

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-4-2017
 :
 DARLA BAILEY, :
 Defendant : PCRA

OPINION AND ORDER

Before the Court is Defendant’s Amended Petition for Post-Conviction Relief pursuant to 42 Pa. C.S.A. § 9501 et seq.

By way of procedural background, on January 30, 2017, following a hearing, the court accepted as knowing, intelligent and voluntary, Defendant’s “Alford plea of guilty” to count 1, conspiracy to commit retail theft. The court sentenced Defendant to a term of incarceration in a State Correctional Institution, the minimum of which was 14 months and the maximum of which was 5 years.

On or about July 1, 2017, Defendant, pro se, filed a document entitled “Petition for Reconsideration of Sentence, nunc pro tunc.” In Defendant’s petition, she notes that “the only reason I took the plea was I have prior retail thefts if I would of (sic) took it to trial because of my prior record, they would of [sic] found me guilty and I probably would of (sic) got more time.”

Upon reviewing the petition, the court decided to treat it as a Post-Conviction Relief Act (PCRA) petition. The court appointed counsel and permitted counsel to file an Amended Petition on or before September 6, 2017.

Counsel filed an Amended Petition on August 23, 2017. The merits of the

petition were argued before the court on September 12, 2017.

Defendant asserts in her amended petition that her appointed trial counsel provided ineffective assistance of counsel which so undermined the truth determining process that no reliable adjudication of guilt could have taken place.

More specifically, Defendant asserts that her counsel provided ineffective assistance of counsel which resulted in the entry of a guilty plea that was involuntary, unintelligent and unknowing.

According to Defendant, at her guilty plea hearing, she was advised that it would be in her best interest to plead guilty because if she went to trial and was found guilty, she would receive a greater sentence. Upon being given additional time to speak privately with her attorney, Defendant returned and indicated to the court that no one was forcing her to plead guilty and that she was satisfied with her attorney.

During Defendant's guilty plea hearing, Defendant denied agreeing with anyone to steal any items and denied "stealing stuff together." She did admit that she "put [the] stuff that [she] was going to purchase in that bag." She adamantly denied that she either conspired to take or took anything.

When asked "the truth" Defendant specifically stated: "The truth is I didn't conspire with anybody, but if I can go ahead and get this plea and get sentenced, and go do what I got to do – that's what I want to do because I am going to look guilty as charged regardless in front of a jury."

Defendant argues that because she repeatedly denied that she was guilty and never acknowledged that she committed the offense of retail theft or that that she conspired

with anyone else to commit said offense, her trial counsel was ineffective by permitting her to enter an unintelligent, unknowing and involuntary plea that was taken without a sufficient factual basis to establish her guilt and, in fact, was accompanied by multiple statements from Defendant that she was innocent of the crime charged.

To be successful in 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 admission; and 3) prejudice as a result, that is, a reasonable probability that but for counsel’s act or omission, the outcome of the proceedings would have been different.” *Commonwealth v. Cooper*, 941 A.2d 655, 664 (Pa. 2007). A failure to satisfy any prong of this test is fatal to the ineffectiveness claim. *Id.* Further, counsel is presumed to have been effective. *Id.*

When a defendant alleges that her guilty plea was induced by ineffective counsel, she must prove that her attorney was not competent and that it caused her to enter an involuntary or unknowing plea. “Allegations of ineffectiveness in connection with the entry of a guilty plea will serve as a basis for relief only if the ineffectiveness caused the defendant to enter an involuntary or unknowing plea.” *Commonwealth v. Anderson*, 995 A.2d 1184, 1192 (Pa. Super. 2010). “Where the defendant enters his plea on the advice of counsel, the voluntariness of the plea depends on whether counsel’s advice was within the range of competence demanded of attorneys in criminal cases.” *Id.*

To determine whether a guilty plea was entered knowingly and intelligently, a reviewing court must review all of the circumstances surrounding the entry of the plea. *Commonwealth v. Mitchell*, 105 A.3d 1257, 1272 (Pa. 2014). “The law does not require

that [a defendant] be pleased with the results of the decision to enter a plea of guilty; rather [a]ll that is required is that [the defendant's] decision to plead guilty be knowingly, voluntarily and intelligently made.” *Commonwealth v. Brown*, 48 A.3d 1275, 1277 (Pa. Super. 2012).

Following Defendant’s guilty plea hearing, the court accepted as knowing, intelligent and voluntary, Defendant’s “Alford plea of guilty to count 1, conspiracy to commit retail theft.” The court noted in its guilty plea order that “while the defendant will not admit to facts constituting retail theft, she has made it clear that she is accepting full responsibility for committing the crime and that she does not wish under any circumstances to go to trial, potentially lose and end up serving far more time.”

In the case of *North Carolina v. Alford*, 400 U.S. 25 (1970), the United States Supreme Court ruled that there are no constitutional barriers in place to prevent a judge from accepting a guilty plea from a defendant who wants to plead guilty while still protesting his innocence. This type of plea has become known as an “Alford plea.” The defendant does not admit the act and may actually assert innocence.

The facts of *Alford* are important to consider. The defendant had been charged with first degree murder and was facing the death penalty. Although, the defendant maintained his innocence, the case against him appeared to be very strong. Ultimately, a plea deal was reached wherein the defendant would plead guilty to second degree murder. The defendant pled guilty but he told the court that he did not commit the crime. The court accepted the plea and imposed an appropriate sentence.

The issue before the court was whether his plea was voluntary. The Supreme

Court held that under the circumstances, the plea was voluntary because the defendant intelligently concluded that the plea was his best option and the record strongly indicated that the defendant was guilty.

In this case, Defendant clearly made a calculated decision to plead guilty, opining that the evidence against her was so strong that it would likely lead to a conviction and a harsher penalty than what was negotiated.

Our Superior Court has described the essence of an Alford plea as follows:

An Alford plea is a *nolo contendere* plea in which the defendant does not admit guilt but waives trial and voluntarily, knowingly and understandingly consents to the imposition of punishment by the trial court. Provided the record reflects a factual basis for guilt, the trial court may accept the plea notwithstanding the defendant's protestation of innocence.

Commonwealth v. Snavelly, 982 A.2d 1244, n.1 (Pa. Super. 2009)(citations omitted).

Defendant alleges that her plea was not entered knowingly, intelligently and voluntarily due to her counsel not offering a factual basis for the plea. A review of the record may support Defendant's claim. At the very minimum, Defendant's plea may be involuntary because of the alleged lack of a factual basis as required. Defendant maintains that had counsel addressed such, she would have exercised her right to a trial.

The court is of the opinion that Defendant's claim merits a hearing and will grant Defendant's request for a hearing to determine whether counsel was ineffective in the particulars claimed.

ORDER

AND NOW, this ____ day of September 2017, a hearing on Defendant's

Amended Petition for Post-Conviction Relief is scheduled for the **January 5, 2018 at 9:00**
a.m in Courtroom No. 4 of the Lycoming County Courthouse.

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire
Don Martino, Esquire
Gary Weber, Lycoming Reporter
Work File