

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : 98-12,015

VS :

DANIEL SCOTT :

OPINION AND ORDER

Before the Court is Defendant's Petition for Post Conviction Collateral Relief. Defendant pled guilty on June 11, 1999, to five counts each of possession with the intent to deliver a controlled substance and delivery of a controlled substance. Defendant was sentenced on September 7, 1999 to a minimum of 30 months and a maximum of 10 years. Defendant filed his instant petition on November 24, 1999, alleging that his counsel had failed to explain that he had the right to go to a trial by jury. A conference on the motion was scheduled for January 25, 2000. According to this Court's Order dated January 25, 2000, the conference was postponed due to the fact that Defendant's Counsel, James Protasio, Esquire, was not available. A conference was held on March 14, 2000, at which time it was determined that Mr. Protasio had a conflict of interest, and could not represent the Defendant.

The matter was continued to May 18, 2000, and another member of conflicts counsel, J. Michael Wiley, Esquire, was appointed to represent the Defendant. At the time of the May 18, 2000 conference, the Commonwealth argued that the Defendant's petition, as submitted *pro se*, did not plead a basis for relief under the Post Conviction Relief Act. Mr. Wiley requested, and the Court granted, an extension of time of thirty (30) days for the purpose of filing an amendment to the petition. Mr. Wiley neglected to file an amended petition, and the matter was not rescheduled for conference until the

deficiency was brought to the Court's attention in April, 2001. Mr. Wiley was requested to immediately file an amendment to the petition, which was submitted to the Court on June 11, 2001. A conference with regard to the amended petition was held June 14, 2001. After a review of the amended petition, the guilty plea colloquy, the transcript of the proceedings at the time of the guilty plea, the Court finds that the Defendant has not asserted a basis for relief under the Act.

42 Pa.C.S. § 9543(a)(2) provides that to be eligible for relief, a Defendant must plead and prove that his conviction or sentence resulted from:

...

(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.

...

Defendant claims both ineffective assistance of counsel, and that his plea was unlawfully induced. Ineffectiveness of counsel will serve as a basis for relief from a guilty plea only where the ineffectiveness caused the Defendant to enter an involuntary or unknowing plea. See Commonwealth v. Klinger, 323 Pa.Super. 181, 470 A.2d 540 (1983), Commonwealth v. Edrington, 317 Pa.Super. 545, 464 A.2d 456 (1983). The primary issue before this Court, therefore, is whether the Defendant entered a lawful, knowing and voluntary plea. After reviewing Defendant's claims, the colloquy, and the transcript from the guilty plea proceedings, the Court finds any argument that Defendant's plea was not knowing and voluntary to be without merit.

Defendant completed an extensive colloquy in which he acknowledged that he understood the elements of the crimes charged, his constitutional right to a trial by jury, (g.p.colloquy at p. 2) and the jury selection process. The colloquy includes the permissible sentence ranges, as well as the sentencing guideline ranges for the offenses.¹ The Defendant acknowledged in the colloquy that his plea was being given knowingly, voluntarily, and intelligently. The Defendant wrote that it was his decision to plead guilty, and in response to the question of why he wished to plead guilty the Defendant wrote “I understood the gravity of my offense and am willing to stand to the consequences.” (Id., p. 5)

Additionally, at the time of the plea, the Court went through the elements of the offenses with the Defendant. The Court then asked the Defendant what had occurred on the dates of the incidents, after which the Defendant admitted to the offenses, and stated: “Well, there would be certain people come by my house and they want a product and I just go get it for them and bring it back.” (N.T. 6/11/99, p. 4) The Court additionally asked the Defendant if he had taken any drugs that could have affected his decision to plead, to which the Defendant stated under oath “No.” (Id., p. 6)

The Court therefore finds that the Defendant’s plea was knowing and voluntary. Even if the Court were to have found that the plea was not knowing and voluntary, the Court would find that the Defendant still did not allege a basis for relief, as he has not alleged that it was induced under circumstances making it likely that the inducement caused him to plead guilty and that he is innocent. The Defendant has never asserted

¹ The Defendant, in fact, received a sentence in the mitigated range for the weights involved in some of the offenses.

his innocence during the course of these proceedings. The Court therefore rejects Defendant's argument.

ORDER

AND NOW, this ____ day of September, 2001 the Court, having found no basis for relief for Post Conviction Collateral Relief, the parties are hereby notified of this Court's intention to deny the Petition. 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.

By The Court,

Nancy L. Butts, Judge

cc: DA
PD
Honorable Nancy L. Butts
Law Clerk
Gary Weber, Esquire
Judges