

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	
<b>v.</b>	:	<b>No. 616-CR-2007</b>
	:	<b>CRIMINAL DIVISION</b>
<b>SEAN M. DURRANT,</b>	:	
<b>Defendant</b>	:	<b>PCRA</b>

**OPINION AND ORDER**

On March 2, 2012, current Counsel for the Defendant filed a Motion to Withdraw as Counsel along with a Motion to Dismiss pursuant to Commonwealth v. Turner, 544 A.2d 927 (1988) and Commonwealth v. Finley, 550 A.2d 213 (Pa.Super.1988). After an independent review of the entire record, the Court agrees with PCRA Counsel and finds that the Defendant has failed to raise any meritorious issues in his PCRA Petition, and that his petition should be dismissed.

***Background***

Sean Durrant (Defendant) pled guilty to Criminal Homicide/Murder of the Third Degree and Criminal Conspiracy Murder of the Third Degree on March 20, 2008. On June 22, 2008, the Defendant was sentenced in accordance with a plea agreement. The Defendant received a minimum of twenty-five (25) years and a maximum of sixty (60) years in a State Correctional Institution. Defendant did not file any post-sentence motions or a direct appeal to the Pennsylvania Superior Court.

On February 3, 2011, Defendant filed a Post Conviction Relief Act (PCRA) Petition. James Protasio, Esquire was appointed to represent the Defendant on his PCRA Petition. On July 11, 2011, the PCRA Petition was reassigned to Lori A. Rexroth, Esquire. On March 2, 2012, Defendant's Counsel filed a Motion to Withdraw as Counsel as she determined that the PCRA Petition lacked merit. Defendant's Counsel filed an Amended Petition to withdraw as

counsel on April 25, 2012. After an independent review of the record, the Court agrees with Defendant's Counsel and finds that Defendant fails to raise any meritorious issues in his PCRA Petition.

### ***Discussion***

Defense Counsel's Turner-Finley letter to the Defendant sets forth with specificity the issues raised in the Defendant's PCRA Petition: (1) Defendant's Fifth and Fourteenth Amendment rights under the U.S. Constitution were violated because police did not have probable cause to perform a vehicle stop and search; (2) Defendant's Fifth and Fourteenth Amendment rights under the U.S. Constitution were violated because Defendant requested an attorney to be present while police interviewed him and the request was ignored; (3) Defendant's attorney coerced him into entering a plea; and (4) Defendant received ineffective assistance of counsel because they failed to investigate a witness statement.

### ***Defendant's Fifth and Fourteenth Amendment rights under the U.S. Constitution were violated because police did not have probable cause to perform a vehicle stop and search***

Defendant contends that police did not have probable cause to perform a vehicle stop and search. The entry 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); Commonwealth v. Moyer, 444 A.2d 101 (1982); Commonwealth v. Casner, 461 A.2d 324 (1983).

In this case the Defendant pled guilty to the offenses of Murder in Third Degree and Criminal Conspiracy to Commit Homicide. The Defendant is not raising an issue of jurisdiction of the court, legality of sentence, or validity of plea. Therefore, the Defendant has waived the issue of whether the police had probable cause to perform a vehicle stop and search.

Additionally, Defendant filed a Motion to Suppress prior to him pleading guilty. Defendant raised the issue of whether police had reasonable suspicion to stop the vehicle in which Defendant was a passenger. In an Order and Opinion dated January 7, 2008, this Court denied Defendant's Motion and determined that police did have reasonable suspicion to stop his vehicle. Following the ruling by this Court, the Defendant pled guilty to two charges and therefore waived his right to appeal the Court's ruling. Further, Defendant was aware that he waived his rights to appeal his Motion to Suppress:

COURT: Excellent point. A number of months ago we had probably a day long, actually, it was scheduled in two half days, we had two separate hearings where there was testimony presented by the Williamsport Bureau of Police and arguments made by attorneys on your behalf as well as the Commonwealth about suppression issues, issues that you believe the jury shouldn't hear if you go to trial. The Court, I personally, ruled on those issues, issued an opinion. I'm sure you've either had the opportunity to review the opinion or had it presented to you by your attorneys?

DEFENDANT: Yes.

COURT: You understand if you plead guilty you give up the right to preserve any issues that you may have raised in that suppression—

DEFENDANT: Yes.

COURT: -- to any higher court other than me to review, make a decision whether or not I inappropriately or incorrectly applied the law?

DEFENDANT: Yes, I understand.

COURT: You understand that you're giving up that right?

DEFENDANT: Yes.

Defendant clearly understood he waived his right to appeal the Court's decision to deny his Motion to Suppress. Finally, one of the Defendant's co-defendants (Javier Cruz-Echevarria) raised this identical issue, which was fully litigated and reviewed by the Pennsylvania Superior

Court, and it was found that the stop and search was legal.<sup>1</sup> Therefore, the Court finds that the Defendant's issue lacks merit.

***Defendant's Fifth and Fourteenth Amendment rights under the U.S. Constitution were violated because Defendant requested an attorney to be present while police interviewed him and the request was ignored***

Defendant alleges that his Constitutional rights were violated because he requested an attorney and his request was ignored by police. This issue is similar to Defendant's issue of whether police had probable cause to perform a vehicle stop and search. Defendant pled guilty to the offenses of Murder in Third Degree and Criminal Conspiracy to Commit Homicide. Therefore, the Defendant has waived the issue of whether his Miranda rights were violated as discussed above. See Coles, 530 A.2d at 457. The Court can find no basis for the Defendant's claim that his Miranda rights were violated.

Once again, Defendant's Motion to Suppress raised this issue. This Court denied this issue citing a case with very similar facts. See Commonwealth v. Davis, 526 A.2d 1205 (Pa. Super 1987). Once Defendant pled guilty he waived his right to appeal the Court's ruling. As discussed above, Defendant was fully aware he waived his right to appeal this issue. Therefore, the Court finds that Defendant's claim has no merit.

***Defendant's attorney coerced him into entering a plea***

Defendant contends that his attorney coerced him into entering a guilty plea. The Defendant states that he was coerced because his attorney stated that he may be sentenced to death if he did not take the deal offered by the Commonwealth. In Pennsylvania, it has been established that fear of a possible death sentence alone is not sufficient to show coercion. Commonwealth v. Pennsylvania v. Melton, 351 A.2d 221 (Pa. 1976). This line of reasoning is in

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<sup>1</sup> Commonwealth v. Cruz-Echevarria, No. 1930 MDA 2008, slip op. at 20-24 (Pa. Super. March 4, 2011).

accordance with the United States Supreme Court. See U.S. v. Jackson, 390 U.S. 570 (1968); Brady v. U.S., 397 U.S. 742 (1970) (declining to vacate a guilty plea shown to have been induced by fear of death penalty).

Therefore, Defendant's reasoning that he was coerced because he feared the death penalty is without merit. Further, the record clearly establishes that Defendant was not coerced. Defendant stated during his guilty plea colloquy that the ultimate decision to plead guilty was his own. N.T. 4/10/2008, p. 12. Defendant also stated that he was pleading guilty of his own free will and that nobody was threatening him. For the aforementioned reasons the Court finds that the Defendant's issue lacks merit.

***Defendant received ineffective assistance of counsel because counsel failed to investigate a witness statement.***

Defendant alleges that he received ineffective assistance of counsel because his attorney failed to investigate a witness's statement. Defendant also contends that his attorney was not duly diligent in representing him in this case. To make a claim for ineffective assistance of counsel, a defendant must prove the following: (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 (Pa. 2007) (citing 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, 941 A.2d at 664 (citing Commonwealth v. Sneed, 899 A.2d 1067, 1076 (2006)). Further, Counsel is presumed to have been effective. Id.

Defendant contends that his Attorney was ineffective because he did not investigate a witness statement. Defendant supports this claim by attaching a letter written by Joshua Feigles (Feigles). Feigles states in his letter that he learned about Defendant's case from Rob Schurer

and that police were questioning him on what Schurer told him. Repeatedly, Feigles states that he knows nothing about his case and that he will not testify against him. If anything, the letter insinuates that Feigles has incriminating evidence against the Defendant but refuses to cooperate with police. The Court fails to see how this letter shows that Defendant's counsel was ineffective or not performing his duties diligently. The Defendant does not make any other allegations to justify an ineffective assistance of counsel claim. Therefore, the Court finds that Defendant's issue lacks merit and that Defendant in no way showed that but for counsel's omission the outcome of the proceeding would have been different.

***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        day of May, 2012, 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 March 2, 2012, is hereby GRANTED and Lori Rexroth, Esq. may withdraw her appearance in the above captioned matter.

By the Court,

Nancy L. Butts, President Judge

xc:    DA  
      Lori Rexroth, Esq.  
      Sean Durrant #JP6394  
          110 Pike Street  
          Huntingdon, PA 16654