IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	**No. CR-573-2010**
vs.	**:**	
	:	
DANIEL BOZOCHOVIC,	**:**	**Opinion and Order regarding PCRA**
Defendant	**:**	

OPINION AND ORDER

This matter came before the Court on the Defendant's Post Conviction Relief Act (PCRA) petition. The relevant facts follow.

On August 18, 2010, Defendant pleaded guilty to simple assault in exchange for a sentence of two years probation.

On December 30, 2010, Defendant appeared before the Court via videoconference for a probation violation hearing. Defendant admitted the violation and the only issue was the sentence that should be imposed. The recommendation of Defendant's probation officer was for a sentence of 8 to 24 months incarceration in a state correctional institution due to Defendant's poor county supervision history in this and other cases. Defendant's attorney, Robin Buzas, argued for a 4 to 8 month county "max out" sentence or a 60-day evaluation at a state correctional institution if the Court was not inclined to keep Defendant in the county prison. The Court revoked Defendant's probation and re-sentenced him to serve 2 to 24 months incarceration in a state correctional institution.

On July 11, 2011, Defendant filed a motion to modify or reduce sentence nunc pro tunc, which the Court treated as a PCRA petition. On August 15, 2011, Defendant filed a pro se form PCRA petition. After counsel was appointed and given an opportunity to amend the pro se petitions, a hearing was held on December 20, 2011. The sole issue for this hearing was whether Defendant was improperly induced into admitting the probation

violation because defense counsel allegedly promised Defendant he would receive a 4 to 8 month "max out" sentence. Two witnesses testified at the hearing: Defendant and Defendant's former attorney Robin Buzas.

Defendant testified that Ms. Buzas told him he would receive a 4 to 8 month "max out" sentence. He acknowledged that she discussed a couple of different alternatives with him, but he was under the assumption that he would get a 4 to 8 month county sentence. Later in his testimony, he claimed Ms. Buzas promised him that sentence.

He admitted he was aware that his probation officer's recommendation was for an 8 to 24 month state sentence. In fact, he testified that before he ever violated this probation, his probation officer told him he would "go up state" if he messed up. Defendant felt that his probation officer had labeled him state property before he even set foot in the probation office on this case.

He also admitted the underlying facts of the probation violation, i.e., he had been drinking and overturned or threw some things at his mother's house,[1] but he claimed that if he knew he was going to get a 2 to 24 month state sentence, he would not have admitted the violation and would have put the state to its proof.

Defendant also claimed he sent request slips to Ms. Buzas asking that she file for reconsideration of his sentence and that she file an appeal.

Ms. Buzas testified that she does not promise a sentence on a probation violation. The only time there is a "plea agreement" is where everybody agrees to the recommendation, and even then there is no guarantee that the judge will go along with it.

[1] One of the conditions of Defendant's probation was that he not consume alcohol, because his simple assault conviction arose out of an incident where, after consuming alcohol, Defendant went to a former girlfriend's residence and got into an altercation with her.

She acknowledged that she would have told Defendant that she would argue for a 4 to 8 month county "max out" sentence; however, she would also have discussed other alternatives such as a 60-day evaluation.

She testified that her practice is to ask a defendant what he or she was contesting about the alleged violation, if anything, then she would go on to the recommendation. Defendant admitted the violation, so she would have gone on to discuss the recommendation of his probation officer. She would have discussed several options with Defendant and told him she would try to get the best sentence from the Court that she could. She would not have promised a 4 to 8 month county sentence, and she would have been clear that there was not guarantee. She would also have been clear that the probation officer recommendation was for a state sentence, and she wasn't surprised that the Court imposed a 2 to 24 month state sentence.

Ms. Buzas recalled getting correspondence from Defendant about credit for time served, but she never received a request from Defendant asking that she file an appeal.

The Commonwealth also introduced two letters Defendant wrote to the Court. In these letters, Defendant mentioned credit for time served, thanked the Court for such a reasonable sentence, and asked for information about how the state prison system works, but he never indicated that he was promised a 4 to 8 month sentence or that he was misled by Ms. Buzas.

In order to prevail on an ineffectiveness claim, a defendant must demonstrate that: (1) his claims are of arguable merit; (2) counsel had no reasonable basis for her actions; and (3) counsel's actions prejudiced the defendant. Commonwealth v. Pierce, 515 Pa. 153, 158, 527 A.2d 973, 975 (1987). Allegations of ineffectiveness with respect to the entry of a

guilty plea will serve as a basis of relief only if the ineffectiveness caused the defendant to enter an involuntary or unknowing plea. Commonwealth v. Williams, 496 Pa. 486, 488, 437 A.2d 1144, 1146 (1981). In determining whether a guilty plea was entered knowingly and intelligently, a court must review all the circumstances surrounding the entry of that plea. Commonwealth v. Schultz, 505 Pa. 188, 192, 477 A.2d 1328, 1330 (1984).

Although this was not a guilty plea per se, the standards pertaining to such are analogous here where Defendant is claiming his admission to a probation violation was improperly induced by ineffectiveness of counsel.

After reviewing all the evidence presented in this case, the Court finds that Ms. Buzas did **not** promise Defendant a 4 to 8 month sentence. Rather, she merely told him she would advocate on his behalf for a county sentence, which she did. Quite simply, the Court does not credit Defendant's assertions that he was promised a 4 to 8 month sentence or that he would have put the state to its burden of proof if he hadn't been promised such a sentence. Defendant admitted that his attorney discussed several options with him. If she had promised that he would receive a 4 to 8 month sentence, there would be no reason to discuss any other options. Furthermore, counsel would not make such a promise, especially when the probation officer's recommendation was for an 8 to 24 month state sentence. Moreover, Defendant never mentioned this claim in his letters to the Court. Instead, he thanked the Court for the 2 to 24 month sentence he received. It was only after he was denied parole in May that Defendant filed his PCRA petition claiming he was promised a 4 to 8 month "max out" sentence. Thus, Defendant's admission to the probation violation was not improperly

induced and he is not entitled to relief.[2]

O R D E R

AND NOW, this ____ day of December 2011, the Court DENIES the claims of ineffective assistance of counsel that Defendant raised in his PCRA petition. The Court notes that in a separate Order it granted in part Defendant's claim for credit for time served.

The defendant is hereby notified that he has the right to appeal from this order to the Pennsylvania Superior Court. The appeal is initiated by the filing of a Notice of Appeal with the Clerk of Courts at the county courthouse, with notice to the trial judge, the court reporter and the prosecutor. The Notice of Appeal shall be in the form and contents as set forth in Rule 904 of the Rules of Appellant Procedure. The Notice of Appeal shall be filed within thirty (30) days after the entry of the order from which the appeal is taken. Pa.R.App.P. 903. If the Notice of Appeal is not filed in the Clerk of Courts' office within the thirty (30) day time period, the defendant may lose forever his right to raise these issues.

The Prothonotary shall mail a copy of this order to the defendant by certified mail, return receipt requested.

By The Court,

_____
Marc F. Lovecchio, J.

cc: Kenneth Osokow, Esquire (ADA)
Todd Leta, Esquire
Daniel S. Bozochovic, #JW 4180

[2] The Court also finds that Defendant did not ask Ms. Buzas to file an appeal from his probation violation sentence.

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Work file