

**IN THE COURT OF COMMON PLEAS
LYCOMING COUNTY, PENNSYLVANIA
CRIMINAL DIVISION**

COMMONWEALTH

v.

**TION LEWIS,
Defendant**

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No.: 03-10,043

OPINION AND ORDER

Before the Court is the Defendant's PCRA petition filed March 29, 2004. In it, he alleges that his prior counsel, all of whom have been members of the Lycoming County Public Defender's Office, have been ineffective. His issues are threefold: One, he asserts that a suppression motion was filed on his behalf without consulting him, and that he did not want a suppression motion filed because he did not want to waive his Rule 600 rights but instead wanted his attorney to file a Rule 600 motion on his behalf. Two, he claims that his guilty plea, entered on July 31, 2003, was made under duress because of the actions of his counsel and therefore his plea was not knowing, intelligent and voluntary. Three, the Defendant's plea was not knowing, intelligent and voluntary because the Defendant was not informed by prior counsel that by entering a guilty plea, he would lose his right to appeal the denial of his suppression motion.

The Court first notes that a defense attorney's decision to file a suppression motion is one that should be made only after consultation with the Defendant. However, even assuming that the suppression motion filed in

this case was filed against the wishes of the Defendant, there is no allegation that his attorney was ineffective so that the truth-determining process was undermined and no reliable adjudication of guilt or innocence of the Defendant could have taken place. To the contrary, the Defendant asserts that the actions of his attorney constituted misconduct. Letters from the Defendant contained within the court file more specifically complain that the Defendant was upset that a suppression motion was filed instead of the Rule 600 motion that he had requested. (Letter from Defendant to Lycoming County Prothonotary William J. Burd, dated June 6, 2003.) He claims that his attorney purposely filed the suppression motion so that he “could not get out on nominal bail”, and asks Mr. Burd “(w)hy would any lawyer in his/her right mind, with the best interest of his/her client file any Motion that would stop the ‘calculable time’ of the ‘Prompt Trial’ Rule for her client?” Id. He then begs Mr. Burd to “please pull that ‘Suppression Motion’ & enter the ‘Rule 600’ for me!” Id.

In this case, the Defendant was arrested on November 30, 2002. A complaint was filed and the Defendant was incarcerated on December 1, 2002. The Commonwealth had 180 days from the filing of the complaint, or until June 1, 2003, to commence trial, as the Defendant was incarcerated in default of bail. The Defendant’s June 6, 2003 letter to Mr. Burd indicates that he attempted to file his own Rule 600 motion on May 23, 2003, but this motion was returned to him with instructions to have his attorney file any needed motions on his behalf. The Court notes that if a May 23, 2003

motion had been filed by the Prothonotary, it would have requested the Defendant's release on nominal bail before he was entitled to such a release and therefore his motion would have had no merit.

The Court finds that the actions of the Defendant's attorney by failing to file a Rule 600 motion as requested and instead filing a suppression motion just prior to the expiration of the Defendant's 180th day of incarceration do not constitute ineffective assistance of counsel which so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place. The Defendant's incarceration has no bearing on whether he committed the offenses with which he has been charged. Defendant does not allege that had he been granted nominal bail after the first 180 days of incarceration, the truth-determining process would have been advanced in any way. The same charges would have remained against the Defendant and he would still have had to decide whether to defend against them or enter a plea of guilty. The Court therefore finds that his PCRA motion must fail on this issue.

Defendant also alleges his PCRA should be granted because he was not properly advised at the time of his guilty plea that he would be giving up his right to appeal the decision made on his suppression motion. The court file in this case includes a written guilty plea colloquy that the Defendant filled out prior to the time that he entered his guilty plea on July 31, 2003. In pertinent part, the Defendant indicated the following on his written guilty plea colloquy:

15. Do you understand that if you plead guilty you are waiving, or giving up, your right to present any defenses that either you or your attorney may think that you have to the crime or crimes charged? Y

16. Do you understand that by pleading guilty you are waiving, or giving up, your right to file any pre-trial motions and waiving any such motions already filed? Y

20. There are certain rights that you do not waive even after sentencing. You have a right to appeal your conviction to the Superior Court within 30 days after the date of sentencing. The appeal of a guilty plea is limited to four grounds. They are:

- a. That your guilty plea was not a knowing, understanding, and voluntary act,
- b. That the Court did not have jurisdiction to accept your plea (in other words the crime or crimes for which you are pleading guilty did not occur in Lycoming County),
- c. That the sentence was improper or in excess of a plea agreement or illegal and,
- d. That your attorney was not competent.

Do you understand these four areas of appeal, what they mean and the fact that that they are not waived? Y

24. Have you thoroughly discussed with your attorney all of the facts and circumstances surrounding the charges against you? Y

25. Are you satisfied with the representation and advice of your attorney? Y

29. How far did you go in school? G.E.D.

30. Can you read, write and understand the English language? Y

36. Has your attorney fully explained to you the meaning of all the terms of this document? Y

40. Do you completely understand all the instructions, terms, provisions, questions and answers of this written guilty plea colloquy form? Y

(Written guilty plea colloquy form dated on the front July 31, 2003 and attached to the Order accepting the Defendant's guilty plea and sentencing him, which was filed on August 13, 2003.)

The Defendant signed and dated his written guilty plea colloquy form on July 28, 2003. The Defendant's responses to each question noted above is indicated as the Defendant wrote them on the line following each question. Each of the seven pages of the written guilty plea colloquy form is initialed by the Defendant. Attached to the written guilty plea colloquy is an attorney's certification signed by James Cleland, Esquire, an attorney with the Lycoming County Public Defender's Office, in which he certifies that

1. I have thoroughly explained each and every paragraph of each and every page of the written guilty plea colloquy to the defendant.
2. I believe that the defendant understands the entire written guilty plea colloquy.
3. I have thoroughly discussed all of the facts and circumstances surrounding the filing of the charges against the defendant.
4. I have thoroughly explained each and every element of each and every crime to which the defendant has

expressed a desire to enter a plea of guilty/nolo contendere.

5. I have thoroughly explained to the defendant all the common law, statutory, and constitutional rights that the defendant will be waiving if he pleads guilty/nolo contendere.
6. I believe that the defendant understands:
 - a. Each and every element of the crime to which the defendant has expressed a desire to enter a plea of guilty.
 - b. All the common law, statutory and constitutional rights that the defendant would be waiving if he pleads guilty.
7. If the defendant enters a guilty/nolo contendere plea, I know of no reason why such a plea would not be made as a knowing, understanding, intelligent and voluntary act.
8. Other than the rights that have been waived in this written guilty plea colloquy I know of no other common law, statutory, or constitutional right that must be waived by the defendant in order to make his/her plea valid and binding.

Excerpt from the Attorney's Certification dated July 28, 2003 and attached to the Defendant's guilty plea colloquy filed in this case on August 13, 2003.

The date of the guilty plea is listed on the front page of the form and again in the body of the Order accepting the Defendant's plea as July 31, 2003. Based upon the information contained within the written guilty plea colloquy and its accompanying Attorney's Certification, and particularly upon the Defendant's answers to the questions excerpted above, the Court finds that the Defendant knew at the time of the entry of his guilty plea that if he entered the guilty plea, he would be giving up any right to appeal the denial

of the suppression motion filed on his behalf in this case. His PCRA petition must therefore fail on this issue as well.

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. None 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 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.

ORDER

AND NOW, this ____ day of August, 2004, the Court notifies the Defendant and his attorney that it is the intention of the Court to dismiss his PCRA petition unless he files an objection to that dismissal within twenty days of today's date.

By The Court,

Nancy L. Butts, Judge J.

xc: DA (KO)
Jay Stillman, Esquire
Hon. Nancy L. Butts
Judges
Gary Weber, Esquire
Diane L. Turner, Esquire