

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 :
 v. : CP-41-CR-0001535-2016
 : CP-41-CR-0001374-2014
 :
 RICHARD MICHAEL BOATMAN, :
 Defendant : PCRA

OPINION AND ORDER

On October 30, 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

In 1374-2014, on October 8, 2015, Richard Michael Boatman (Defendant) pled open to an amended Count I, Indecent Assault without Consent¹, a misdemeanor of the second degree. The Honorable Marc F. Lovecchio sentenced Defendant to two years probation under the supervision of the Lycoming County Adult Probation Office. Sentence, 1/20/216, at 1.

In 1374-2014, on March 10, 2016, the Honorable Marc F. Lovecchio revoked Defendant's probation and resentenced to the following:

With respect to the 90 day electronic monitoring sentence the defendant shall serve the remaining portion of that sentence in the Lycoming County Prison. With respect to the subsequent probationary period of two years the Defendant is to undergo incarceration in the Lycoming County Prison, the minimum of which is sixty (60) days and the maximum of which is 18 months. This sentence shall run consecutive to the prior sentence imposed with

¹ 18 Pa.C.S. § 3126(a)(1).

respect to electronic monitoring. If the defendant is fully compliant with the terms and conditions of his incarceration, he may be eligible for work release after April 18, 2016. This determination shall be made by the Lycoming County Prison depending upon defendant's conduct. Once the defendant is released from incarceration he must immediately report to his probation officer for continued supervision. The Court directs that the defendant undergo a MH assessment, and that Lycoming County MH open a case to address defendant's anger management issues.

PV, 3/10/2016, at 1.

In 1374-2014, on August 18, 2016, following a hearing, the Honorable Marc F. Lovecchio found probable cause to believe that the Defendant had violated the conditions of his parole by allegedly assaulting and injuring his adult probation officers and by allegedly committing new criminal offenses. Parole Violation Hearing, 8/8/2016.

In 1535-2016, on September 8, 2016, Defendant was charged in relation in to the alleged assault on probation officers under 1535-2016. On September 12, 2016, Defendant pled guilty and was sentenced by this Court, pursuant to a negotiated plea agreement, to a Consolidated Count of Aggravated Assault² (police officer), a felony of the second degree:

The Court:...If you were to go trial on the that charge the Commonwealth would have to prove beyond a reasonable doubt that on August 10th of this year you assaulted, intentionally or knowingly caused bodily injury to a police officer or an individual attempting to make a lawful arrest, that would be two probation officers.

The Court: Okay. Mr. Boatman, how did you wish to plead to the consolidated aggravated assault charge? Your choices are guilty or not guilty.

Defendant Boatman: Guilty.

The Court: Okay. Can you tell me what happened with you and Mr. Geiser and Mr. Whiteman back on August 10th?

² 18 Pa. C.S. § 2702(a)(3).

Defendant Boatman: Um, I had an issue when I...about the phone issue. My PO went through my phone and found porno on my phone.

The Court: Okay.

Defendant Boatman: And –

The Court: And you weren't supposed to have it?

Defendant Boatman: No, I wasn't supposed to have it.

The Court: Okay.

Defendant Boatman: And Loretta said that she was going to take it to dump and I was kicking and screaming now [sic].

The Court: Okay. And kicking and screaming would be....

Defendant Boatman: And I got actually tased and stun gunned.

The Court: Okay. So you kicked feet into the officers striking them. One of the probation officers broke his finger as a result of what happened?

Defendant Boatman: Yeah.

The Court: And then because of the way you behaved they tased you?

Defendant Boatman: Yeah

Guilty Plea, 9/12/2016, at 2 and 7-8.

The negotiated plea agreement included a recommended sentence “for one year minimum State Correctional Institution consecutive to any other case.” At the time of the Guilty Plea the Court asked Defendant

The Court: Okay there is a plea agreement for you to do a year in state prison and have that sentence be consecutive to any PV sentence that you receive. You understand that?

Defendant Boatman: Yeah.

Guilty Plea, 9/12/2016 at 3.

Sentence of the Court on 1535-2016 was to a minimum of one year to a maximum of two years in a State Correctional Institution, consecutive to any

sentences the Defendant is currently serving. The Defendant was to receive credit for time served from August 10, 2016, through September 28, 2016. State Sentence, 9/29/2016, at 1.

Sentence of the Court on the Parole Violation was to three months to 24 months in a State Correctional Institution.

Defendant's aggregate sentence on the new charge and the parole violation was to a minimum of 15 months to a maximum four (4) years in a State Correctional Institution. Sentence, 9/29/2016, at 8-9.

Defense Counsel filed a Motion for Reconsideration of Sentence, which was denied without hearing by this Court on October 17, 2016. No direct appeal followed and as such Defendant's Order of Sentence became final on October 31, 2016.

On May 11, 2017, the Defendant filed a timely *pro se* Post Conviction Relief Act (PCRA) Petition alleging that he was sentenced unlawfully to a mandatory minimum sentence. On May 17, 2017, this Court issued an Order appointing counsel in accordance with Pa.R.Crim.P. 904(C), and scheduled a court conference for August 21, 2017. Due to a delay in preparing transcripts, PCRA Counsel requested a continuance of the court conference and the court conference was continued to November 13, 2017. PCRA Counsel filed a Motion to Withdraw as Counsel and a Turner-Finley letter on October 30, 2017. Following the conference, and after thorough review, this Court finds that there are no genuine issues of material fact and that Defendant is not entitled to post-conviction collateral relief, and no purpose would be served by any further proceedings.

Discussion

Incarcerated defendants, or those on probation or parole for a crime, are eligible for relief under the PCRA when they have pled and proved by a preponderance of the evidence the following four components:

- 1) Defendant has been convicted of a crime under the laws of PA and is at the time relief is granted currently serving a sentence of imprisonment, probation or parole for the crime.
- 2) Conviction or sentence resulted from one or more of the following
 - i. A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States 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.
 - ii. 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.
 - iii. A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.
 - iv. The improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.
 - v. Deleted.
 - vi. The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.
 - vii. The imposition of a sentence greater than the lawful maximum.
 - viii. A proceeding in a tribunal without jurisdiction.
- 3) Allegation of the error has not been previously litigated or waived; and
- 4) Failure to litigate the issue prior to or during trial, during unitary review or on direct appeal could not have been the result of any rational, strategic, or tactical decision by counsel.

42 Pa.C.S. § 9543 (eligibility for relief).

Defendant is currently incarcerated in SCI Rockview under the above captioned docket numbers so he is potentially eligible for relief. The Defendant, alleges that his plea was unlawfully induced and that he was sentenced under an unconstitutional mandatory minimum sentencing scheme whereby the Court did not consider the Defendant's functional level, IQ and behavioral issues in sentencing him.

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, 54 A.3d 35, 45 (Pa. 2012).

Was plea of guilty unlawfully induced?

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.

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. Guilty Plea Transcript, 9/12/201, at 2, 7-8, 18. The Defendant had ample opportunity to consult with counsel throughout the plea process as well.

The Court informed the Defendant of the maximum sentence/fine for the charges. Id. at 3. 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 2. The Defendant gave the Court a factual basis for the guilty plea. Id. at 7-8. The Court reviewed the guilty plea colloquy form with Defendant and explained that he had a right to go to trial on the charges. Id. 13-15. The Court also explained

that if a Defendant were on parole and pled guilty that the Probation Officer could request a final parole violation hearing. *Id.* at 16.

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.³ According to Pennsylvania law, the Defendant's guilty plea was entered knowingly, voluntarily, and intelligently.

Was Defendant sentenced to an unlawful mandatory minimum sentence?

Defendant is correct that the Supreme Court of Pennsylvania declared numerous provisions of Section 6317 of Title 18 (relating to drug free school zones) constitutionally infirm under Alleynes⁴. Commonwealth v. Hopkins, 117 A.3d 247, 262 (Pa. 2015). Defendant was neither sentenced to a mandatory minimum nor was he sentenced under Section 6317 so the holding in Hopkins provides no relief to Defendant. Moreover, in Commonwealth v. Washington, 142 A.3d 810 (Pa. 2016), the Supreme Court of Pennsylvania held that Alleynes relief would not be available collaterally so even if Defendant were correct that he was sentenced under a statute made constitutionally infirm by Alleynes, no relief would be available to him under the PCRA.

Was Defendant's sentence unduly excessive given his special circumstances and needs based upon his functional level, IQ level, and behavioral issues?

As a threshold matter, the Court does not believe that the discretionary aspects of Defendant's sentence are amenable to relief under the Post Conviction

³ The Court's Order dated September 12, 2016, found that he knowingly, voluntarily and intelligently entered his guilty plea.

⁴ Alleynes v. United States, 570 U.S. 99, 133 S. Ct. 2151, 186 L.Ed.2d 314 (2013).

Relief Act unless they are raised under 42 Pa.C.S. § 9524(a)(2)(ii) ineffective assistance of counsel. “A claim regarding the discretionary aspects of a sentence raised in the context of an ineffectiveness claim is cognizable under the PCRA.” Commonwealth v. Watson, 835 A.2d 786, 801 (Pa. Super. 2003). Therefore, the Court must consider the three prongs *supra*. In the context of a challenge to the discretionary aspects of one's sentence, prejudice may be established only by pleading and proving that the challenge would have resulted in "a reduction in the sentence." Commonwealth v. Reaves, 923 A.2d 1119, 1132 (2007) (internal quotations and citations omitted).

Here, Defendant is serving a maximum sentence on the 2014 conviction after having been found to violate the terms of his probation, and then his parole.

Regarding the 2015 docket number, the Defendant was sentenced to one to two years, the minimum is within the standard guideline range (9 months -16 months for an Offense Gravity Score of “6” and a Prior Record Score of “2”). The maximum of two years is well below the 10 years available to the Court for a felony of the second degree.

The Court crafted its sentence to provide the Defendant with a state prison sentence that the Court believed would better serve Defendant’s rehabilitation needs. Sentence, 9/29/2016, at 6. The Court crafted a state prison sentence with a minimum amount of time because it recognized Defendant’s special needs that Trial Counsel brought to the attention of the Court. Sentence, Id. at 5 and 7.

Trial Counsel continued to raise these issues in a Motion to Reconsider Sentence that was denied by the Court. The Court cannot find that Trial Counsel was

ineffective in any way. She brought the concerns to the Court, the Court was well aware of Defendant's history through supervision and Mental Health/Intellectual Disabilities. Trial Counsel asked the Court for reconsideration of sentence even though the plea agreement was for a state prison sentence. There is no action that Counsel could have taken and did not take that would have resulted in a reduction of Defendant's sentence and therefore the Defendant has suffered no prejudice and the claim of ineffective assistance of counsel must fail.

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 31st day of January, 2018, 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 May 11, 2017. 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 October 30, 2017, is hereby **GRANTED**, and **Trisha Hoover Jasper, Esq.** may withdraw from the above-captioned case.

By the Court,

Nancy L. Butts, President Judge

cc: DA
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