

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA:

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CR-1945-2016

v.

RYAN HAMILTON,
Petitioner

Notice of Intent to Dismiss
PCRA Petition without Holding
An Evidentiary Hearing and
Order Granting Counsel's
Motion to Withdraw

OPINION AND ORDER

On September 19, 2017, the Petitioner, Ryan Hamilton, filed a petition for relief under the Post Conviction Relief Act (PCRA). On September 26, 2017, this Court appointed Julian Allatt, Esq. PCRA Counsel. On May 24, 2017, PCRA Counsel filed a petition to withdraw from representation and 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). A court conference was originally scheduled for January 16, 2018, but was continued at the request of PCRA counsel. An amended petition filed by PCRA counsel was brought to the conference which was rescheduled to and held on March 19, 2018. For the reasons set forth in this Opinion, the Court finds that the Petitioner’s petition lacks merit, will be dismissed and counsel will be granted leave to withdraw.

Background

Under the PCRA, Petitioner has one year after his judgment of sentence becomes final to request post-conviction relief unless circumstances exist that prevented Petitioner from filing within one year and he files within 60 days of the

date when his claim could have been presented. Petitioner entered a plea of guilty on November 21, 2016, and was sentenced on February 10, 2017. He did not file post sentence motions or take a direct appeal to the Superior Court and as such his Judgment of Sentence became final on March 12, 2017. Therefore, Petitioner's *pro se* PCRA Petition filed September 19, 2017 is timely.

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 the preponderance of the evidence the following four components:

- 1) Petitioner 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. Violation of the US or PA Constitution that so undermined the truth determining process that no reliable adjudication of guilt or innocence could have taken place.
 - ii. Ineffective assistance of counsel – same undermining the truth determining process standard as above “undermined the truth determining process that no reliable adjudication of guilt or innocence could have taken place”.
 - iii. Plea of guilty induced where inducement caused Petitioner to plead guilty when he is innocent.
 - iv. Improper obstruction by government officials of petitioner's appeal right where a meritorious appealable issue was properly preserved in the Trial Court.
 - v. The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial had it been introduced.
 - vi. Imposition of sentence greater than the lawful maximum.
 - vii. 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.

Petitioner alleges that he is innocent of the crime of Driving under the Influence of a Controlled substance¹ and that he was in fact pressured into entering that plea as a result of trial counsel's ineffectiveness. He alleges no additional facts supporting his assertion of innocence.

Where counsel's effectiveness is at issue, the Superior Court applies the standard adopted by *Commonwealth v. Pierce*, 515 Pa. 153, 527 A.2d 973 (Pa. 1987), which restated the two-factor inquiry regarding the effectiveness of counsel set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), as the following three-factor inquiry:

[I]n order to obtain relief based on [an ineffective assistance of counsel] claim, a petitioner must establish: (1) the underlying claim has arguable merit; (2) no reasonable basis existed for counsel's actions or failure to act; and (3) petitioner suffered prejudice as a result of counsel's error such that there is a reasonable probability that the result of the proceeding would have been different absent such error.

Commonwealth v. Rivera, No. 1423 EDA 2015, 2017 Pa. Super. LEXIS 39, at *31 (Super. Ct. Jan. 18, 2017) (J. Bowes dissent citing *Commonwealth v. Lippert*, 2014 PA Super 25, 85 A.3d 1095, 1100 (Pa. 2014)).

Whether Petitioner was coerced into pleading guilty

Under the PCRA, a petitioner is eligible for relief if he pleads and proves by a preponderance of the evidence that he has been convicted of a crime for which he is currently serving a sentence and that his conviction has resulted from “a **plea of guilty** unlawfully induced where the circumstances make it

¹ 75 Pa. C.S.A. §3802 (d)1(ii)

likely that the inducement caused an individual to plead **guilty**; and, (2) that the petitioner is innocent.” 42 Pa.C.S.A. §§ 9543(a) (2) (iii).

In *Commonwealth v. Persinger*, 532 Pa. 317, 320-22, 615 A.2d 1305, 1307 (1992), our Supreme Court set forth the appropriate standard to be applied when reviewing a PCRA petition to withdraw one's guilty plea, as follows:

When considering a petition to withdraw a guilty plea submitted to a trial court after sentencing, it is well-established that “a showing of prejudice on the order of manifest injustice is required before withdrawal is properly justified.” *Commonwealth v. Shaffer*, 498 Pa. 342, 446 A.2d 591 (emphasis omitted) (citations omitted).

Pennsylvania Rules of Criminal Procedure, Rule 319 governing guilty pleas, requires the court to conduct an on-the-record inquiry to determine that the plea is “voluntary and understandingly tendered.” Pa.R.Crim.P. 319(a). In order to determine whether the plea is voluntary and understandingly entered the court must ask questions in six particular areas, including “Is the Petitioner aware of the permissible range of sentences and/or fines for the offenses charged?” Pa.R.Crim.P. 319 comment. Inquiry into these areas is mandatory, *Commonwealth v. Willis*, 471 Pa. 50, 369 A.2d 1189 (1977); *Commonwealth v. Dilbeck*, 466 Pa. 543, 353 A.2d 824 (1976), and failure to make the inquiry will require that the Petitioner be allowed to withdraw his or her guilty plea. See *Commonwealth v. Kulp* 476 Pa. 358, 382 A.2d 1209 (1978). The purpose of

this rule is to insure that the Petitioner fully understands the consequences of his election to plead guilty.

Here the transcript of the guilty plea hearing² supports this Court's finding that Petitioner made a knowing, voluntary and intelligent plea. The Court went over with the Petitioner the elements of the crimes to which he was pleading guilty, *Notes of Testimony*, 11/21/2016, at pp.3, 6-7, and what his maximum exposure would be if he chose to plead guilty on that date. *Id.* at p.8.

In addition, the Court asked Petitioner, after reviewing the specific terms of the plea agreement the question, "how do you wish to plead to the theft by unlawful taking, driving under the influence and driving under suspension dui related charges?" *Id.* at p.10. Petitioner responded "guilty". *Id.* As a part of the review of the charges themselves the Petitioner acknowledged that he had consumed a controlled substance that day. *Id.* at p.11.

The Court went on to review the entire written guilty plea colloquy with Petitioner, making sure that he had time to review it with his attorney and that he understood the rights he might be giving up. *Id.* at p.24-33. The Court specifically asked Petitioner if anyone "was forcing him, threatening him or putting pressure on him in any way to get him to give up his right to a trial", or to plead guilty to which he said. "no". *Id.* at p.28. He was also asked if he was "doing this" or pleading guilty of his own free will, to which the Petitioner said. "yes" *Id.* at p.31. Although the Petitioner wrote in his answer to colloquy question number 21 that the decision to plead was "my attorney[s]", See Guilty

² Although Petitioner entered a plea of guilty to a Theft by Unlawful Taking charge, and a Driving under suspension, DUI related summary as well as the DUI offense, he alleges that he is innocent of only the DUI.

Plea Colloquy form, 11/21/2016 at p.4, his answer to the Court when asked whose decision it was to plead guilty, the Petitioner responded “mine.” *Id.* at p.32 Such a thorough review of the Petitioner’s desire to plead guilty shows that the Petitioner knew what he was pleading guilty to and the consequence of such a plea. Petitioner has neither raised nor has the Court found any evidence that his plea was not lawfully entered.

ORDER

AND NOW, this _____ day of April, 2018, it is hereby ORDERED and DIRECTED as follows:

1. Petitioner is hereby notified pursuant to Pennsylvania Rule of Criminal Procedure No. 907(1), that it is the intention of the Court to dismiss his PCRA petition unless he files an objection to that dismissal within twenty (20) days of today's date. If no response is received within that time period, the Court will enter an Order dismissing the petition.

2. The **Petition to Withdraw from Representation of Post-Conviction Collateral Relief** filed September 19, 2017 is hereby **GRANTED**. Petitioner may represent himself or hire private counsel to represent him further.

BY THE COURT,

Nancy L. Butts, President Judge

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