

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	No. 1924-2007
	:	CRIMINAL DIVISION
BREAION M. GRISSOM,	:	APPEAL
Defendant	:	

OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a)
OF THE RULES OF APPELLATE PROCEDURE

The Defendant appeals the Court's Order of January 14, 2011, which decisively dismissed the Defendant's Post Conviction Relief Act (PCRA) Petition. The Defendant filed a Notice of Appeal on February 11, 2011, and on the same day, this Court directed the Defendant, in accordance with Pa.R.A.P. No. 1925(b), to file within thirty days a concise statement of matters complained of on appeal. The Defendant filed his concise statement on March 3, 2011.

The Defendant raises three issues on appeal: 1) the Court erred in determining that trial counsel was not ineffective for failing to adequately investigate and otherwise provide proper advice to the Defendant regarding his sentencing exposure pursuant to the plea agreement prior to his entry of his guilty plea; 2) the Court erred in determining that trial counsel was not ineffective for failing to advise the Defendant to withdraw his guilty plea and for failing to file a direct appeal; 3) the court erred in summarily dismissing the Defendant's PCRA Petition without conducting an evidentiary hearing.

Trial counsel was not ineffective for failing to adequately investigate and otherwise provide proper advice to the Defendant regarding his sentencing exposure pursuant to the plea agreement prior to his entry of his guilty plea

The Defendant contends that this Court erred in determining that trial counsel was not ineffective for failing to adequately investigate and otherwise provide proper advice to the Defendant regarding his sentencing exposure pursuant to the plea agreement prior to the entry of his guilty plea. The Court acknowledges that at the time the Defendant entered his guilty plea, it was thought that the Defendant's prior record score might be a two (2). However, at the time of the Defendant's sentencing hearing on March 30, 2009 before the Honorable Kenneth D. Brown, the Defendant was present when Judge Brown stated that the Defendant's prior record score was actually a five (5) and his offense gravity score was a ten (10). Furthermore, Judge Brown stated that the Defendant was already aware at the time of his March 30, 2009 sentencing date that his prior record score was a five (5) and his offense gravity score was a ten (10) as he had previously requested a continuance of his sentencing hearing after learning these facts. N.T. 6. As the Defendant was aware of this information before he was sentenced, the Court finds there was no ineffective assistance of counsel.

The Court erred in determining that trial counsel was not ineffective for failing to advise the Defendant to withdraw his guilty plea and for failing to file a direct appeal

The Defendant alleges that the Court erred in determining that trial counsel was not ineffective for failing to advise the Defendant to withdraw his guilty plea. Where an allegation of ineffective assistance of counsel is made in connection to the entry of a plea agreement, such allegation will only serve as a basis for relief if the ineffectiveness caused the accused to enter an unknowing or involuntary plea. See Commonwealth v. Fluharty, 632 A.2d 312 (Pa.Super.1993).

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.

The record of the guilty plea hearing held before Judge Brown on April 8, 2008, establishes that the Defendant was informed that he was presumed innocent and that he had the right to a jury trial. N.T. 2-3. The Defendant was also informed of the permissible range of sentences for the offenses charged. N.T. 3-4. Judge Brown made certain that the Defendant understood the nature of the charges to which he was pleading. N.T. 4. An extensive factual basis for the plea was also established. N.T. 4-7. While the Court notes that Judge Brown did not inform the Defendant orally that he was not bound by the terms of the plea agreement, he did ultimately accept the terms of the agreement. Therefore, there was no prejudice to the Defendant. Furthermore, Judge Brown incorporated the Defendant's written guilty plea colloquy, which the Defendant signed and stated orally that he understood, into the oral colloquy. N.T.8. The written colloquy addressed all of the required areas listed above, including the fact that the judge is not bound by the terms of the plea agreement.

The Defendant also alleges that the Court erred in determining that trial counsel was not ineffective for failing to file a direct appeal. However, the Defendant failed to present the Court with any evidence to demonstrate that he had in fact requested that counsel file an appeal. See

Commonwealth v. Collins, 687 A.2d 1112 (Pa.1996), in which the PCRA court's dismissal of a PCRA petition was affirmed when the defendant failed to present documents, affidavits or other evidence supporting his assertion that trial counsel failed to file an appeal from judgment of sentence upon defendant's request.

Based on the above facts, the Court finds that counsel was not ineffective for failing to advise the Defendant to withdraw his guilty plea, or for failing to file a direct appeal.

The court erred in summarily dismissing the Defendant's PCRA Petition without conducting an evidentiary hearing

The Defendant argues that the Court erred by summarily dismissing the Defendant's PCRA Petition without conducting an evidentiary hearing. Pursuant to Pa.R.Crim.P. 907, the Court is permitted to dispose of a PCRA Petition without a hearing if it is satisfied upon a review of the petition that there are no genuine issues concerning any material fact and that the defendant is not entitled to PCRA relief. Based on the above review of the Defendant's Petition, it is clear that the Court found that there were no genuine issues concerning any material fact and that the Defendant was not entitled to PCRA relief. Therefore, the Court fails to see how it erred by dismissing the Petition without conducting an evidentiary hearing.

It is respectfully suggested that this Court's Opinion and Order dated January 14, 2011,
be affirmed.

DATE: _____

By the Court,

Nancy L. Butts, President Judge

xc: DA
Edward J. Rymysz, Esq.
Amanda B. Browning, Esq. (Law Clerk)
Gary L. Weber (LLA)