

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

COMMONWEALTH

v.

**RICHARD JAMES,
Defendant**

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No.: 02-10,302

OPINION AND ORDER

Before the Court is Defendant's Petition under the Post Conviction Relief Act (PCRA), filed February 20, 2004. On January 9, 2003, Defendant pleaded guilty to two counts of Delivery of a Controlled Substance and one count of Criminal Use of a Communication Facility. Defendant was sentenced to 2 to 4 years incarceration in a State Correctional Institution, which he is presently serving. Defendant now alleges ineffective assistance of counsel throughout the proceedings, which, in the circumstances of this particular case, "so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place," as required for relief under 42 Pa.C.S. § 9543(a).

In order to make a claim for ineffective assistance of counsel, the Defendant must demonstrate that: (1) the underlying claim is of arguable merit; (2) counsel's performance was unreasonable, and; (3) counsel's ineffectiveness prejudiced defendant. *Commonwealth v. Beasley*, 544 Pa. 554; 678 A.2d 773, 778 (1996). Counsel's effectiveness is presumed, so the burden of establishing ineffectiveness rests squarely with the Defendant. Generalized ineffectiveness claims raised in a vacuum must be rejected. *See Commonwealth v. Lilloock*, 1999 PA Super 244; 740 A.2d 237 (1999).

Defendant's first allegation of ineffectiveness asserts that trial counsel received discovery only two days before Defendant's entry of a guilty plea and that it was never properly reviewed with Defendant. The Court finds this argument insufficient to establish ineffectiveness. As an initial matter, counsel's effectiveness is presumed, and there is nothing to persuade the Court that the two-day period between discovery and the plea was insufficient for counsel to review evidence and render adequate representation. Without more, the Court will not find counsel ineffective based solely on the Defendant's characterization that a two-day period was inadequate. Defendant argues that further preparation may have resulted in a plea agreement. However, the Commonwealth is not obligated to offer such agreements, and Defendant was fully aware that no such agreement had been reached at the time of the plea. Upon review of the guilty plea, the Court is satisfied that Defendant was adequately advised of the effect of the plea and that it was undertaken knowingly, intelligently and voluntarily. Defendant's sworn statement included affirmative answers to the following inquiries:

24. Have you thoroughly discussed with you attorney all of the facts and circumstances surrounding the charges against you?
25. Are you satisfied with the representation of your attorney?

(Guilty Plea Colloquy, 1/9/03 pp.6). During the proceedings on January 9th, 2003, the Court exercised further caution to assure the Defendant's awareness of the effect of the plea, including a recess during which Defendant was instructed to discuss his decision further with family and counsel. (N.T. 01/09/03, pp. 10-11). The Court is satisfied that Defendant was well informed of the effect of the plea. Based on the foregoing, counsel cannot be said to have acted unreasonably and the Court finds that the claim is insufficient to establish ineffectiveness of counsel.

Defendant next alleges that counsel failed to advise Defendant, or pursue the issue of sentence entrapment. Defendant's arrest was effectuated by a controlled buy arranged by police. Defendant asserts that because the buy was intentionally arranged in a school zone, it constituted sentence entrapment.

The Superior Court has specifically found that controlled buys conducted in school zones and therefore drawing a sentence enhancement, does not, without more, constitute sentencing entrapment. *Commonwealth v. Adams*, 2000 Pa.Super. 270, 760 A.2d 33 (2000). Sentencing entrapment occurs, "when a defendant, although predisposed to committing a minor or lesser offense, is entrapped into committing a greater offense subject to greater punishment." 760 A.2d at 40. The standard applied in such cases is "outrageous governmental conduct" or "extraordinary governmental misconduct" which is designed to increase the sentence of a defendant. *Id.*

In the instant case, the Court finds that the controlled buys set up by police did not constitute sentencing entrapment due to the school zone enhancement. There is nothing in the record to indicate outrageous governmental conduct. Further, underlying the Defendant's argument is a presumption that Defendant did not intend to sell drugs within a school zone, but rather was entrapped into the area and therefore received the enhanced sentence. School zones often cover a large portion of a developed area, and the Court will not compel law enforcement to choose between sidestepping these areas or be forced to prove that a defendant intended to sell in a school zone in order for the enhancement to apply. *See Commonwealth v. Murphy*, 405 Pa.Super. 452, 592 A.2d 750, 755 (1991) (Commonwealth need not prove defendant intended to be within 1000 feet of a school). Because the underlying argument of sentencing entrapment is without merit, the claim of ineffective assistance of counsel fails.

Defendant next contends that counsel erroneously advised him that due to his race, he would be unable to receive a fair trial in Lycoming County. Defendant contends that this advice led to his plea of guilty. The Court again points to the guilty plea and finds that Defendant was fully informed and aware of the consequences of his choice. The sworn statement signed by Defendant at the time of the plea contains no fewer than forty statements that ensure Defendant's awareness at the time of the plea. Notably, Defendant answered "no" to:

34 Has anybody made any promises to you [other than those in the plea agreement], threatened you in any manner or done or said anything that would force you or put pressure on you to plead guilty?

And "yes" to:

35 Is your plea of guilty being given freely and voluntarily without any force, threats, pressure or intimidation?

(Guilty Plea Colloquy, 1/9/05 pp. 6). The Court is satisfied that Defendant was adequately informed and instructed as to the effect of the guilty plea and made aware of his rights. He was given ample time to consider the instructions and discuss them with counsel, family and friends. The allegation that counsel influenced his decision by her statements concerning race is insufficient to find that counsel acted unreasonably or to establish a claim of arguable merit given the thorough safeguards and instruction given to Defendant at the time of the plea.

Defendant's final contention is that counsel's ineffectiveness led to a lack of confidence which unlawfully induced Defendant to plead guilty. The Court finds this argument insufficient. As discussed above, Defendant was made fully aware of the repercussions of the plea and signed a sworn statement that he was satisfied with the representation and advice of his attorney and that the plea was given freely and voluntarily. Further, based on the insufficiency of the preceding

assertions in Defendant's petition, this final assertion is rendered a generalized claim of ineffectiveness and must be rejected.

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 March, 2005, 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

xc: DA (KO)
E. Linhardt, Esq.
Hon. Nancy L. Butts
Gary Weber, Esquire
Law Clerk