IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	**:**	
	:	
v.	**:**	**No. 02-11,063**
	:	**CRIMINAL DIVISION**
STEVEN P. SCOTT,	**:**	**PCRA**
Defendant	**:**	

OPINION AND ORDER

Before this Honorable Court, is the Defendant's Petition under the Post Conviction Relief Act (PCRA), filed March 3, 2004, after a preliminary conference, an Amended PCRA was filed by Court appointed conflict counsel, Jay Stillman, Esq., on August 9, 2006. Subsequently, Counsel filed a Revised Amended PCRA was filed on October 23, 2007. The Defendant raises two issues in his Revised Amended Petition: first, that previous counsel was ineffective; and second, that his Guilty Plea was unlawfully induced. For the following reasons, the Court finds that the Defendant has not established sufficient grounds for relief under the PCRA.

Background

On January 9, 2003, the Defendant pled guilty to two counts of Involuntary Deviate Sexual Intercourse at 18 Pa. C.S.A. § 3123(a)(6), to two counts of Aggravated Indecent Assault at 18 Pa. C.S.A. § 3125(a)(8), to one count of Indecent Assault at 18 Pa. C.S.A. § 3126(a)(7); to one count of Indecent Assault at 18 Pa. C.S.A. § 3125(a)(8), to Endangering the Welfare of a Child at 18 Pa. C.S.A. § 4303, and Corruption of Minors at 18 Pa. C.S.A. § 6301. On March 7, 2003, this Court sentenced the Defendant to an aggregate of five (5) to ten (10) years incarceration at a state correctional institution and seventeen (17) years of consecutive probation supervision under the Pennsylvania Board of Probation and Parole. Defendant was also required to register as a sex offender under Megan's Law. The Defendant did not file a direct appeal to

the Superior Court; therefore, his sentence became final on April 7, 2003, thirty days after his sentencing. Defendant's PCRA Petition was timely filed on March 3, 2004.

Discussion

Defendant contends in his PCRA Petition that previous counsel was ineffective, in that although a suppression motion was filed, previous counsel failed to pursue a suppression of Defendant's statement to the police based on a "voluntariness" theory. Defendant also alleges that the guilty plea was unlawfully induced by previous counsel, in that prior to the entering of Defendant's plea, previous counsel had advised the Defendant that if he did not plead guilty he would serve a jail sentence of 20 to 40 years.

A suppression Motion was filed on August 12, 2002, by then counsel, Nicole Spring, Esq. of the Public Defender's Office. Counsel moved to suppress the Defendant's statement made to Agent William Weber of the Williamsport Bureau of Police, claiming that Defendant was in custody when he confessed and was not advised of his Miranda[1] rights. Miranda warnings must be given when a person is subjected to custodial interrogation. See Miranda v. Arizona, 384 U.S. 436 (1966) and Beckwith v. United States, 425 U.S. 341, 344 (1976). "Pennsylvania's test for custodial interrogation is 'whether the suspect is physically deprived of his freedom in any significant way or is placed in a situation in which he reasonably believes that his freedom of action of [sic] movement is restricted by such interrogation.'" Commonwealth v. Meyer, 412 A.2d 517, 521 (Pa. 1980) (quoting Commonwealth v. Romberger, 312 A.2d 353, 355 (1973), vacated, 417 U.S. 964 (1974), reinstated on remand, 347 A.2d 460 (1975)). If under the test above, the Court determines a person was subjected to custodial interrogation, the Court looks to see if Miranda warnings were given. If Miranda warnings were given and the Defendant waived

[1] Miranda v. Arizona, 384 U.S. 436 (1966).

his rights, the Court then must inquire into the validity of the waiver under Miranda. See Commonwealth v. Scarborough, 491 Pa. 300, 421 A.2d 147 (1980). The Court determines if the confession was voluntary by looking to the "totality of the circumstances surrounding the interrogation." Colorado v. Spring, 479 U.S. 564, 573 (U.S. 1987) (quoting Fare v. Michael C., 442 U.S. 707, 725 (1979)). See also Commonwealth v. Carter, 546 A.2d 1173 (Pa. Super. Ct. 1988).

In an Opinion dated October 22, 2002, the Honorable Dudley N. Anderson denied Defendant's Suppression Motion. In his Opinion, Judge Anderson found that Defendant was not in custody, and therefore, Miranda warnings were not required. Defendant was told he was free to leave and that he was not under arrest. Additionally, when Defendant asked if he could leave, he was told that he could leave. Furthermore, the interview did not take place at the Williamsport Police Station, but rather at the Sharwell Building in Department of the Children and Youth Office. Based on the totality of the circumstances, Judge Anderson found that Defendant was not in custody and therefore, Miranda warnings were not required. As Miranda warnings were not required, this Court finds there is no issue as to whether the Defendant's confession was voluntary. Further, this argument is moot because the Defendant chose to plead guilty. See Commonwealth v. Fears, 836 A.2d 52, 61 (Pa. 2003) (finding that counsel was not ineffective for failing to assert a suppression claim when the interrogation was not constitutionally infirm, and thus, the guilty plea could not be found to be invalid on that ground).

Defendant's second claim for relief under the PCRA is that his guilty plea was unlawfully because Defense Counsel advised Defendant that if he did not plead guilty he would serve a jail sentence of 20 to 40 years. Under Pennsylvania Law, a guilty plea is not "deemed invalid if the circumstances surrounding the entry of the plea reveal that the defendant fully understood the

nature and consequences of his or her plea and that he or she knowingly and voluntarily decided to plead guilty." Commonwealth v. Blackwell, 647 A.2d 915, 922 (Pa. Super. Ct. 1994). The Court must look to the guilty plea colloquy to determine if the plea was entered into knowingly and voluntarily. Id. Further, according to the Pennsylvania Supreme Court, "a guilty plea motivated by a desire to avoid a higher penalty is not, in itself, inherently involuntary or invalid merely because it was entered to escape a higher penalty than that which might be imposed after a jury trial." Commonwealth v. Williams, 275 A.2d 103, 105 (Pa. 1971).

Defendant pled guilty to multiple counts of Involuntary Deviate Sexual Intercourse, Aggravated Indecent Assault, Indecent Assault, Endangering the Welfare of a Child, and Corruption charges. After reviewing the guilty plea colloquy and the transcript from the guilty plea hearing, the Court finds that the Defendant's guilty plea was not unlawfully induced. At the guilty plea hearing, the Defendant was examined extensively under oath. Some of the testimony referred to occurred as follows:

> COURT: It's my understanding that you're here before me to plead guilty to a number of offenses. I have to go over them with you before I can accept your plea. It looks like you're here to plead guilty to Count 1 and 2, involuntary deviate sexual intercourse. . . . Aggravated indecent assault . . .. The indecent assault . . . . Endangering the welfare of a child . . .. And then corruption of minors . . .. Sir, do you understand all those charges and what the commonwealth would have to prove if you were to go to trial and the what the maximums are on each?
>
> DEFENDANT: Yes, ma'am.
>
> COURT: So adding everything up you would be looking at 20, 40, 50, 60, 82 years and 145,000 dollar fine or both. You understand that?
>
> DEFENDANT: Um-hum.
>
> . . .

COURT: Sir, how do you wish to plead to the two counts of involuntary deviate sexual intercourse, two counts of aggravated indecent assault, two counts of indecent assault, count of endangering the welfare of a child and a count of corruption of minors?

MR. MARTINO: Before the Defendant pleads he needs to be aware that the mandatory applies. The victim is ten years old in this case. We'd be requesting five on Counts 1 and 2 and two and a half on Counts 3 and 4, which would also merge.

COURT: Assuming that 3 and 4 would merge into 1 and 2. There may be an argument. You're looking at mandatory five years. Okay. So even though the standard range says four to six and a half years as standard range if the Commonwealth is asking for a mandatory, which they're telling me they are by letting me know this that the least amount of time you can get is five years. Do you understand that.

DEFENDANT: Yes, ma'am.

COURT: How do you wish to plead to all those charges I just listed?

DEFENDANT: Guilty.

. . .

COURT: Ms. Eddinger gave me a copy of a guilty plea colloquy form. Did you fill this out?

DEFENDANT: Yes, ma'am.

COURT: Did you read through all the questions.

DEFENDANT: Yes, ma'am.

COURT: As you read through the questions and filled it out did you understand that this form is explaining to you the rights you're giving up by pleading guilty here today?

DEFENDANT: Yes, ma'am.

COURT: Whose decision is it to plead guilty here today?

DEFENDANT: Mine.

. . .

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Further, the guilty plea colloquy signed by the Defendant asked:

> 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?

Defendant wrote "No." Next the colloquy asked:

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

Defendant wrote "Yes."

Based upon his written replies to the guilty plea colloquy, there is no indication that Defendant was in any way coerced or induced to enter his plea or that his plea was anything other than knowing and voluntary. The fact that Defendant chose to plead guilty at the advice of counsel in order avoid a higher penalty, does not make the guilty plea unlawfully induced. See Williams, 275 A.2d at 105. Also, from his replies at the guilty plea hearing, Defendant understood the nature of the charges against him, the significance of pleading guilty, the rights he was giving up, and the range of the sentence, including any mandatory time, which the Court could impose. See Williams, 275 A.2d at 104-05. As Defendant's guilty plea was not unlawfully induced, Defendant's argument is without merit.

Conclusion

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 2008, the Defendant and his attorney are notified that it is the intention of the Court to dismiss his PCRA petition unless he files an objection to that dismissal within twenty days (20) of today's date.

By The Court,

Nancy L. Butts, Judge

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