

IN THE COURT OF COMMON PLEAS LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	
	:	
v.	:	No.: 1688-2007; 1716-2007;
	:	1743-2007; 2156-2007
RONALD RUMMINGS,	:	CRIMINAL DIVISION
Defendant	:	PCRA

OPINION AND ORDER

On January 20, 2009, Defendant filed a *Pro Se* Petition for Relief under the Post Conviction Relief Act (PCRA). Conflicts Counsel, Edward J. Rymysza, Esq. was appointed on March 22, 2009, to represent Defendant. On March 31, 2009, after a Court Conference, Defense Counsel was granted an additional thirty days after preparation of the guilty plea and sentencing transcripts, in which to file an Amended PCRA Petition or a Turner-Finley letter indicating no meritorious issues were raised in Defendant's Petition. The transcripts were prepared and filed on June 2, 2009, however, the transcripts were sent to the Public Defender's Office first, causing current Counsel not to receive the transcripts until July 28, 2009. On July 29, 2009, Attorney Rymysza submitted a "no merit" letter to the Court in compliance with the requirements of Commonwealth v. Turner, 544 A.2d 927 (1988). Although, for some unknown reason, the Petition did not make it to this Court until December 16, 2009 after Attorney Rymysza re-filed the Petition. After an independent review of the entire record, the Court agrees with PCRA counsel and finds that the Defendant has failed to raise any meritorious issues in his PCRA petition.

Background

On January 31, 2008, Defendant entered into a plea agreement for the following: a nolo contest plea under docket number 1688-2007 to Burglary for two to four years; for docket

number 1716-2007, a guilty plea to Receiving Stolen Property for one year to two years consecutive to 1688-2007; for docket number 1743-2007, a guilty plea to two counts of Theft by Deception for six to twelve months concurrent to each other and concurrent to docket number 1688-2007 and to two counts of summary bad checks for guilt without further penalty; and on docket number 2156-2007, a guilty plea to Theft for six to twenty-four months, concurrent to docket numbers 1688-2007 and 1743-2007. Defendant was sentenced on the same date and received an aggregate sentence of three (3) to six (6) years in a State Correctional Institution.

No direct appeal was filed. Defendant's sentence then became final thirty days later on March 1, 2009. Therefore, Defendant's PCRA Petition was timely filed on January 20, 2009.

Discussion

Defendant alleges in his PCRA Petition that his guilty plea was unlawfully induced as he did not commit the burglary and was forced into signing the no contest plea on the burglary case. Defendant also asserts that prior counsel, Janan M.E. Tallo, Esquire was ineffective for withdrawing his appeal to the Superior Court.

In order to make a claim for ineffective assistance of counsel, the Defendant must demonstrate:

- 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. Counsel is presumed to have been effective. A failure to satisfy any prong of this test is fatal to the ineffectiveness claim.

Commonwealth v. Cooper, 941 A.2d 655, 664 (Pa. 2007) (and cases cited therein).

Defendant's Guilty Plea was Unlawfully Induced

First, Defendant alleges in his PCRA Petition that his guilty plea was unlawfully induced.

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.

The Court finds the Defendant’s claim that his guilty plea was unlawfully induced without merit. First, Defendant entered into a negotiated plea agreement, with the guilty plea colloquy form stating the terms of the plea agreement. Further, according to Attorney Rymysza, Robert Cronin, Esquire who represented Defendant at the guilty plea and sentencing hearings stated he met with Defendant “at length” prior to the entry of Defendant’s plea. Next, Defendant also completed the seven pages of the written guilty plea colloquy which consists of forty questions. Next to each question, Defendant wrote “yes” and/or initialed. Finally, the Court examined Defendant extensively under oath at the time of the guilty plea hearing including questioning the Defendant about the portions of the colloquy he initialed to insure there was no problem. Some of the testimony referred to occurred as follows:

Q: It’s a no contest plea to felony one burglary for two to four years; felony three receiving stolen property for one to two consecutive, a bad checks and theft counts to run concurrent to the sentence under the burglary and the bad checks, I’m assuming it’s the receiving and then consecutive to any sentence concurrently being served, recommend drug treatment. And the 2156 that’s the theft by deception is concurrent with all the other cases.

A: Yes, ma’am.

Q: Is that your understanding of the plea agreements?

A: Yes.

...

Q: Mr. Rummings is here to plead to receiving stolen property, bad check, theft by deception, three counts, and burglary charges.

A: I plead guilty to everything and no contest to the burglary charge.

...

Q: Now, you understand a no contest plea has the same legal consequence as a guilty plea. Okay. . . .

A: Okay.

...

Q: If this case were to go to trial that would be the testimony that they would present. Do you contest that that's what would be testified to?

A: No.

Q: Okay. And then with regard to the remaining counts you've pled guilty with bad checks and theft by deception that's 1743. That's between August 17th and 18th of 2007 it looks like you went to Crystal Beverage.

A: Yes, ma'am.

...

Q: So gentlemen, as you all four filled out this form and read through the questions did you understand this form is explaining to you the rights that you're giving up by either pleading guilty or no contest here today?

...

A: Yes.

...

Q: Whose decision is it to plead guilty here today . . . Mr. Rummings?

A: Mine.

...

Q: Anybody forcing you or threatening you in any way to get you to enter a plea today?

...

A: No.

Q: Are you doing this of your own free will?

...

A: Yes.

...

Q: Why do you want to plead guilty?

A: Because I'm guilty and I want to get it over with.

N.T. 1/31/08, pgs. 6-7, 14-16, 23, 25, & 27.

The Court finds that based on the Defendant's 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, which the Court could impose. Commonwealth v. Williams, 275 A.2d 103, 104-05 (Pa. 1971). As Defendant's guilty plea was not unlawfully induced and the guilty plea was fully explained to him, Defendant's argument is without merit.

Prior Counsel was ineffective for withdrawing Defendant's appeal

Next, Defendant also asserts that prior counsel, Janan M.E. Tallo, Esquire, who represented him pre-trial, was ineffective for withdrawing his appeal in the Pennsylvania Superior Court with docket number 303 MDA 2008.

The Court finds Defendant's argument that Attorney Tallo was ineffective for withdrawing his appeal without merit. After review of the Superior Court docket, this Court determined that Defendant's appeal for Lycoming County docket number 1213-2007 was withdrawn on March 25, 2008 for some reason; however, that docket number is not subject to this PCRA Petition. Therefore, as Defendant sets forth no specific claim as to how Defense Counsel was ineffective, his claim 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. 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 February 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 July 29, 2009, is hereby GRANTED and Edward J. Rymysz, Esq. may withdraw his appearance in the above captioned matter.

By The Court,

Nancy L. Butts, P.J.

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