

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
 :
 vs. : NO. 1965-2005
 :
 MATTHEW WATKINS, :
 :
 Defendant : 1925(a) OPINION

Date: April 15, 2009

**OPINION IN SUPPORT OF THE ORDER OF DECEMBER 31, 2008 IN COMPLIANCE
WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

Defendant Matthew Watkins has appealed this court’s order of December 31, 2008, in which we denied his Petition Under Post-Conviction Relief Act, filed January 10, 2008, Amended Petition Under Post-Conviction Relief Act, filed April 3, 2008, and Second Amended Petition Under Post-Conviction Relief Act, filed May 9, 2008 (hereinafter collectively referred to as “PCRA Petition”). The Defendant’s appeal should be denied. To support this contention, we rely on our December 31, 2008 Opinion and Order, a copy of which is attached hereto. We will also provide a brief explanation as follows.

Defendant asserts this Court abused its discretion by denying Defendant’s PCRA Petition based upon the evidence presented and that this Court’s decision to deny the Defendant’s PCRA Petition was against the weight of the evidence and arbitrary and unreasonable and/or illegal.

Our Supreme and Superior Court’s have recently re-emphasized the burden that the appellant defendant faces in appealing a decision by the PCRA trial court:

“When a court comes to a conclusion through the exercise of its discretion, there is a heavy burden to show that this discretion has been abused. It is not sufficient to persuade the appellate court that it might have reached a different conclusion, it is necessary to show an actual abuse of the discretionary power. An abuse of discretion will not be found based on a mere error of judgment, but

rather exists where the court has reached a conclusion which overrides or misapplies the law, or where the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will.”

Commonwealth v. Fowler, 930 A.2d 586, 597 (Pa. Super. Ct. 2007); *citing Paden v. Baker Concrete Construction, Inc.*, 658 A.2d 341, 343 (Pa. 1995). This Court did not abuse its discretion by denying the Defendant’s PCRA petition.

Our decision to deny the Defendant’s PCRA Petition was premised upon, among other things, the evidence at trial of the Defendant’s guilt, conspiracy to rob the Billtown Cab Company, being so overwhelming it rendered his petition for post-conviction relief meritless. The overwhelming evidence of guilt made it impossible to undermine the truth determining process by any possible ineffective representation of trial counsel, so as to entitle Defendant to a new trial. As our December 31, 2008 opinion explains, even if the Defendant had not confessed, repeatedly as he did, to his part in the robbery, the evidence against him would have resulted in the jury finding him guilty regardless. Defendant was not denied his constitutional guaranteed right to effective representation, even if trial counsel did assert his own ineffectiveness at Defendant’s sentencing, as he was effectively represented.

At the PCRA hearing, Defendant strongly asserted that his counsel was ineffective by failing to pursue discovery and seek out grounds for suppression of his various exculpatory statements made to police agents and that his statements to police agents were unlawfully induced by promises of leniency, specifically that he would not go to jail and that in addition to those statements being made to induce his confessions those same police promises were made to him in order for him to waive his preliminary hearing. Over and over again, the evidence presented in the Defendant’s PCRA hearing proved that it was not ineffectiveness, but the

Defendant's will that guided trial counsel's tact and conduct in preparing for and delivering the Defendant's defense. This was not Defendant's first time in the court system and he admitted at the final hearing on September 29, 2008 that he knew that if he cooperated with the system the system would treat him better and he would receive a lesser sentence. The Defendant, with the representation of trial counsel, was attempting to get a good plea bargain by being cooperative. Trial counsel's testimony at the hearing made it clear that trial counsel did go over all the documents and evidence with the Defendant and the two decided that Defendant's best course of action was to pursue a plea bargain. N.T., 7/2/2008. Thus, it was not ineffectiveness at all, but rather a joint case tactic, held by both the Defendant and his counsel, to cooperate with the Commonwealth, including Agent Kontz, by releasing information to them, not trying to cover information up by the filing of a suppression motion or otherwise. This went so far as to Defendant entering a guilty plea. It was only after Defendant decided, for unknown reasons, his guilty plea was not good enough that he decided to withdraw it and proceed to trial. Defendant cannot now blame trial counsel for not pursuing a different trial tactic.

Although the Defendant asserts that he had a "deal" with Agent Kontz that was not honored, thereby allegedly making his confessions unlawfully induced, the deal of no prison time that the Defendant asserts he had was not believable by this Court. The armed robbery crimes that the Defendant participated in were serious. Particularly in view of Defendant's prior record it is inconceivable that the Defendant or Agent Kontz would have expected the District Attorney or any Judge of this Court to honor such a plea deal. Further, trial counsel

testified that although he and the Defendant agreed that the Defendant would cooperate and make a plea agreement, trial counsel was not aware of any agreement for mere probation.

After the Defendant and his trial counsel decided to withdraw the Defendant's plea and proceed to trial, there was no legal reason supporting trial counsel filing a *Nunc Pro Tunc* suppression motion as such a motion had no chance to succeed. Rather a *Nunc Pro Tunc* suppression motion would almost certainly fail to be heard on its merits, since all facts upon which such a motion could be based were already known to both the Defendant and trial counsel.

This Court did not override or misapply the law, and our judgment was not manifestly unreasonable, the result of partiality, prejudice, bias or ill-will. This Court assess the facts based upon the testimony presented, the credibility of the witnesses, including the Defendant, and the strength of the underlying case. In this case, the truth determining process could not have been so undermined by ineffective representation of trial counsel that the Defendant may be entitled to a new trial and the December 31, 2008 order should be affirmed.

BY THE COURT,

William S. Kieser, Senior Judge

cc: John A. Gummo, Esquire
DA
Judges
Gary L. Weber, Esquire (Lycoming Reporter)