

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-590-2016
v.	:	
	:	
HASAN GOODEN REID,	:	
Defendant	:	PCRA

**OPINION AND ORDER**

On June 9, 2017, Counsel for the Defendant filed a Motion to Withdraw as Counsel along with a Motion to Dismiss pursuant to Commonwealth v. Turner, 544 A.2d 927 (Pa. 1988) and Commonwealth v. Finley, 550 A.2d 213 (Pa. Super.1988). After an independent review of the entire record, the Court agrees with PCRA Counsel and finds that the Defendant has failed to raise any meritorious issues in his PCRA Petition, and his petition should be dismissed.

***Background***

On June 9, 2016, Hasan Gooden-Reid (Defendant) pled guilty and was sentenced, pursuant to a negotiated plea agreement, to Third Degree Murder, a felony of the first degree;<sup>1</sup> Abuse of Corpse, a misdemeanor of the second degree;<sup>2</sup> Criminal Mischief, a felony of the third degree<sup>3</sup>; Possession of an Instrument of Crime<sup>4</sup> (weapon) a misdemeanor of the first degree; Obstructing the Administration of Law or other Law Enforcement<sup>5</sup>, Tampering with or Fabricating Physical Evidence<sup>6</sup> and the

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<sup>1</sup> 18 Pa.C.S. § 2502(c).  
<sup>2</sup> 18 Pa.C.S.A § 5510.  
<sup>3</sup> 18 Pa.C.S.A. 3304 (a)(1).  
<sup>4</sup> 18 Pa.C.S.A. 907(a).  
<sup>5</sup> 18 Pa.C.S.A. 5101.  
<sup>6</sup> 18 Pa. C.S.A. 4910(1).

amended count of Recklessly Endangering another Person<sup>7</sup>, all misdemeanors of the second degree. The plea agreement was that the Defendant was to be incarcerated for an aggregate sentence of thirty (30) to sixty (60) years in a State Correctional Institution. For the Third Degree Murder charge, the Defendant was sentenced by this Court to twenty (20) to forty (40) years in a State Correctional Institution. On the charge of abuse of Corpse, the defendant received a consecutive one (1) to two (2) year sentence; Criminal Mischief a consecutive three and one half (3 ½) to seven (7) year sentence; Possession of An Instrument of Crime a consecutive two and one half (2 ½) to five (5) year sentence; and, on each of the remaining charges of Recklessly Endangering, Obstruction and Tampering with or fabricating Physical Evidence the Defendant received a consecutive one (1) to two (2) year sentence. The Defendant did not file any subsequent appeals. Therefore his sentence became final on July 9, 2016.

On February 2, 2017 the Defendant filed a *pro se* Post Conviction Relief Act (PCRA) Petition. The Defendant alleges that his trial counsel was ineffective for multiple reasons including: 1) there was a violation of the Constitution of the United States or the Commonwealth; 2) ineffective assistance of counsel; 3) an unlawfully induced plea agreement; and, 4) improper obstruction by governmental officials to the petitioner's right of appeal. Trisha Hoover Jasper, Esquire was appointed to represent the Defendant for the PCRA Petition. On June 9, 2017, Attorney Jasper filed a Petition to Withdraw from Representation of PCRA and a Memorandum Pursuant to Turner/Finley. After an independent review of the record and an additional PCRA

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<sup>7</sup> 18 Pa.C.S.A. 2705.

conference, the Court agrees with Attorney Jasper that Defendant failed to raise any meritorious issues in his PCRA Petition.

In order to succeed on a claim of ineffective assistance of counsel, Defendant must overcome the presumption of counsel effectiveness by proving the following three factors, that: (1) Defendant's underlying claim has arguable merit, (2) trial counsel had no reasonable basis for her action or inaction, and (3) the performance of trial counsel prejudiced Defendant. Commonwealth v. Pierce, 527 A.2d 973, 975-76 (Pa. 1987)). See also, Strickland v. Washington, 466 U.S. 668, 687-91, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); Commonwealth v. Sampson, 900 A.2d 887, 890 (Pa. Super. 2006), appeal denied, 907 A.2d 1102 (Pa. 2006) (citing Commonwealth v. Lynch, 820 A.2d 728, 733 (Pa. Super. 2003)). A claim of ineffectiveness will be denied if the petitioner's evidence fails to satisfy any one of these prongs. Commonwealth v. Busanet, 618 Pa. 154 A.3d 35, 45 (Pa. 2012).

***Whether counsel was ineffective for failing to advocate for self defense***

In the context of a guilty plea, a claim of ineffectiveness must show that plea counsel's ineffectiveness induced the plea and there is a causal nexus between counsel's ineffectiveness and an unknowing or involuntary plea. Commonwealth v. Flood, 627 A.2d 1193, 1199 (Pa. Super. 1993) (citations omitted); see also, Commonwealth v. Johnson, 875 A.2d 328, 331 (Pa. Super. 2005). The focus is the guilty plea hearing and whether the accused was misled or misinformed or acted under misguided influence. Flood, supra, citing, Commonwealth v. Broadwater, 479 A.2d 526, 531 (1984). A defendant who pleads guilty has a duty to answer questions

truthfully. Commonwealth v. Pollard, 832 A.2d 517, 523-24 (Pa. Super. 2003) (citations omitted).

The Defendant contends that his trial counsel was ineffective for multiple reasons. The entry of a plea of guilty, however, “usually constitutes a waiver of all defects and defenses except those concerning the jurisdiction of the court, legality of sentence, and validity of plea.” Commonwealth v. Coles, 530 A.2d 453, 457 (Pa. Super. 1987); Commonwealth v. Moyer, 444 A.2d 101 (1982); Commonwealth v. Casner, 461 A.2d 324 (1983). Thus, this Court will assess whether the Defendant entered a valid guilty plea to determine if he has waived many of the issue raised in his PCRA Petition.

Manifest injustice is required to withdraw guilty pleas, which are requested after sentence has been imposed. Commonwealth v. Flick, 802 A.2d 620, 623 (Pa. Super. 2002). Such a manifest injustice occurs when a plea is not tendered knowingly, intelligently, voluntarily, and understandingly. Commonwealth v. Persinger, 615 A.2d 1305 (Pa. 1992). It does not matter if the Defendant is pleased with the outcome of his decision to plead guilty as long as he did so knowingly, voluntarily, and intelligently. Commonwealth v. Yager, 685 A.2d 1000, 1004 (Pa. Super. 1996).

The minimum inquiry required of a trial court must include the following six areas: (1) Does the defendant understand the nature of the charges to which he is pleading guilty? (2) Is there a factual basis for the plea? (3) Does the defendant understand that he has a right to trial by jury? (4) Does the defendant understand that he is presumed innocent until he is found guilty? (5) Is the defendant aware of the permissible ranges of sentences and/or fines for the offenses charged? (6) Is the defendant aware that the judge is not bound by the terms of any plea agreement tendered unless the judge accepts such agreement?

Commonwealth v. Young, 695 A.2d 414, 417 (Pa. Super. 1997). In Yeomans, the Superior Court further summarized:

In order for a guilty plea to be constitutionally valid, the guilty plea colloquy must affirmatively show that the defendant understood what the plea connoted and its consequences. This determination is to be made by examining the totality of the circumstances surrounding the entry of the plea. Thus, even though there is an omission or defect in the guilty plea colloquy, a plea of guilty will not be deemed invalid if the circumstances surrounding the entry of the plea disclose that the defendant had a full understanding of the nature and consequences of his plea and that he knowingly and voluntarily decided to enter the plea.

Commonwealth v. Yeomans, 24 A.3d 1044 (Pa. Super. 2011) (citing Commonwealth v. Fluharty, 632 A.2d 312, 314 (Pa. Super. 1993); see also Commonwealth v. Scott, 55 A.3d 146 (Pa. Super. 2012).

A review of the transcript of the guilty plea hearing in this case confirms that the Defendant did in fact enter into his plea knowingly, voluntarily, and intelligently. The guilty plea hearing took more than one hour to review all of the information that the Defendant needed to determine whether he wished to enter a plea to the charges filed against him. The defendant had ample opportunity to consult with counsel throughout the plea process as well.

This Court informed the Defendant of the maximum sentence/fine for the charges and that the Court did not have to accept the terms of the plea agreement. N.T., 6/9/2016, p. 14. The Defendant was made aware of the elements of the crime and that the Commonwealth must prove the elements of the crime beyond a reasonable doubt. Id. at 6-14. The Defendant gave the Court an extensive factual basis for the guilty plea and was informed that he had the right to go to trial. Id. at 18-33.

In addition, the Defendant filled out a written guilty plea colloquy highlighting many of these factors in greater detail, to which he stated he understood.<sup>8</sup> According to Pennsylvania law, the Defendant's guilty plea was entered knowingly, voluntarily, and intelligently.

Defendant contends that his attorney should have pursued a self-defense claim. The Defendant, however, stated on the record during his guilty plea that he was not coerced into pleading guilty and that it was his decision and he was giving up his right to allege self-defense:

MIELE: Do you understand that if you go through with this guilty plea, you are giving up your right to claim self defense?

DEFENDANT: Yes.

MIELE: And under Pennsylvania law self defense would be a defense to the charges—some of the charges against you, do you understand you're giving it up?

DEFENDANT: Yes.

MIELE: And what does it mean when I tell you that you are giving it up?

DEFENDANT: It means I can't pursue that no more.

MIELE: You're willing to plead guilty and you give up the right to claim self defense?

DEFENDANT: Yes.

Id. at 32-33. Therefore, this claim lacks merit.

***Whether trial counsel was ineffective for failing to argue his mental illness was manifest injustice***

The Defendant contends that trial counsel was ineffective because he did not argue Defendant's mental illness as a mitigating factor and the Court's sentence of

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<sup>8</sup> The Court's Order dated June 9, 2016, found that he knowingly, voluntarily and intelligently entered his guilty plea.

30-60 years is manifestly injustice and shocks the conscious. To make a claim for ineffective assistance of counsel, a defendant must prove the following: (1) an underlying claim of arguable merit; (2) no reasonable basis for counsel's act or omission; and (3) prejudice as a result, that is, a reasonable probability that but for counsel's act or omission, the outcome of the proceeding would have been different. Commonwealth v. Cooper, 941 A.2d 655, 664 (Pa. 2007) (citing Commonwealth v. Carpenter, 725 A.2d 154, 161 (1999)). A failure to satisfy any prong of this test is fatal to the ineffectiveness claim. Cooper, 941 A.2d at 664 (citing Commonwealth v. Sneed, 899 A.2d 1067, 1076 (2006)). Further, Counsel is presumed to have been effective. Id.

Initially, the Court notes that at the time of his plea to the most serious charge, Third Degree murder, had an offense gravity score (OGS) of 14 with a prior record of zero (0). Since the Defendant was alleged to have used a deadly weapon in the commission of the offense, the standard range of the guidelines, using the deadly weapon enhancement was ninety (90) months to twenty (20) years. Defendant received a minimum sentence of 20 years which was within the standard range. Although the sentences imposed by the court on the other charges would have been in the aggravated range, they were designated by counsel as part of the plea agreement, which was acknowledged by the Defendant as he signed his name directly below the plea agreement<sup>9</sup>.

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<sup>9</sup> Defense Counsel added a line just below the handwritten pleas agreement on the face sheet of the colloquy.

During sentencing, the Commonwealth also noted for the Court that the Defendant's mental health history and diagnoses were considered in the formation of the plea agreement entered into by the Defendant.

LINHARDT: Just wanted the Court to be aware that among the reasons for reaching this agreement with the Defendant is that, as the Court's aware, the Defendant spent several months in Torrance State Hospital gaining competency then after returning back to the county prison, he would have been evaluated by psychiatrists. Ultimately, Dr. Voskianian concluded that because of the Defendant's history of mental illness, which includes a diagnosis of paranoid schizophrenia and bipolar, it was the doctor's opinion that the Defendant was incapable of forming the specific intent to kill, which is necessary, obviously, to prove first degree murder. And that among other reasons was the reason for the third degree murder plea as well as the other counts.

Id. at 51.

"Where the plea agreement contains a negotiated sentence which is accepted and imposed by the sentencing court, there is no authority to permit a challenge to the discretionary aspects of that sentence." Commonwealth v. Dalberto, 648 A.2d 16, 19 (Pa. Super. 1994). In addition, the Commonwealth as part of its offer considered the Defendant's mental health history and current diagnosis. The Defendant cannot show he was prejudiced in anyway, as the Court also accepted the plea agreement and sentenced him accordingly. Therefore, the Court finds that this issue is without merit.

***Whether trial counsel was ineffective for failing to file a motion to modify sentence and appeal without his requesting them to be filed***

Just prior to the end of the guilty plea colloquy, the Court advised the Defendant of his post sentence rights.

COURT: Do you have any questions for me?

DEFENDANT: No, I don't. I'm grateful. I'm grateful. Thank you so much.

COURT: You're welcome. Now you understand—



DEFENDANT: Yes, I understand.

COURT: that you would still have the right to file a motion to modify this court's sentence within 10 days or to take an appeal from what's happened here today within 30?

DEFENDANT: Yes, I understand.

COURT: Mr. Miele will continue to represent you throughout that time frame.

DEFENDANT: Yes ma'am.

COURT: They're your post sentencing rights.

DEFENDANT: Yes ma'am.

COURT: Do you have any questions about those rights from me?

DEFENDANT: No, I don't.

COURT: Or from me?

DEFENDANT: No I don't.

Id. at 57.

PCRA Counsel also had the opportunity to review the file kept in the Defendant's case by trial counsel confirming the discussion that was held prior to the Defendant being transported to state prison; trial counsel had written documentation that the Defendant wished to waive his post sentence and appeal rights. However, when the Defendant did wish to take an appeal, his letter was received by his attorney's office past the deadline to file but that he was advised to file a PCRA petition. The court is satisfied that the Defendant knew his post sentence rights and when he chose to exercise them outside the time set by rule, it was at no fault of his trial counsel.

***Conclusion***

Based upon the foregoing, the Court finds no basis upon which to grant the Defendant's PCRA petition. Additionally, the Court finds that no purpose would be served by conducting any further hearing. As such, no further hearing will be scheduled. Pursuant to Pennsylvania Rule of Criminal Procedure 907(1), the parties are hereby notified of this Court's intention to deny the Defendant's PCRA Petition. The Defendant may respond to this proposed dismissal within twenty (20) days. If no response is received within that time period, the Court will enter an Order dismissing the Petition.

**ORDER**

**AND NOW**, this 30th day of August, 2017, it hereby ORDERED and DIRECTED as follows:

1. Pursuant to Pennsylvania Rule of Criminal Procedure 907(1) and for the reasons discussed in the foregoing opinion, the Defendant is hereby notified that this Court intends to dismiss his PCRA petition, which was filed on August 11, 2015. The Defendant may respond to the proposed dismissal within 20 days of the date of the notice.
2. The **Petition to Withdraw from Representation**, filed on June 9, 2017, is hereby **GRANTED**, and Trisha Hoover Jasper, Esq. may withdraw from the above-captioned case.

BY THE COURT,

Nancy L. Butts, P.J.

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