant's full palm print been submitted to the Federal Bureau of Investigation the agency might have determined that the print belonged to appellant.

The PCRA hearing in the instant case was held five years after appellant's trial. At the hearing appellant's counsel stated that he probably elicited evidence regarding appellant's partial palm print in order to minimize any damage that could have occurred had the prosecution raised the point. N.T., 10/1/91, at 67.

Counsel stated, "If it was something that I thought the jury was

certain to hear, I might have thought that it would be better for them to hear it from us." Id. We find counsel's action had some reasonable basis designed to serve the interests of appellant; hence, appellant's claim is without merit.² Commonwealth v. Smith, supra. Furthermore, we will not speculate on what the jury might have inferred from the testimony revealing that only appellant's partial palm print was submitted to the Federal Bureau of Investigation.

Appellant's issue number three is that the trial court subjected him to double jeopardy when it sentenced him to sentences for burglary and conspiracy that were consecutive to his life-sentence for second-degree murder. As we stated in appellant's issue 2(b) we are remanding to the trial court so that it may vacate appellant's judgment of sentence for conspiracy; hence, we are now only concerned with appellant's sentence for burglary. Appellant avers that since burglary "is an underlying element of the felony murder conviction, the sentencing court violated the multiple punishment aspect of both the United States and Pennsylvania's Constitutional amendments forbidding double jeopardy." Appellant's Brief at 36.³

²We also refer to the trial court opinion, at pages 13-14.

³As mentioned in appellant's issue 2(b) appellant was also sentenced to a term of imprisonment of two to four years for a robbery conviction that was unrelated to the instant crimes. The sentence for robbery was to run concurrent with appellant's sentences for the instant crimes of burglary and conspiracy.

In Commonwealth v. Tarver, 493 Pa. 320, 426 A.2d 569 (1981), the defendant pled guilty to first-degree murder and was sentenced to life imprisonment; he was also convicted of a robbery which stemmed from the same criminal episode.⁴ He was sentenced to a ten to twenty year term of imprisonment for the robbery, to be served consecutively to the sentence of life imprisonment. Appellant filed a PCRA claim, alleging that the two sentences violated double jeopardy principles; the claim was denied. Our Supreme Court held that in a felony murder situation once a defendant is sentenced for the murder he may not be sentenced for the underlying felony if said felony was part of the same transaction. Id. In the instant case the burglary was part of the same criminal transaction as the murder of the elderly victim; hence, once appellant received a life sentence for second-degree murder he should have received no further sentence for the burglary conviction. Therefore, we remand to the trial court so that it may vacate appellant's judgment of sentence for burglary.

Since appellant's sentence of two to four years for an unrelated robbery conviction was to run concurrent with appellant's sentences for burglary and conspiracy, which will be vacated by the trial court, we also remand so that the trial court may vacate the sentence for robbery and impose a new sentence for the robbery.⁵

⁴The fact that the robbery culminated in a killing led to the finding of murder in the first degree.

⁵We note that since the robbery was unrelated to appellant's conviction for second-degree murder the trial court may impose a consecutive sentence for the robbery.

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Appellant's issue number four is that testimony elicited from Sonny Oglesby was improperly obtained since appellant had requested to have counsel present before he answered any further questions yet the police approached Oglesby in jail to see if he had any information regarding the perpetrators of the instant crimes. Appellant avers that the police circumvented his right to counsel since they recruited Oglesby to get appellant to reveal details of the instant crimes.

We affirm this issue based upon our independent review of the record and President Judge Erb's opinion, at pages 14-28.

Appellant's fifth issue is that his life

sentence is illegal and improper without a minimum sentence[;] sentences of life imprisonment currently being served and imposed in Pennsylvania are illegal and unconstitutional inasmuch as they lack parole eligibility or a minimum sentence and thus prejudice those prisoners through a denial of the benefits of the Parole Act

Appellant's Brief at 44, 48.

This claim is devoid of merit. 18 Pa.C.S. §1102(b) states that a person convicted of second degree murder shall be sentenced to a term of life imprisonment. Although 42 Pa.C.S. §9756 states that a trial court shall impose a minimum sentence of confinement which shall not exceed one-half of the maximum sentence imposed, when a person is sentenced under 18 Pa.C.S. §1102(b) (for second degree murder) the sentencing court is not required by section 9756(b) to state a minimum sentence less than a life sentence.

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Castle v. Pa. Bd. of Probation and Parole, 123 Pa.C. 570, 554 A.2d 625 (1989), alloc. den. at 567 A.2d 653.

In summation, we affirm the dismissal of all of appellant's PCRA claims except those regarding his judgments of sentence for conspiracy, burglary and robbery. Pursuant to our discussion of appellant's issues 2(b) and three we reverse the PCRA court's findings regarding appellant's judgments of sentence for burglary, conspiracy and robbery and remand to the trial court so that it may vacate the judgments of sentence for the aforementioned three crimes and resentence appellant regarding his robbery conviction. We leave undisturbed appellant's life sentence for second degree murder.

Order affirmed in part and reversed in part. Case remanded with directions consistent with this Memorandum. Jurisdiction relinquished.

McEWEN, J., Concurs in the Result.

DATED: April 30, 1993
JUDGMENT ENTERED


DEPUTY PROTHONOTARY

APPENDIX

C

Senate Bill 1400

2025-2026 Regular Session

Sponsors	BAKER, LANGERHOLC, K. WARD, PITTMAN, YAW, PICOZZI, GEBHARD, ROBINSON, PENNYCUICK, VOGEL, CULVER, ARGALL, DUSH, STEFANO, FARRY		
Short Title	An Act amending Titles 18 (Crimes and Offenses), 42 (Judiciary and Judicial Procedure) and 61 (Prisons and Parole) of the Pennsylvania Consolidated Statutes, in authorized disposition of offenders, further providing for sentence for murder, murder of unborn child and murder of law enforcement officer and providing for sentence for murder of the second degree; in sentencing, further providing for sentences for second and subsequent offenses and for life imprisonment for homicide; and, in motivational boot camp, further providing for definitions; in Pennsylvania Board of Probation and Parole, providing for parole eligibility for offenders sentenced to life for murder of the second degree and * * *		
Memo Subject	Sentencing for second degree murder following Commonwealth v. Lee		
Actions	1834	Referred to JUDICIARY, June 22, 2026	
	1836	Reported as amended, June 23, 2026	
		First consideration, June 23, 2026	
		Second consideration, June 24, 2026	
		Third consideration and final passage, June 25, 2026 (31-19)	
		Vote on final passage reconsidered, June 25, 2026	
		Final passage, June 25, 2026 (30-20)	
		(Remarks see Senate Journal Page), June 25, 2026	
		In the House	
		Referred to JUDICIARY, June 26, 2026	

APPENDIX

D

House Bill 1042

2025-2026 Regular Session

Sponsors	N. NELSON, HILL-EVANS, SANCHEZ, BOYD, CURRY, D. WILLIAMS, BRIGGS, CEPHAS, KINKEAD, RIVERA, O'MARA, KENYATTA, CARROLL		
Short Title	An Act amending Titles 18 (Crimes and Offenses), 42 (Judiciary and Judicial Procedure), 61 (Prisons and Parole) and 63 (Professions and Occupations (State Licensed)) of the Pennsylvania Consolidated Statutes, in crimes against unborn child, further providing for the offense of murder of unborn child; in arson, criminal mischief and other property destruction, further providing for the offense of arson and related offenses; in judicial boards and commissions, further providing for adoption of guidelines for sentencing; in posttrial matters, further providing for jurisdiction and proceedings; in sentencing, providing for sentence for general murder of the second degree, further providing for * * *		
Memo Subject	Public Safety and Rehabilitation Act		
Actions	1131	Referred to JUDICIARY, March 25, 2025	
		Reported as committed, May 5, 2025	
		First consideration, May 5, 2025	
		Laid on the table, May 5, 2025	
		Removed from table, Feb. 3, 2026	
	2884	Second consideration, with amendments, Feb. 4, 2026	
		Re-committed to APPROPRIATIONS, Feb. 4, 2026	
		(Remarks see House Journal Page 97-98), Feb. 4, 2026	
		Re-reported as committed, March 23, 2026	
		Third consideration and final passage, March 23, 2026 (149-50)	
		(Remarks see House Journal Page 150-151), March 23, 2026	
		In the Senate	
		Referred to JUDICIARY, March 30, 2026	
	3758	Reported as amended, July 10, 2026	
		First consideration, July 10, 2026	
		Second consideration, July 11, 2026	
		Re-referred to APPROPRIATIONS, July 11, 2026	

Re-reported as committed, July 11, 2026

Re-referred to RULES AND EXECUTIVE NOMINATIONS, July 11, 2026

3766 Re-reported as amended, July 11, 2026

Third consideration and final passage, July 12, 2026 (28-22)

Vote on final passage reconsidered, July 12, 2026

Final passage, July 12, 2026 (30-20)

(Remarks see Senate Journal Page), July 12, 2026

In the House

Referred to RULES, July 12, 2026

3793 Amended in House Committee on RULES, July 23, 2026

Re-reported on concurrence, as amended, July 23, 2026

House concurred in Senate amendments, as amended by the House,
July 23, 2026 (102-100)

(Remarks see House Journal Page), July 23, 2026
