

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 846 - 2004
	:	
vs.	:	CRIMINAL DIVISION
	:	
CAMERON BELLE,	:	
Defendant	:	Motion for Post-Conviction Relief

OPINION AND ORDER

Before the Court is Defendant’s Motion for Post-Conviction Relief, filed December 28, 2006, and amended April 16, 2007. A hearing on the motion was held October 8, 2007, at which time the Court determined it was necessary to review a transcript of the guilty plea hearing held January 10, 2006. That transcript was completed November 2, 2007.

Defendant pled guilty to two counts of delivery of a controlled substance and one count of conspiracy, and was sentenced in accordance with a plea agreement to three to six years incarceration and fourteen years probation. Defendant now contends his plea was not knowing and voluntary as his counsel at that time advised him that a previous guilty plea (which had been withdrawn) could be used against him were he to go to trial. Defendant seeks to withdraw the most recent plea, and asks for a new trial. The Court believes Defendant should be allowed to seek to withdraw his plea.

Claims that counsel provided ineffective assistance during the plea bargaining process are reviewable under Section 9543(a)(2)(ii) of the Post-Conviction Relief Act. Commonwealth ex. rel. Dadario v. Goldberg, 773 A.2d 126 (Pa. 2001). That section provides relief if a petitioner pleads and proves by a preponderance of the evidence “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.” 42 Pa.C.S. Section 9543(a)(2)(ii). Where a defendant enters his plea on the advice of counsel, the voluntariness of the plea depends on whether counsel’s advice was “within the range of competence demanded of attorneys in criminal cases.” Commonwealth v. Hickman, 799 A.2d 136, 141 (Pa. Super. 2002)(citations omitted).

In the instant case, it appears Defendant was ill-advised by his counsel at the time of the plea that a previous plea could be used against him at trial if he went to trial, and that he would not have pled guilty but for that erroneous advice. It appears Defendant did not wish to be sentenced at the time of the plea because he wished to consult a different attorney¹ regarding the advice, but the Court proceeded to sentencing without giving Defendant an opportunity to do so.² The Court thus also finds that Defendant was prejudiced by counsel's advice during the plea process, and is therefore entitled to relief.

ORDER

AND NOW, this 29th day of November 2007, for the foregoing reasons, Defendant's Motion for Post-Conviction Relief is hereby GRANTED. The Defendant is hereby given leave to request to withdraw his guilty plea, within thirty (30) days of this date.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
James Protasio, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

¹ Defendant was represented at the hearing by Charles Brace of the Public Defender's office, and wished to speak with another member of that office.

² While it was not known to the Court at the time of the plea that Defendant had been so advised, in hindsight, his request to speak to alternate counsel regarding "a few things here that I want to make sure that's right", N.T. January 10, 2006, at p. 11, and his statement that "I signed that piece of paper stating that [counsel] told me a couple things and I want to make sure what [counsel] told me is correct", Id., should have been investigated further before proceeding with sentencing.