

IN THE COURT OF COMMON PLEAS LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	
	:	
v.	:	No.: 8-2007; 28-2007; 1799-2007
	:	CRIMINAL DIVISION
FRANK SECHRIST, III	:	
Defendant	:	PCRA

OPINION AND ORDER

On April 14, 2009, Defendant filed a *Pro Se* Petition for Relief under the Post Conviction Relief Act (PCRA). Conflicts Counsel, Edward J. Rymysza, Esquire was appointed on April 22, 2009, to represent Defendant. On June 4, 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. On December 7, 2009, after several continuances¹, Attorney Rymysza submitted a “no merit” letter to the Court 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 PCRA counsel and finds that the Defendant has failed to raise any meritorious issues in his PCRA petition.

Background

On February 14, 2008, Defendant entered into a plea agreement under docket numbers 8-2007 and 28-2007 to one count each of Delivery of a Controlled Substance (DCS) and Possession with the Intent to Deliver (PWID) and under docket number 1799-2007 to one count

¹ This Court granted several continuances in order for Attorney Rymysza to obtain a copy of the file from Attorney Lepley.

of Driving Under the Influence (DUI) and Driving Under Suspension (non-DUI related). The agreement called for an aggregate sentence of three (3) to six (6) years in a State Correctional Institution in addition to the dismissal of the charges against Co-Defendant Christine Park. On August 29, 2008, this Court sentenced Defendant to 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 September 29, 2008. Therefore, Defendant's PCRA Petition was timely filed on April 14, 2009.

Discussion

Defendant alleges in his PCRA Petition that his guilty plea was unlawfully induced by prior Defense Counsel, George E. Lepley, Jr., Esquire. Defendant also asserts that Attorney Lepley was ineffective for failing to file an 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 is without merit. First, Defendant entered into a negotiated plea agreement, with the guilty plea colloquy form stating the terms of the plea agreement. Further, Defendant completed the seven pages of the written guilty plea colloquy which consists of forty questions. Next to each question, Defendant wrote the appropriate “yes” or “no” response. Finally, the Court examined Defendant extensively under oath at the time of the guilty plea hearing. Some of the testimony referred to occurred as follows:

Q: Mr. Lepley handed me this guilty plea colloquy form and it looks as though he filled it out for you?

A: Yes.

Q: So did you – did he read the questions to you?

A: Yes.

Q: Did you guys talk about what the questions meant?

A: Yes.

Q: Did you give him an answer?

A: Yes.

Q: And when you gave him an answer did you watch him write it on the form?

A: Yes.

Q: And whose initials are these down here?

A: Mine.

Q: And why did you initial at the bottom of the page?

A: Mr. Lepley said if I understood everything sign everything, which I understood everything.

Q: And also verify that you went through each page with him?

A: Yes.

Q: So as you went through the form and filled it out through Mr. Lepley did you understand that this form is explaining to you the rights that you're giving up by pleading guilty here today?

A: Yes.

Q: As you went through the form if you weren't sure or didn't understand something did you have the opportunity to talk it over with Mr. Lepley?

A: Yes.

Q: Did you feel comfortable you were able to have him answer any questions that you had?

A: He helped me. I'm very sick today. I don't have my glasses and he helped me as much as he could so I understood everything. Yes, I understand.

Q: But is there anything left you don't understand that you need to ask me?

A: No, I think Mr. Lepley and the DA I think has went over everything and as far I know everything is – I'm going to get three to six and all sentences are running together and that's my understanding.

...

Q: Anybody forcing you or threatening you to get you to plead guilty here today?

A: No.

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

A: Yes.

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

A: It's mine.

N.T. 2/14/08, pgs. 10-13.

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). Further, Defendant told the Court that Attorney Lepley read the guilty plea colloquy questions to him and explained everything he (Mr. Attorney Lepley) could to make him (Defendant) understand. 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 failing to file an appeal

Next, Defendant also asserts that Attorney Lepley was ineffective failing to file an appeal to the Pennsylvania Superior Court.

The Pennsylvania Constitution guarantees a direct appeal as of right. See Article V, Section 9 of the Pennsylvania Constitution. As such the "failure to file or perfect such an appeal results in a denial so fundamental as to constitute prejudice per se." Commonwealth v. Lantzy, 736 A.2d 564, 571 (Pa. 1999). Where counsel has failed to file a direct appeal and "where the remaining requirements of the PCRA are satisfied, the petitioner is not required to establish his innocence or demonstrate the merits of the issue or issues which would have been raised on appeal." Id. at 572.

In this case, the Court can find nothing in the record to suggest that Defendant ever made a request to Attorney Lepley to file an appeal and that request was disregarded. Defendant was made aware of his post-sentence and appellate rights on the record at the time of sentencing and did not file a post-sentence motion or appeal on his own behalf. Moreover, Attorney Lepley informed Attorney Rymysza that Defendant did not request that either a post-sentence motion or appeal be filed in this case. Therefore, the Court finds Defendant's allegation that Attorney Lepley is ineffective for failing to file a direct appeal 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 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 December 7, 2009, is hereby GRANTED and Edward J. Rymsza, Esq. may withdraw his appearance in the above captioned matter.

By The Court,

Nancy L. Butts, P.J.

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