

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

: No. CR-651-2017

:

vs.

:

: **Notice of Intent to Dismiss PCRA**

: **Without Holding An Evidentiary Hearing**

LUKE WOMER,

: **and Granting Counsel's Motion to**

Defendant

: **Withdraw**

OPINION AND ORDER

Luke Womer (Petitioner) was driving his vehicle on Allegheny Street in Jersey Shore, Pennsylvania on March 27, 2017 and was involved in an accident. A pedestrian was hit and injured. Petitioner had been drinking alcoholic beverages to the extent he was incapable of safely driving and failed to stop or remain at the scene of the accident to fulfill the requirements of giving information and aid.

On April 24, 2017, Petitioner plead guilty to one count of accidents resulting in death and injury, a misdemeanor of the first degree and driving under the influence, incapable of safe driving. The plea agreement called for time served on the DUI up to six (6) months. Petitioner had ten days credit for time served. The plea agreement also called for consecutive probation on the accidents resulting in death or serious bodily injury.

On July 12, 2017, the court sentenced Petitioner in accordance with the plea agreement. With respect to the driving under the influence count, the court sentenced Petitioner to an indeterminate term of county incarceration, the minimum of which was ten (10) days and the maximum of which was six (6) months. In connection with the accidents involving death or serious bodily injury count, Petitioner was placed on probation for a period of four (4) years to run consecutive to the DUI sentence.

Petitioner did not file a post-sentence motion nor did he appeal the sentence. On August 30, 2017, Petitioner filed a pro se petition for relief under Pennsylvania's Post Conviction Relief Act (PCRA). Petitioner alleged that his trial counsel was ineffective for failing to properly advise him regarding the loss of license associated with his plea.

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

On November 6, 2017, PCRA counsel filed a motion to withdraw which included a *Turner/Finley* no merit letter. After an independent review of the record, the court concludes as a matter of law, that Petitioner is not entitled to relief.

Counsel is presumed to have rendered effective assistance, and the burden is on the PCRA Petitioner to prove otherwise. *Commonwealth v. Treiber*, 121 A.3d 435, 445 (Pa. 2015); *Commonwealth v. Philistin*, 53 A.3d 1, 10 (Pa. 2012). To do so, the petitioner must show that: "(1) his underlying claim is of arguable merit; (2) counsel had no reasonable basis for his action or inaction; and (3) the petitioner suffered actual prejudice as a result." *Commonwealth v. Spatz*, 84 A.3d 294, 311 (Pa. 2014).

Petitioner alleges that his trial counsel was ineffective because he was not informed by his trial counsel that by pleading guilty he would suffer a license suspension through the Pennsylvania Department of Transportation.

A license suspension is a collateral civil consequence of a criminal conviction. *Commonwealth v. Duffey*, 639 A.2d 1174, 1176 (Pa. 1994). A defendant's lack of

knowledge of the collateral consequences of pleading guilty does not undermine the validity of his or her plea. *Id.* In other words, there is no requirement that counsel advise a defendant at the time of his or her guilty plea that his or her operating privilege will be suspended as a consequence of the plea. *Commonwealth v. Bell*, 96 A.3d 1005, 1019 (Pa. 2014)(“As operating privilege suspensions are collateral civil consequences, not criminal penalties, they do not violate a motorist’s equal protection or due process rights, nor does a defendant in a criminal case need to be informed of the collateral consequences for his criminal conduct, as it does not constitute a portion of his or her punishment.”).

While the courts have created very limited exceptions, it remains the law of Pennsylvania that a license suspension is a collateral consequence of a guilty plea and that a defendant’s lack of knowledge of such a collateral consequence on the entry of a guilty plea does not undermine the validity of the plea. Counsel is not constitutionally ineffective for failure to advise a defendant of the collateral consequences of a guilty plea. *Commonwealth v. Abraham*, 62 A.3d 343, 350 (Pa. 2012).

Accordingly, Petitioner’s claim is without merit and the court will enter the following Order.

ORDER

AND NOW, this ___ day of December 2017, as it appears to the court that Petitioner’s claim lacks merit, the court gives Petitioner notice of his intent to dismiss his Petition without holding an evidentiary hearing pursuant to Rule 907 (1) of the Pennsylvania Rules of Criminal Procedure. Petitioner has twenty (20) days from the date of this Order within which to respond to this proposed dismissal. If Petitioner does not respond or his

response does not allege facts which show that his petition has merit, the court will enter a final Order dismissing his petition without holding an evidentiary hearing.

The court also grants PCRA's counsel's motion to withdraw.

If Petitioner files a response which alleges facts that arguably show that his petition has merit, the court will reappoint counsel to represent Petitioner and schedule an evidentiary hearing to give Petitioner the opportunity to present evidence to support the merit of his petition.

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
Don Martino, Esquire
Luke Womer
312 Corning Avenue
Jersey Shore, PA 17740
Work file
Gary Weber, Esquire (Lycoming Reporter)