

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1052-2010
vs. :
: Notice of Intent to Dismiss PCRA
DENNIS M. AHERN, : Without Holding an Evidentiary Hearing
Defendant :

OPINION AND ORDER

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

On February 23, 2010, the police charged Defendant with three counts of forgery, as a result of Defendant taking three checks from Thomas Long's checkbook, writing them to himself in various amounts, signing Mr. Long's name, and cashing them. By the time Mr. Long discovered the forgeries, Defendant had left Pennsylvania for New Jersey. Defendant was arrested in New Jersey and extradited back to Pennsylvania. At Defendant's preliminary hearing, Defendant was offered a plea agreement to one count of forgery "for a 3 to 4 month county sentence (min/max)." When Defendant appeared for arraignment on August 2, 2010 desiring to enter his guilty plea, the Court had a discussion with counsel about the terms of the plea agreement. Since a 3 to 4 month sentence would be an illegal sentence in violation of 42 Pa.C.S.A. §9756(b)(1), the Court attempted to determine what lawful plea agreement was intended by the parties. Since neither the assistant district attorney nor the assistant public defender who engaged in the plea negotiations were available, the Court continued the matter to the next week.

On August 9, 2010, the District Attorney, defense counsel and Defendant appeared before the Court. At that time the parties had agreed to a new plea agreement for a

guilty plea to a consolidated count of forgery in exchange for a 1 to 2 years state prison sentence consecutive to any parole or probation violation sentence. The Court accepted the plea agreement and sentenced Defendant to 1 to 2 years incarceration in a state correctional institution consecutive to his parole violation sentences.

On May 11, 2011, Defendant filed a pro se PCRA petition in which he asserted a breach of his original plea agreement and a conflict of interest on the part of the District Attorney, Eric Linhardt, because Mr. Linhardt had previously represented him on a PCRA petition in 2002 at case number 786-2000 and in a summary driving under suspension matter in 2005. Defendant also indicated in this petition that he did not have the funds for an attorney, but he wanted to represent himself.

Since this was Defendant's first PCRA petition and he had a rule based right to the appointment of counsel, the Court scheduled a videoconference with Defendant to ascertain whether Defendant was knowingly and voluntarily waiving his right to counsel. During this conference, Defendant indicated he desired the appointment of counsel. The Court had the transcripts prepared that related to Defendant's guilty plea, appointed counsel, and gave counsel the opportunity to amend Defendant's pro se petition.

Counsel filed an amended PCRA petition, which raised two issues: (1) the guilty plea was not voluntarily and knowingly made in that Defendant was unaware of all the ramifications of his plea of guilty; and (2) District Attorney Eric Linhardt should have recused himself from the prosecution of this matter due to his representation of Defendant in prior criminal matters which provided him with information regarding Defendant obtained

through his representation causing him to be biased in using his prosecutorial discretion in this matter. After a conference with counsel, the Court directed defense counsel to file a further amendment specifying what consequences or ramifications of his guilty plea that Defendant was allegedly unaware and what non-public information from Defendant's prior cases Mr. Linhardt would have known or obtained from representing defendant that allegedly made Mr. Linhardt biased or prejudiced against Defendant in this case. Despite the Court's order directing further amendment, no amendment providing these additional facts was ever filed.

After a review of the record in this case, the Court finds that Defendant's PCRA petition does not comply with Rule 902 of the Rules of Criminal Procedure and none of his claims, as pleaded, possess any merit.

Defendant first asserts that his guilty plea was not knowingly or voluntarily entered because his sentence did not conform to his original plea agreement and he was unaware of all of the ramifications of his plea. As previously discussed, Defendant's original plea agreement called for an illegal sentence, because the minimum term exceeded one-half of the maximum term in violation of 42 Pa.C.S.A. §9756(b)(1). Therefore, the Court could not accept that plea agreement and would not have imposed an illegal sentence. Furthermore, the record reflects that after this illegality was discovered, the parties entered a lawful plea agreement for a one to two year state prison sentence. Defendant was fully aware of the terms of this agreement and acknowledged his understanding on the record. N.T., August 9, 2010, at p. 5.

With regard to the portion of this claim that asserts Defendant was unaware of all the ramifications of his plea agreement, Defendant's petition fails to comply with Rule 902 of the Rules of Criminal Procedure in that it is not factually specific. Rule 902 indicates that a petition for post conviction relief shall state the relief requested; the grounds for the relief requested; and the facts supporting each such ground. Pa.R.Cr.P. 902(A)(10), (11), and (12). Defendant does not state what ramifications of which he was allegedly unaware, despite being given an opportunity to amend his petition to provide such information. The Court also notes that a defendant need not be informed of collateral consequences of his plea agreement, such as the correct length of his registration requirements under Megan's Law or a suspension of his operating privileges. Commonwealth v. Leidig, 598 Pa. 211, 956 A.2d 399 (2008); Commonwealth v. Duffey, 536 Pa. 436, 639 A.2d 1174 (1994).

Defendant's second issue, related to the failure of the District Attorney to recuse himself, is waived and lacks merit. Defendant would have been aware from the commencement of these proceedings that Mr. Linhardt represented him in the past. Yet when Mr. Linhardt handled Defendant's guilty plea and sentencing on August 9, 2010, Defendant neither objected nor made a motion to have Mr. Linhardt recused or removed from handling his case. Moreover, the mere fact that Mr. Linhardt represented Defendant several years earlier on unrelated cases would not, in and of itself, be a basis to preclude Mr. Linhardt from prosecuting Defendant in this case. Furthermore, any district attorney would have access to the public records regarding Defendant's prior convictions. The Court directed Defendant to further amend his petition to plead this claim with more specificity, but

he failed to do so.¹

ORDER

AND NOW, this ___ day of June 2012, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the Court hereby gives Defendant notice of its intent to dismiss his PCRA petition without holding an evidentiary hearing. 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.

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
Lori Rexroth, Esquire
Dennis Ahern
453 Douglas Street, Reading PA 19601
Gary Weber, Esquire (Lycoming Reporter)

¹ The Court also notes that, based on the transcripts and other documents in the court file, it appears that the plea agreement changed for several reasons that had nothing to do with Mr. Linhardt having previously represented Defendant, including, but not limited to: (1) the original plea agreement called for an illegal sentence; (2) the original plea agreement was based on an incorrect prior record score; (3) Defendant was facing a state prison sentence on his parole violations; and no one, including Defendant, wanted him to be under county supervision given his poor supervision history.