

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	No. 1818-07; 1918-07;
	:	2012-07; 2031-07; 1003-08
v.	:	1004-08; 629-08
	:	CRIMINAL DIVISION
DANIEL CASSIDY,	:	
Defendant	:	PCRA

OPINION AND ORDER

Following a Court conference on the Defendant's Post Conviction Relief Act (PCRA) Petition, the Court determined that an evidentiary hearing was not needed. Therefore, the Court will address in this Opinion the merit of the issues raised in the Petition.

Factual Background

On October 3, 2008, the Defendant entered An open plea of guilty before the Honorable Nancy L. Butts under CR 1818-07 to two (2) counts of Theft by Unlawful Taking, one count of Receiving Stolen Property, all felonies of the third degree, and one count each of Receiving Stolen Property and Access Device Fraud, misdemeanors of the second degree; under CR 1918-07 to Forgery, a felony of the second degree, Access Device Fraud, a felony of the third degree, Receiving Stolen Property and Identity Theft, both misdemeanors of the first degree, and Theft by Deception and Receiving Stolen Property, both misdemeanors of the second degree; under CR 2012-07 to two counts Forgery, felonies of the third degree, two counts of Theft By Unlawful Taking, misdemeanors of the second degree, four counts Access Device Fraud, misdemeanors of the second degree, two counts Access Device Fraud, misdemeanors of the first degree, five counts Access Device Fraud, felonies of the third degree, and two counts Theft,

misdemeanors of the second degree; under CR 2031-07 to one count Forgery and one count Access Device Fraud, both felonies of the third degree, one count Theft by Deception, Receiving Stolen Property, and Identity Theft, all misdemeanors of the first degree, and one count Criminal Attempt, a misdemeanor of the second degree; under CR 629-08 to Retail Theft, a misdemeanor of the first degree; under CR 1003-08 three counts Access Device Fraud, one count Theft from a Motor Vehicle, misdemeanors of the second degree, and Criminal Mischief, a summary offense; under CR 1004-08 to two counts of Access Device Fraud, felonies of the second degree, one count of Access Device Fraud and two counts of Receiving Stolen Property, misdemeanors of the first degree, and one count Receiving Stolen Property and Theft from a Motor Vehicle, misdemeanors of the second degree.

The Defendant was then sentenced by the Court on March 13, 2009 on all of the above listed cases, along with CR 569-2008, which is part of a separate PCRA Petition.¹ The aggregate sentence imposed against the Defendant was for a period of incarceration in the Lycoming County Prison of 11 ½ months to 23 months with parole supervision to be administered by the Adult Probation Office, and a consecutive period of 40 years Intermediate Punishment Supervision also to be supervised by the Adult Probation Office. The judgment of sentence imposed by this Court was affirmed by the Superior Court on April 26, 2010.

¹ Under CR 569-2008, the Defendant was found guilty following a non-jury trial before the Court on February 26, 2009, and was convicted of two counts Burglary and Criminal Trespass and one count Theft by Unlawful Taking and Receiving Stolen Property.

Procedural Background

At the time the Defendant entered his plea of guilty, he was represented by George Lepley, Esquire. However, at the time of his sentencing, the Defendant was represented by Matthew Zeigler, Esquire, who filed an appeal following the imposition of sentence. While the Defendant's case was still on appeal, Andrea Pulizzi, Esquire, of the Zeigler Law Office, filed a premature PCRA Petition which was dismissed by this Court. The Defendant is now represented by the Public Defender's Office and alleges in his current Petition the ineffectiveness of trial counsel George Lepley, Esquire. In order to establish a claim for ineffective assistance of counsel, a petitioner must establish:

(1) the underlying claim has arguable merit; (2) no reasonable basis existed for counsel's actions or failure to act; and (3) petitioner suffered prejudice as a result of counsel's error such that there is a reasonable probability that the result of the proceeding would have been different absent such error.

Commonwealth v. Reed, 971 A.2d 1216, 1221 (2009). See Commonwealth v. Pierce, 527 A.2d 973 (1987).

Discussion

Defendant coerced into entering guilty plea

The Defendant alleges that Attorney Lepley was ineffective in that he coerced the Defendant into pleading guilty as the Defendant maintained his innocence at all times during Attorney Lepley's representation. "Where an allegation of ineffective assistance of counsel is made in connection with the entry of a plea of guilty, such allegation 'will serve as a basis for relief only if the ineffectiveness caused appellant to enter an involuntary or unknowing plea.'" Commonwealth v. Fluharty, 632 A.2d 312 (Pa. Super. 1993). (Citing Commonwealth v.

Chumley, 394 A.2d 497, 504 (Pa. 1978)). In determining whether a plea is entered knowingly, voluntarily, and intelligently, the court must at a minimum address the following six (6) areas: 1) whether the Defendant understands the nature of the charges to which he is pleading; 2) whether there is a factual basis for the plea; 3) whether the defendant understands that he has a right to a jury trial; 4) whether the defendant is aware that he is presumed innocent until proven guilty; 5) whether the defendant is aware of the permissible range of sentences for the offenses charged; and 6) whether the defendant understands that the judge is not bound by the terms of the plea agreement unless he or she accepts the agreement. Fluharty at 313.

A review of the transcripts of the guilty plea hearing in this case confirms that the Defendant did in fact enter into his plea knowingly, voluntarily and intelligently. This Court informed the Defendant of his right to a jury trial, what the Commonwealth would have to prove in order for the Defendant to be found guilty, and that by entering into an open plea, there was no agreement as to the length of sentence or the location as to where the Defendant may be ordered to serve that sentence. N.T., 10/3/08, p. 3-4, 12. While it is obvious the Defendant pled to multiple charges, the Court reviewed with the Defendant the elements for each charge to which he pled and informed the Defendant of the possible range of sentence for each charge, including the range of each sentence for the various grading of each charge. N.T., 10/3/08, p. 3-9. A factual basis for each of the cases was also established. N.T., 10/3/08. p. 13-21. In addition to the oral colloquy, the Defendant filled out and signed a written colloquy, which also establishes that he was informed of all of the necessary elements of a knowing, voluntary and intelligent plea.

The Court also reviewed the substance of the Defendant's witness certification letter, in which the Defendant opines that at the time of his guilty plea hearing, he had only planned to

plead guilty to the crimes he committed, not to the crimes he did not commit. The Defendant alleges that the Court only read the case number, without any factual basis relating to the crime in question, before asking the Defendant how he pled. However, as stated above, this allegation is patently untrue, as a very detailed factual basis, of which the either Defendant agreed to or did not dispute, for each case was read into the record before the Defendant's guilty plea was accepted by the Court.

As it is evident that the Defendant entered into the plea knowingly, voluntarily, and intelligently, the Court finds his claim of ineffective assistance of counsel in connection with said plea to be without merit.

ORDER

AND NOW, this ____ day of September, 2011, upon consideration of the Defendant's Petition for Post Conviction Collateral Relief, it is **ORDERED** and **DIRECTED** that the Defendant's PCRA Petition is **DENIED** and the Defendant and his attorney are hereby notified pursuant to Pennsylvania Rule of Criminal Procedure No. 907 (1), that it is the intention of the Court to dismiss the remainder of the PCRA petition unless he files an objection to that dismissal within twenty (20) days of today's date.

By the Court,

Nancy L. Butts, President Judge

xc: DA
Kirsten Gardner, Esq.