

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-263-2016  
:   
vs. : CRIMINAL DIVISION  
:   
: Notice of Intent to Dismiss PCRA Petition  
HANSAN SUGGS, : Without Holding An Evidentiary Hearing  
Defendant :   
:

**OPINION AND ORDER**

This matter came before the court on the Post Conviction Relief Act (PCRA) petition filed by Defendant, Hansan Suggs (hereinafter “Suggs”). The relevant facts follow.

On October 15, 2016, Suggs took a Trek 9.8 carbon fiber mountain bike valued at \$5,000 from the victim’s residence. The police charged Suggs with theft by unlawful taking and receiving stolen property, felonies of the third degree.

On February 29, 2016, the Commonwealth amended the Information to change the grading of the theft by unlawful taking charge from a felony of the third degree to a misdemeanor of the first degree, and Suggs entered a guilty plea to that offense in exchange for an eighteen-month minimum sentence in a State Correctional Institution (SCI) and restitution not to exceed \$5,000. Suggs waived the preparation of a Pre-Sentence Investigation (PSI) report, and the court sentenced Suggs to incarceration in an SCI for a minimum of eighteen months and a maximum of five years.

Suggs filed a pro se PCRA petition. Although the petition is somewhat difficult to follow in that Suggs’s allegations of error are comingled with his case citations, it appears that Suggs asserted the following claims: (1) he had a drug addiction problem but the sentencing judge failed to offer him any kind of help (drug program, RRRRI option, etc.); (2)

the judge sentenced outside the guidelines without stating why he deviated from the guidelines; and (3) Suggs pled guilty without having been informed of the crime's elements. There are some general allegations of defective advice of counsel, but the court is unable to decipher the specifics of this claim from the PCRA petition.

As this was Suggs' first PCRA petition and he appeared to be indigent, the court appointed counsel to represent Suggs and gave counsel an opportunity to amend the PCRA petition or file a "no merit" letter in accordance with *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988) and *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988)(en banc).

Counsel obtained a transcript of the guilty plea and sentencing hearing. After reviewing the transcript and corresponding with Suggs about his claims, counsel filed a motion to withdraw, which included a *Turner/Finley* no merit letter. According to this letter, Suggs' allegations of ineffective assistance of counsel relate to his attorney failing to: explain the elements of the charges, make sure he had full knowledge of all the factors tying into his plea agreement such as the true amount of the bicycle, and make sure that the agreement had a front time and a back time (minimum and maximum).

After an independent review of the record, the court finds that Suggs' claims lack merit and he is not entitled to relief as a matter of law.

Suggs first claims that his sentence is unlawful because the judge did not recommend or offer him any kind of drug program or RRRI. The court cannot agree. Suggs had a lengthy criminal record. (Transcript at 16-18). His prior record score was a RFEL. By his own admission, he had been to state prison about four times in the past. (Transcript at

15). He also had been treated for substance abuse issues a “couple times,” which included inpatient treatment for his substance abuse issues with crack cocaine. (Transcript at 15-16). In light of these facts and circumstances, drug treatment instead of state incarceration was not an appropriate sentence in this case. Furthermore, the court could not send Suggs for an evaluation for the State Intermediate Punishment (SIP) program without the approval of the District Attorney. See 61 Pa. C. S. § 4104(a). One can infer that the District Attorney would not recommend or approve Suggs for the SIP program based on his arguments in favor of imposing the highest available maximum sentence for a misdemeanor of the first degree. (Transcript, at 18.).

Suggs was not eligible for RRRRI due to his prior convictions for robbery. The definition of an eligible offender for RRRRI excludes an individual with a history of past or present violent behavior and an individual who has been convicted of a personal injury crime. 61 Pa. C.S. §4503. Robbery is a crime of violence, as well as a personal injury crime. 42 Pa. C. S §9714(g)(defining crime of violence); 18 P.S. §11.103 (defining personal injury crime). Therefore, the court could not make Suggs eligible for a RRRRI minimum in this case.

Suggs next contends that he is entitled to relief because the court imposed a sentence that exceeded the lawful maximum or imposed a sentence that exceeded the guidelines without stating adequate reasons. Again, the court cannot agree.

The maximum allowable sentence for a misdemeanor of the first degree is five years. 18 Pa. C. S. § 1104(1). The court sentenced Suggs to incarceration in an SCI for a minimum of eighteen months and a maximum of five years. Therefore, the sentence did not exceed the lawful maximum.

The sentence imposed also did not exceed the sentencing guidelines. Suggs entered a guilty plea to theft by unlawful taking graded as a misdemeanor of the first degree. The offense gravity score for that offense is a three. 204 Pa. Code §303.15. Suggs' prior record score was a RFEL. Therefore, the standard sentencing guidelines for this case were 12-18 months. 204 Pa. Code §303.16. The numbers listed in the guidelines are the standard range for the **minimum** sentence. 204 Pa. Code §303.9(e) ("All numbers in sentence recommendations suggest months of minimum confinement pursuant to 42 Pa.C.S. §9755(b)(partial confinement) and 42 Pa.C.S. §9756(b)(total confinement)."). The court imposed, and Suggs agreed to, a minimum sentence of 18 months, which was the top of the sentencing guidelines.

Suggs might think, incorrectly, that he did not receive a good plea deal. Instead, Suggs was fortunate that his attorney and the District Attorney agreed to amend the charge to a misdemeanor of the first degree.

The grading of a theft offense depends on the value of the item stolen. When the value of the item exceeds \$2,000, the offense is properly graded as a felony of the third degree. 18 Pa. C. S. §3903(a.1). Suggs was ordered to pay restitution in the amount of \$500 to the victim and \$1620 to the victim's insurance company. Therefore, the value of the bike was \$2,120.<sup>1</sup>

The maximum sentence for a felony of the third degree is seven years. 18 Pa. C. S. §1103. The offense gravity score would be a five for theft graded as a felony of the third degree. With Suggs' prior record score of a RFEL, the standard guideline range would

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<sup>1</sup> \$500 + \$1620 = \$2,120.

have been 24-36 months. In other words, if Suggs' counsel and the District Attorney had not reached an agreement for an 18-month minimum sentence on an amended count of theft graded as a misdemeanor of the first degree, Suggs would have been facing a standard range minimum sentence of 24-36 months and the possibility of a maximum sentence of 7 years.

Suggs claims his attorney was ineffective for failing to explain the elements of the charges, not making sure he had full knowledge of all the factors tying into his plea agreement such as the true amount of the bicycle, and for not making sure the agreement had a front time and a back time (minimum and maximum).

Counsel is presumed effective and the burden is on the defendant to prove otherwise. *Commonwealth v. Steele*, 961 A.2d 786, 796 (Pa. 2008). To be eligible for relief under the PCRA, the petitioner must plead and prove that his conviction or sentence resulted from ineffective assistance of counsel which so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place. 42 Pa. C. S. §9543(a)(2). A petitioner claiming ineffective assistance of counsel must establish that: (1) the underlying claim has arguable merit; (2) no reasonable basis existed for counsel's actions or failure to act; and (3) the petitioner suffered prejudice as a result of counsel's error, with prejudice measured by whether there is a reasonable probability that the result of the proceedings would have been different. *Commonwealth v. Cousar*, 154 A.3d 287, 296 (Pa. 2017). Furthermore, allegations of ineffectiveness in connection with a guilty plea will generally only provide a basis for relief if the ineffectiveness caused an involuntary or unknowing plea. *Commonwealth v. Mitchell*, 105 A.3d 1257, 1272 (Pa. 2014).

In his written guilty plea colloquy, Suggs was asked several questions about

his understanding of the charge, the permissible range of sentences, and his counsel. The written guilty plea colloquy reveals the following information:

2. Has your attorney explained to you all the elements of the crime or crimes to which you intend to plead guilty? Yes
5. Do you fully understand the permissible range of sentences and/or fines that can be imposed for the crime/crimes to which you are pleading guilty? Yes
- 21 Whose decision is it to plead guilty? Mines (sic)
22. Why do you wish to plead guilty? I want to because Im (sic) guilty
24. Have you thoroughly discussed with your attorney all of the facts and circumstances surrounding the charges against you? Yes
25. Are you satisfied with the representation and advice of your attorney? Yes

I swear or affirm that I have read this entire document or it was read to me and I understand its full meaning, and I still, nevertheless, want to enter a plea of guilty to the offense or offenses specified.

The cover sheet of the written colloquy sets forth the maximum punishment as 5 years and \$10,000 and the guideline range of 12-18 months.

A criminal defendant who elects to plead guilty has an obligation to answer questions truthfully. *Commonwealth v. Iseley*, 615 A.2d 408, 412 (Pa. Super. 1992)(citations omitted).

Even assuming for the sake of argument that counsel failed to explain the elements of theft by unlawful taking to Suggs, he was not prejudiced because the court explained to him the elements of the offense before he entered his guilty plea. Transcript, 2/29/2016, at 3. The court also asked questions about the factual basis for the plea, Suggs' understanding of his right to a trial by jury and the presumption of innocence, the permissible range of sentences and fines, and his awareness that the judge was not bound by the plea

agreement unless the judge accepted the agreement. Transcript at 3, 7-8, 13-14. These areas of inquiry were also covered in greater detail in the written guilty plea colloquy, specifically questions 3, 5, 7 through 9, 12, and 13.

Similarly, Suggs was not prejudiced by counsel's failure to discuss the true value of the bike with him. When the charge was filed, the bike's value was listed as \$5,000, and the plea agreement was structured so that restitution would not exceed \$5,000. The actual amount of restitution ordered, however, totaled \$2,120. Suggs was not prejudiced by this change. Theft is graded as a felony of the third degree when the amount involved exceeds \$2,000 but is less than \$100,000. 18 Pa. C. S. §3903. Despite the fact that the theft offense could properly be graded as a felony of the third degree, defense counsel reached an agreement with the prosecutor for the charge to be amended to a misdemeanor of the first degree. See Guilty Plea Recommendation.

Suggs also was not prejudiced by counsel's failure to make sure that an agreement was reached regarding the maximum sentence to be imposed. It is clear to the court that, based on the District Attorney's comments at the guilty plea and sentencing hearing (see Transcript, at 18), the District Attorney would not agree to a maximum sentence of less than five years.

The court was required to give a maximum sentence of at least three years, because the minimum sentence cannot exceed one-half of the maximum sentence. 42 Pa. C.S. 9756(b).

By not reaching an agreement on the maximum sentence, defense counsel left the court with the discretion to impose a maximum sentence between three and five years.

The court, however, agreed with the District Attorney that a five-year maximum sentence was warranted in this case.

**ORDER**

AND NOW, this \_\_\_\_ day of June 2017, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the court finds that Suggs' PCRA petition lacks merit. The parties are hereby notified of this court's intention to dismiss Sugg's PCRA petition without holding an evidentiary hearing. Suggs may respond to this proposed dismissal within twenty (20) days. If no response is received within that time period, the court will enter an order dismissing the petition.

The court GRANTS counsel's motion to withdraw. Suggs may represent himself or hire private counsel to represent him.

By The Court,

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Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)  
Trisha Hoover Jasper, Esquire  
325 Market Street, Williamsport PA 17701  
Hansan Suggs, ML4953  
SCI Coal Township, 1 Kelley Drive, Coal Township PA 17866-1020  
Work File