

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

**COMMONWEALTH OF PENNSYLVANIA, :
v. : No. 616-2007
SEAN DURRANT, : CRIMINAL DIVISION
Defendant : APPEAL**

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

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. On May 10, 2012, the Court proposed dismissal of Defendant's PCRA Petition in and Opinion and Order. The Defendant filed a response on June 18, 2012, which raised new issues. In an Order dated July 6, 2012, the Court addressed the issues raised by the Defendant and dismissed his PCRA Petition.

On July 31, 2012, the Defendant filed a Notice of Appeal. On August 1, 2012, the Court directed the Defendant to file a concise statement of the matters complained of on appeal in compliance with Pa.R.A.P. 1925(b). On September 10, 2012, the Defendant filed his concise statement and raised four (4) issues: 1) ineffective assistance of Counsel as PCRA Counsel failed to present his claims in the correct legal terms; 2) invalid guilty plea because he was concerned about receiving the death sentence and because he filed a civil suit against one of his attorneys; 3) violation of his Fifth Amendment right to have questioning discontinued when a Defendant demands an attorney; 4) failure to suppress illegal arrest, car stop, and search.

Ineffective assistance of Counsel as PCRA Counsel failed to present his claims in the correct legal terms

Defendant contends that PCRA Counsel was ineffective because they did not present his claims in correct legal terms. PCRA Counsel, however, filed a Motion to Withdraw as Counsel in accordance with Commonwealth v. Turner, 544 A.2d 927 (1988) and Commonwealth v. Finley, 550 A.2d 213 (Pa.Super.1988). As PCRA Counsel complied with Turner and Finley in withdrawing as counsel, the Court finds that this issue is without merit.

Invalid guilty plea because he was concerned about receiving the death sentence and because he filed a civil suit against one of his attorneys

Defendant alleges that his guilty plea was coerced. Manifest injustice is required to withdraw guilty pleas which are requested after sentence has been imposed. Commonwealth v. Flick, 802 A.2d 620, 623 (Pa. Super. 2002). Such a manifest injustice occurs when a plea is not tendered knowingly, intelligently, voluntarily, and understandingly. Commonwealth v. Persinger, 615 A.2d 1305 (Pa. 1992). It does not matter if the Defendant is pleased with the

outcome of his decision to plead guilty as long as he did so knowingly, voluntarily, and intelligently. Commonwealth v. Yager, 685 A.2d 1000, 1004 (Pa. Super. 1996).

The minimum inquiry required of a trial court must include the following six areas: (1) Does the defendant understand the nature of the charges to which he is pleading guilty? (2) Is there a factual basis for the plea? (3) Does the defendant understand that he has a right to trial by jury? (4) Does the defendant understand that he is presumed innocent until he is found guilty? (5) Is the defendant aware of the permissible ranges of sentences and/or fines for the offenses charged? (6) Is the defendant aware that the judge is not bound by the terms of any plea agreement tendered unless the judge accepts such agreement?

Commonwealth v. Young, 695 A.2d 414, 417 (Pa. Super. 1997). In Yeomans, the Superior Court further summarized:

In order for a guilty plea to be constitutionally valid, the guilty plea colloquy must affirmatively show that the defendant understood what the plea connoted and its consequences. This determination is to be made by examining the totality of the circumstances surrounding the entry of the plea. Thus, even though there is an omission or defect in the guilty plea colloquy, a plea of guilty will not be deemed invalid if the circumstances surrounding the entry of the plea disclose that the defendant had a full understanding of the nature and consequences of his plea and that he knowingly and voluntarily decided to enter the plea.

Commonwealth v. Yoemans, 24 A.3d 1044 (Pa. Super. 2011) (citing Commonwealth v. Fluharty, 632 A.2d 312, 314 (Pa. Super. 1993); see also Commonwealth v. Scott, No. 1732 MDA 2011 (Pa. Super. Filed July 24, 2012)).

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 explained the charges against him, the elements the Commonwealth would have to prove beyond a reasonable doubt, that the Defendant had a right to a trial, and the maximum sentences and fines. N.T., 3/20/2008, p. 3-5, 11. A factual basis for each of the charges was also established. Id. at 5-9. The Court explained that the plea agreement was not binding and that the Judge does not have to accept the agreement. Id. at 5. In addition, the Defendant filled out a written guilty

plea colloquy highlighting many of these factors in greater detail. *Id.* at 10. According to Pennsylvania law, the Defendant's guilty plea was entered knowingly, voluntarily, and intelligently.

In addition, the Defendant indicated that he was not coerced into pleading guilty:

COURT: Is anyone forcing you in any way?

DEFENDANT: No.

COURT: Threatening you?

DEFENDANT: No.

COURT: Anybody putting any pressure on you to plead guilty here today?

DEFENDANT: No.

COURT: Are you doing this of your own free will?

DEFENDANT: Yes, ma'am.

....

COURT: So whose ultimate decision is it to plead guilty here today?

DEFENDANT: It's mine.

There is no indication that the Defendant was improperly coerced into pleading guilty, as he alleges. This Court explained the plea agreement and the Defendant subsequently stated that he wanted to plead guilty to the charges. The record reflects that the Defendant's plea was intelligent, voluntary, and knowing.

In addition, for purposes of this Opinion, the Court will rely on its Opinion and Order of May 10, 2012 and Order of July 6, 2012, which addressed Defendant's specific contention that the death sentence and one of his attorneys, who he filed a civil suit against, coerced his guilty plea.

Violation of his Fifth Amendment right to have questioning discontinued when a Defendant demands an attorney

For purposes of this Opinion, the Court will rely on its Opinion and Order of May 10, 2012, which found that the Defendant waived this issue by pleading guilty.

Failure to suppress illegal arrest, car stop, and search

For purposes of this Opinion, the Court will rely on its Opinion and Order of May 10, 2012, which found that the Defendant waived this issue by pleading guilty and also that this issue was covered by the Superior Court for a co-defendant and it was found to be a legal arrest, stop, and search. Commonwealth v. Cruz-Echevarria, No. 1930 MDA 2008, slip op. at 20-24 (Pa. Super. March 4, 2011).

DATE: _____

By the Court,

Nancy L. Butts, President Judge

xc: DA
Sean Durrant #JP-6394
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Huntingdon, PA 16654