



## *Discussion*

Defense Counsel's Turner-Finley letter to the Defendant sets forth with specificity the issues raised in the Defendant's PCRA Petition: 1) trial counsel was ineffective in failing to respond to the Defendant's requests to withdraw his plea of guilty; 2) trial counsel failed to investigate the charges against the Defendant and communicate with the Defendant; and 3) the Defendant's Miranda Rights were violated.

### ***Whether trial counsel was ineffective in failing to respond to the Defendant's requests to withdraw his plea of guilty***

The Defendant alleges that trial counsel was ineffective for failing to file a motion to withdraw his guilty plea and that he requested to withdraw his guilty plea due to trial counsel's ineffective assistance of counsel that led the Defendant to enter into a plea of guilty.

To make a claim for ineffective assistance of counsel, a defendant must show 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. Commonwealth v. Cooper, 941 A.2d 655, 664 (2007). (See Commonwealth v. Carpenter, 725 A.2d 154, 161 (1999)). A failure to satisfy any prong of this test is fatal to the ineffectiveness claim. Cooper at 664. (See Commonwealth v. Sneed, 899 A.2d 1067, 1076 (2006)). "Manifest injustice is required to withdraw guilty pleas which are requested after sentence has been imposed." Commonwealth v. Broaden, Pa.D. & C. Dec. LEXIS 331 (Pa.D. & C. 2009). A manifest injustice occurs if a guilty plea is not knowingly, voluntarily, and intelligently made. Broaden at 5. (See Commonwealth v. Yager, 685 A.2d 1000, 1004 (Pa.Super. 1996). The Defendant was sentenced before the Honorable Kenneth D. Brown on March 2, 2009. In this PCRA Petition, the Defendant alleges that he filed

two written requests to withdraw his guilty plea on March 3, 2009. As the Defendant's request to withdraw his guilty plea was made after his sentence was imposed, the Defendant must show that his guilty plea was not knowingly, voluntarily, and intelligently made in order to have a legitimate claim.

The Defendant also states that he wanted to withdraw his guilty plea because it was trial counsel's ineffective assistance of counsel that induced him to enter into the plea. "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 (1978)).

Therefore, it appears that both of the Defendant's claims hinge on whether his guilty plea was knowingly, voluntarily, and intelligently entered. 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.

In this case, the Honorable Kenneth D. Brown conducted an on the record guilty plea colloquy with the Defendant on March 2, 2009 and supplemented this with a written guilty plea colloquy. The Defendant stated that he understood everything in the written colloquy and signed the colloquy. N.T. 18-20. Judge Brown reviewed the nature of the charges against the Defendant and even provided a definition of serious bodily injury. N.T. 3-6. Furthermore, the Defendant

responded “yes” on the written colloquy to question two (2) which asked whether his attorney explained all of the elements of the crimes to which he intended to plead guilty. Judge Brown went over the facts of the two incidents to which the Defendant pled guilty to Robbery. N.T. 10-13. The Defendant was informed by both the written colloquy in questions seven (7) and nine (9) and by Judge Brown that he had the right to a jury trial and that he was presumed innocent until proven guilty. N.T. 3. Judge Brown went over the permissible range of sentences for the offense of a Robbery and the Defendant answered “yes” on the written colloquy to question five (5) stating that he did understand the permissible range of sentences that could be imposed against him. N.T. 4-5. The written guilty plea colloquy informed the Defendant that the Judge was not bound by the plea agreement; however, in this case Judge Brown agreed to comply with the terms of the plea agreement and sentenced the Defendant accordingly. N.T. 31. Also, on question twenty one (21) when asked “whose decision is it to plead guilty” the Defendant answered “mine.”

As it appears that the Defendant’s guilty plea was entered knowingly, voluntarily, and intelligently, the Defendant’s claim fails the first prong needed to prove ineffective assistance of counsel. Therefore, the Defendant’s claim that trial counsel was ineffective for failing to file a motion to withdraw his guilty plea is without merit.

***Trial counsel failed to investigate the charges against the Defendant and communicate with the Defendant***

The Defendant alleges that trial counsel failed to investigate the charges against the Defendant and communicate with the Defendant. However, the Defendant fails to raise any specific issues that trial counsel should have raised or any specific information that trial counsel would have discovered if further pretrial consultations or investigations were conducted. As current PCRA Counsel correctly points out in his Turner-Finley letter, in order to merit relief on

this issue, a defendant must establish that counsel inexcusably failed to raise issues that, had they been raised, would have entitled him to relief. See Commonwealth v. Porter, 728 A.2d 890 (Pa. 1999). Furthermore, the entrance of a plea of guilty “usually constitutes a waiver of all defects and defenses except those concerning the jurisdiction of the court, legality of sentence, and validity of plea.” Commonwealth v. Coles, 530 A.2d 453, 457 (Pa.Super.1987) (Quoting Commonwealth v. Johnson, 466 A.2d 636 (Pa.1983)). As the Defendant has failed to meet his burden, the Court finds this issue to be without merit.

### ***The Defendant’s Miranda Rights were violated***

The Defendant also contends that his Miranda Rights were violated. Miranda rights exist to protect against the Fifth Amendment privilege against self incrimination during custodial interrogation. However, in this case the Defendant pled guilty to the offense of Robbery. Therefore, as PCRA Counsel points out in his Turner-Finley letter, the Commonwealth had no reason to introduce any evidence against the Defendant related to his statements to the police. Furthermore, the Court has examined the Defendant’s guilty plea and determined that the guilty plea was made knowingly, voluntarily, and intelligently, and as stated above, the entrance of a plea of guilty “usually constitutes a waiver of all defects and defenses except those concerning the jurisdiction, legality of sentence, and validity of plea.” Coles at 457. (Quoting Johnson). Therefore, the Court can find no basis for the Defendant’s claim that his Miranda rights were violated.

### ***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. As such, no further hearing 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 Defendant's PCRA Petition. The 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 3<sup>rd</sup> day of January, 2011, 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 November 3, 2010, is hereby GRANTED and Donald F. Martino, Esq. may withdraw his appearance in the above captioned matter.

By The Court,

Nancy L. Butts, President Judge

xc: DA  
Donald F. Martino, Esq.  
Amanda Browning, Esq. (Law Clerk)