IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	**:**	
	:	
v.	**:**	**No. 147-2007**
	:	**CRIMINAL DIVISION**
SHAUN CORMIER,	**:**	
Defendant	**:**	**PCRA**

OPINION AND ORDER

On December 2, 2009, the Defendant filed a Petition for Relief under the Post Conviction Relief Act (PCRA). Conflicts Counsel, Joel M. McDermott, was appointed on December 2, 2009, to represent the Defendant. On March 2, 2010, after a Court Conference, Defense Counsel was given until March 8, 2010, to file an amended PCRA petition or a Turner-Finley letter indicating no meritorious issues were raised in the Defendant's Petition. A "no merit" letter has been submitted to the Court by the PCRA counsel for the Defendant, Joel M. McDermott, Esq., in compliance with the requirements of Commonwealth v. Turner, 544 A.2d 927 (1988). After an independent review of the entire record, the Court agrees with the PCRA counsel and finds that the Defendant has failed to raise any meritorious issues in his PCRA petition.

Background

On January 8, 2008, the Defendant pled guilty to count 2, Rape of a Child, in an open plea agreement. On May 1, 2008, the Defendant was sentenced to undergo incarceration in a state correctional institution for an indeterminate period of time, the minimum of which shall be six (6) years and the maximum of which shall be twelve (12) years, with a consecutive ten (10) year period of supervision under the Pennsylvania Board of Probation and Parole.

As the Defendant did not file a direct appeal, the Defendant's sentence became final on June 1, 2008. Therefore, the Defendant had until June 1, 2009, to file his PCRA Petition. As the Court did not receive the Defendant's PCRA Petition until December 2, 2009, it appears the Petition is untimely. However, the Court notes that the Defendant signed his Petition on June 1, 2009, and that the Court was not listed on the Defendant's Certificate of Service. As it appears there is a discrepancy as to when the Petition was actually filed, the Court will address the merits of the Defendant's Petition.

Discussion

The Defendant alleges in his PCRA Petition that his counsel was ineffective as his withdrawal of appearance failed to comply with the requirements for withdrawal; the plea was involuntary because the prosecutor failed to comply with the plea bargain; the trial court failed to conduct an on the record colloquy to verify that the Defendant understood his right to a jury trial.

Whether the Defendant's original counsel's withdrawal of appearance failed to comply with the requirements for withdrawal and whether this failure constituted ineffective assistance of counsel

The Defendant alleges in his PCRA Petition that his counsel was ineffective as his withdrawal of appearance failed to comply with the requirements for withdrawal. The Court notes that although the Defendant refers to his counsel as appeal counsel in his Petition, the Defendant's case was never on appeal. Therefore, the Court will simply refer to the Defendant's counsel as counsel, not as appeal counsel.

To make a claim for ineffective assistance of counsel, a defendant must show 1) an underlying claim of arguable merit; 2) no reasonable basis for counsel's act or omission; and 3)

prejudice as a result, that is, a reasonable probability that but for counsel's act or omission, the outcome of the proceeding would have been different. Commonwealth v. Cooper, 941 A.2d 655, 664 (2007). (See Commonwealth v. Carpenter, 725 A.2d 154, 161 (1999)). A failure to satisfy any prong of this test is fatal to the ineffectiveness claim. Cooper at 664. (See Commonwealth v. Sneed, 899 A.2d 1067, 1076 (2006)).

On January 28, 2008, Jason S. Dunkle, Esq. and the law firm of Masorti & Sullivan, P. C. filed a Motion to Withdraw as Counsel. The Motion stated that the Defendant, via letter dated January 16, 2008, expressly requested that "you withdraw yourself from my case as soon as possible." The Motion also stated that the deterioration between Defense Counsel and the Defendant was such that the Defendant needed new counsel to be appointed by the Court.

In his PCRA Petition, the Defendant claims that when counsel seeks to withdraw, they must provide a no-merit letter which sets forth the nature and extent of counsel's review of the case, a list of claims that the defendant seeks to have reviewed, and an explanation by counsel why the claims do not have merit. The Defendant cites to Commonwealth v. Finley, 550 A.2d 213 (1988) and Commonwealth v. Turner, 544 A.2d 927 (1988) to support his claim.

The no-merit letter the Defendant alludes to in his PCRA Petition pertains to the withdrawal of counsel during PRCA proceedings. Jason S. Dunkle, Esq. and the law firm of Masorti & Sullivan, P. C. filed a Motion to Withdraw as Counsel on January 28, 2008, pursuant to Pa. R. Crim. Pro. 120 (B). The Defendant's PCRA Petition was not filed with the Court until December 2, 2009. As the Defense Counsel's Motion to Withdraw was not made during the Defendant's PCRA proceeding, the Motion did not need to include a no-merit letter. Therefore, the Court finds that the Defendant's claim that his counsel was ineffective for failure to comply with the requirements of withdrawal is without merit.

The plea was involuntary because the prosecutor failed to comply with the plea bargain

The Defendant further alleges that his plea was involuntary because the prosecutor failed to comply with the plea bargain. The Defendant alleges that a correspondence letter, dated December 21, 2007, confirmed that a plea was offered by the Commonwealth at the Pre-Trial Conference on December 18, 2007. The Defendant alleges that the Commonwealth agreed that if the Defendant pled guilty to Rape of a Child, the Commonwealth would nolle prosse the remaining charges and recommend a sentence of the mandatory minimum of five (5) years.

A review of the record reveals that the Defendant was aware of the fact that he was pleading guilty without a specific agreement as to the length of his sentence. The terms of the Defendant's plea agreement state plainly that the plea was an open plea with a recommended sentence of seven (7) to eight (8) year minimum range, with the ultimate sentence to be decided by the court. The mandatory minimum of five (5) years spoken of in the correspondence letter dated December 21, 2007, refers to 42 Pa. C. S. § 9718, which states that a person convicted of 18 Pa. C. S. § 3121(c) shall receive a mandatory minimum imprisonment of five (5) years. Therefore, as the Defendant pled guilty to 18 Pa. C. S. § 3121(c), his sentence could not be for less than five (5) years imprisonment.

The Court sentenced the Defendant on May 1, 2008, to undergo incarceration in a state correctional institution for an indeterminate period of time, the minimum of which shall be six (6) years and the maximum of which shall be twelve (12) years, with a consecutive ten (10) year period of supervision under the Pennsylvania Board of Probation and Parole. At the time he entered his plea of guilty, the Defendant was aware that the standard sentence range for his term of imprisonment was seventy-two (72) months to twenty (20) years, and that as he pled guilty to 18 Pa. C. S. 3121(c), his sentence could not be for less than five (5) years. The Defendant was

also aware that the plea agreement included a recommended sentence in the seven (7) to eight (8) year range, but that the ultimate sentence was to be decided by the Court. Taking all of these factors into account, the Court concludes that the Defendant's argument that the plea agreement was involuntary because of the breached plea agreement is without merit.

The Defendant's guilty plea was not made knowingly, voluntarily, or intelligently, as the Trial Court failed to conduct an on the record colloquy informing the Defendant of his right to a trial by jury

The Defendant argues that his guilty plea was not made knowingly, voluntarily, or intelligently as the Trial Court failed to conduct an on the record colloquy informing the Defendant of his right to a trial by jury. Transcripts of the Guilty Plea Hearing held before the Honorable Nancy L. Butts on January 8, 2008, reveal the following,

COURT: So Mr. Cormier, if you were to go to trial on that charge the Commonwealth would have to prove beyond a reasonable doubt that on December 24th of 2006 you would have engaged in sexual intercourse with an individual under the age of 13. It's graded a felony of the first degree, the maximum punishment is going to be 20 years in jail and/or a 25, excuse me, 40 years in jail and/or a 25,000-dollar fine or both. So, do you understand the elements of the offense meaning if you were to go to trial what the Commonwealth would have to prove and then what the minimums are?

DEFENDANT: Yes

…

DEFENDANT: When I talked to my attorney it was brought to me even if I took this to trial all that will be needed was a birth certificate. Even if they said that she lied to me about her age, did tell me fake ID or whatever that I would still be charged so, therefore, its - - I felt there was no reason to go to trial if that's all you need even if somebody did lie that there is nothing you could do about that.

COURT: Right. So what you're telling me is that it's your decision? Bottom line it still is your decision?

DEFENDANT: I take responsibility for my actions.

Transcript of Guilty Plea Hearing at 2-3, 10, Commonwealth v. Cormier, No. 147-2007 (Jan. 8, 2008). Furthermore, the guilty plea also incorporates the Defendant's written colloquy, which described in detail the Defendant's jury trial rights.

It is apparent that the Defendant did indeed have an understanding of his right to a jury trial. In light of this knowledge, the Defendant decided to proceed with his guilty plea. As the record reveals that the Court conducted an on the record colloquy and found that the Defendant was fully aware of his right to a jury trial at the time he rendered his plea of guilty, the Defendant's claim otherwise has no 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. As such, no further hearing 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 Defendant's PCRA Petition. The 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 13th day of May, 2010, it is hereby ORDERED and DIRECTED as follows:

1. Defendant is hereby notified pursuant to Pennsylvania Rule of Criminal Procedure No. 907 (1), that it is the intention of the Court to dismiss his PCRA petition unless he files an objection to that dismissal within twenty (20) days of today's date.
2. The application for leave to withdraw appearance filed March 8, 2010, is hereby GRANTED and Joel M. McDermott, Esq. may withdraw his appearance in the above captioned matter.

By The Court,

Nancy L. Butts, President Judge

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