

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA	
COMMONWEALTH	: No. CR-1152-2008; CR-289-2009;
	: CR-1117-2010
vs.	:
	:
JONATHAN GADRA,	: Notice of Intent to Dismiss PCRA without
Defendant	: Holding an Evidentiary Hearing and Order
	: Granting Counsel’s Motion to Withdraw

OPINION AND ORDER

This matter came before the Court on Defendant’s Post Conviction Relief Act (PCRA) petition and on defense counsel’s motion to withdraw. The relevant facts follow.

On June 27, 2008, Defendant was charged with corruption of minors, indecent assault, and unlawful contact with a minor in case number 1152-2008.¹ On November 24, 2008, Defendant pled guilty to corruption of minors, a misdemeanor of the first degree, and was sentenced to three years of probation. Defendant received credit for time served from June 29, 2008, but a condition of Defendant’s release from jail was that Defendant submit an “approved parole address.”

On February 2, 2009, Defendant was charged with theft by unlawful taking, conspiracy to commit theft by unlawful taking, receiving stolen property, unauthorized use of a motor vehicle, conspiracy to commit unauthorized use of a motor vehicle, criminal mischief, conspiracy to commit criminal mischief, and driving without a license in case number 289-2009 as a result of an incident that occurred on June 18, 2008. Defendant pled

¹ When the criminal complaint and Information were filed, the unlawful contact charge was incorrectly graded as a misdemeanor of the second degree. On October 7, 2008, the Honorable Richard Gray accepted Defendant’s guilty plea to the charge, but by Order entered November 24, 2008 vacated the plea and accepted a plea and sentenced Defendant on the corruption of minors count.

guilty to unauthorized use of a motor vehicle, conspiracy to commit unauthorized use of a motor vehicle, and criminal mischief, and was sentenced to twelve months of supervision under the Intermediate Punishment Program on each offense, to be served consecutively to each other and to the sentence imposed at case 1152-2008.

Defendant remained incarcerated until June 17, 2010, when the Court vacated the provision in the guilty plea and sentencing order in case 1152-2008 that required Defendant to submit an “approved parole address” in order to be released.

Unfortunately, it was only a matter of days before Defendant resumed his law-breaking behavior. On June 22, 2010, Defendant’s mother reported her vehicle stolen. When the police observed the vehicle and attempted to stop it, the driver of the vehicle, who was later identified as Defendant, took the police on a high speed chase through the City of Williamsport. Defendant disregarded numerous traffic signals and stop lights. He was eventually captured after he lost control of the vehicle, which went over a curb, through a flower bed and struck a gas meter. A minor female was a passenger in the vehicle during this high speed chase. When the police asked Defendant for his name, address and date of birth, Defendant provided false information.

Defendant was arrested and charged with fleeing and eluding, unauthorized use of a motor vehicle, false reports, false identification to law enforcement, recklessly endangering another person, criminal mischief, and numerous traffic summaries in case 1117-2010. As a result of these new charges, a probation violation detainer was lodged against Defendant.

On December 8, 2010, Defendant pled guilty to fleeing and eluding, a felony of the third degree, and unauthorized use of a motor vehicle, a misdemeanor of the second degree, in exchange for an aggregate nine month minimum sentence to be served consecutive to any probation violation sentence.

On December 22, 2010, the Court found Defendant in violation of his probation and Intermediate Punishment sentences due to his guilty plea on the new charges. In case 1152-2008, the Court revoked Defendant's probation and sentenced him to 2 ½ to 5 years incarceration in a state correctional institution for corruption of minors. The Court gave Defendant credit for time served from June 22, 2008 to June 17, 2010. In case 289-2009, the Court revoked Defendant's Intermediate Punishment sentences and re-sentenced Defendant to a total of 5 years probation under the supervision of the Pennsylvania Board of Probation and Parole.²

The Court also sentenced Defendant to 9 months to 3 years incarceration on case 1117-2010, consisting of 7 months to 2 years for fleeing and eluding and a consecutive 2 months to 1 year for unauthorized use. The Court gave Defendant credit for time served from June 22, 2010 to December 22, 2010.

The aggregate sentence imposed was 39 months to 8 years incarceration followed by 5 years of probation with credit for time served from June 22, 2008 to June 17, 2010 and June 22, 2010 to December 22, 2010.³

Defendant filed a timely pro se PCRA petition, in which he asserted

² The Court imposed 2 years probation for unauthorized use, 2 years probation for conspiracy and 1 year probation for criminal mischief, all of which were consecutive to each other and consecutive to the incarceration sentences imposed.

³ The Court found Defendant was eligible for a Recidivist Risk Reduction Incentive (RRRI). Defendant's RRRI

ineffective assistance of counsel. The only factual basis provided for this claim was that his attorney left the public defender's office and, as a result, the public defender who handled his guilty plea and sentence had no knowledge of his case. Although Defendant did not allege that his sentence was illegal, he did make an allegation that his sentence was "extreme for the conviction at hand" and should be reduced.

Since this was Defendant's first PCRA petition, the Court appointed counsel to represent Defendant. Despite receiving numerous extensions within which to either file an amended PCRA petition or a Turner/Finley letter, original PCRA counsel failed to act and new counsel was appointed. New counsel filed a motion to withdraw, which included a Turner/Finley letter.

The Court has conducted a thorough, independent review of the record in this case, and agrees with counsel that Defendant's PCRA petition lacks merit.

In Pennsylvania, it is presumed that counsel was effective; therefore, it is Defendant's burden to prove otherwise. Commonwealth v. Cross, 535 Pa. 38, 634 A.2d 173, 175 (1993).

To establish ineffectiveness, a petitioner must plead and prove the underlying claim has arguable merit, counsel's actions lacked any reasonable basis, and counsel's actions prejudiced the petitioner. Counsel's actions will not be found to have lacked a reasonable basis unless the petitioner establishes that an alternative not chosen by counsel offered a potential for success substantially greater than the course actually pursued. Prejudice means that, absent counsel's conduct, there is a reasonable probability the outcome of the proceedings would have been different.

minimum was 33 ½ months.

Commonwealth v. Miner, 44 A.3d 684, ___ (Pa. 2012) (internal citations omitted). If any prong is not met, the case may be dismissed without determining whether the remaining prongs are met. Commonwealth v. Spotz, 582 Pa. 207, 870 A.2d 822, 829-30 (2005), cert denied, 546 U.S. 984, 126 S.Ct. 564 (2005). Furthermore, claims of counsel's ineffectiveness in connection with a guilty plea will provide a basis for relief only if the ineffectiveness actually caused an involuntary or unknowing plea. Commonwealth v. McCauley, 797 A.2d 920, 922 (Pa. Super. 2001). A defendant need not be pleased with the outcome of his decision to enter a guilty plea; instead, all that is required is that defendant's decision to plead guilty be knowingly, voluntarily and intelligently made. Commonwealth v. Moser, 921 A.2d 526, 528-29 (Pa. Super. 2007); Commonwealth v. Myers, 434 Pa. Super. 221, 642 A.2d 1103, 1105 (1994). A defendant is also bound by the statements made during the plea colloquy, and he may not later offer reasons for withdrawing the plea that contradict statements made when he pled. Commonwealth v. McCauley, 797 A.2d 920, 922 (Pa. Super. 2001); Commonwealth v. Lewis, 708 A.2d 497, 502 (Pa. Super. 1998).

Defendant entered a knowing, intelligent and voluntary plea to fleeing and eluding, and unauthorized use in case number 1117-2010. The Commonwealth and Defendant reached a negotiated plea agreement in this case that called for a seven month minimum on fleeing and eluding and a two month minimum on unauthorized use to be served consecutively to his probation violation sentences. The Court recited these terms to Defendant at the guilty plea hearing and Defendant indicated to the Court that he understood the terms of the plea agreement. (Guilty Plea Transcript, pp. 4-5). Defendant also was aware that his sentence would be a state sentence. (Guilty Plea Transcript, p. 5).

In accordance with Rule 590 of the Pennsylvania Rules of Criminal Procedure and the comment thereto, the Court informed Defendant of the nature of the charges to which he was pleading guilty and the permissible range of sentences for those charges (p. 3-4), the fact that the Court was not bound by the terms of the plea agreement (p. 5), the right to a trial by jury (pp. 8-9) and the presumption of innocence (pp. 8-9). The Court also elicited the factual basis for the plea (p. 10).

Prior to entering his plea, Defendant completed an extensive written guilty plea colloquy that provided an even more in depth explanation of Defendant's trial rights. (Written Guilty Plea Colloquy, pp. 2-4). In his answers on the written colloquy, Defendant acknowledged that he thoroughly discussed with his attorney all the facts and circumstances surrounding the charges against him and that he was satisfied with her representation and advice. (Written Guilty Plea Colloquy, p. 5).

Apart from the minimum sentences for fleeing and eluding, and unauthorized use and the consecutive nature of the sentences with his probation violations, all other sentencing issues were left to the discretion of the Court. The Court could have imposed a maximum sentence of up to seven years for fleeing and eluding and up to two years for unauthorized use. However Defendant's attorney, Ms. Buzas, argued for maximum sentences of two years and one year, respectively, and the Court agreed with defense counsel. (Sentencing Transcript, p. 12).

Defendant's guilty plea to fleeing and eluding, and unauthorized use of a motor vehicle established his probation violations as a matter of law. See Commonwealth v. Burrell, 497 Pa. 367, 441 A.2D 744, 746-47 (1982) ("The court's finding of a probation

violation on the basis of a criminal conviction for an offense committed while on probation was required as a matter of law.”); Commonwealth v. Graeff, 13 A.3d 516, 520 (Pa. Super. 2011)(conviction means a judgment on a plea or verdict of guilt). Therefore, the only matter at issue for the probation violation hearing was the sentence to be imposed.

The Lycoming County adult probation officer advocated for a 4 ½ to 9 year sentence on the probation violations. (Sentencing Transcript, p. 6). Defense counsel argued that such a lengthy sentence was not necessary and advocated for a sentence on corruption of minors conviction in case 1152-2008 that would result in an additional six months incarceration before Defendant would be eligible for parole and the reinstatement of probation for the unauthorized use, conspiracy, and criminal mischief. (Sentencing Transcript, pp. 6, 8). The Court imposed the maximum sentence of 2 ½ to 5 years for corruption because the Court wanted Defendant to serve an additional six months before he was eligible for parole and Defendant had nearly two years of credit for time served. The Court also imposed probation sentences on the unauthorized use, conspiracy and criminal mischief convictions, but increased the aggregate term of consecutive probation from three years to five years.

From a review of the record, it is clear that Defendant’s guilty plea was knowing, voluntary, and intelligent and that his counsel’s arguments on the sentencing issues were effective. Therefore, the claims in Defendant’s pro se PCRA petition do not have any merit and the Court will grant counsel’s motion to withdraw.

In response to PCRA counsel’s Turner/Finley letter and motion to withdraw, Defendant submitted a document entitled “Motion to Reargue Post Conviction Petition and

Motion to Move for Evidentiary Hearing Amended PCRA Petition” in which Defendant requests to proceed pro se because his attorney has requested to withdraw from any further proceedings. Defendant also raises new claims that he wanted Mr. Rymza to assert based on an argument that he was not in violation of any provisions relating to driving or using a motor vehicle. Since the Court is granting defense counsel’s motion to withdraw and Defendant will be proceeding pro se, the Court briefly addresses Defendant’s pro se arguments.

Defendant argues that the Court lacked jurisdiction and he could not be lawfully convicted of the offenses in case 1117-2010 based on the Articles of Confederation and the definition of motor vehicle contained in two provisions of the United States Code. Defendant also asserts that his Miranda rights were violated. The Court finds that these claims lack merit.

Defendant claims the Court lacked jurisdiction because he has a right to travel based on the Articles of Confederation. The Articles of Confederation ceased having any effect over 200 years ago when they were replaced by the United States Constitution. It is well settled in Pennsylvania law that driving is a privilege, not a right. Commonwealth v. Jenner, 545 Pa. 445, 681 A.2d 1266, 1273 (1996)(“This Court has often stated that driving is a privilege, not a fundamental right.”); Commonwealth v. Wysocki, 517 Pa. 175, 535 A2.d 77, 78 (1987)(“Permission to operate a motor vehicle upon the highways of this Commonwealth is a privilege subject to such conditions as the legislature may see fit to impose”); Commonwealth v. Funk, 323 Pa. 390, 186 A. 65, 67-68 (1936)(driving is a privilege that may be controlled and regulated by the state).

Defendant also claims the Court lacks jurisdiction based on the definition of a motor vehicle found at 18 U.S.C. §31(a)(6) and 18 U.S.C. §30102(a)(6). In both instances, Defendant ignores the language at the beginning of each of these sections which limits the use of the definition of motor vehicle contained therein to that specific chapter of the United States Code. Those definitions do not apply to any crimes in Pennsylvania's Vehicle Code, which has its own definition of motor vehicle, see 75 Pa.C.S. §102.

Defendant also claims his Miranda rights were violated when he was not read his rights before being questioned by the police. It appears that Defendant was questioned during a traffic stop, which was initiated because Defendant was driving a vehicle that had been reported stolen. According to the affidavit of probable cause, during the investigatory stop of Defendant's vehicle, Defendant provided the police with false information about his name, address, and date of birth, which gave rise to the charge of providing false information to law enforcement. This claim does not entitle Defendant to relief for several reasons.

First, Defendant waived this claim when he entered his knowing, intelligent, and voluntary plea agreement.

Second, Miranda warnings are only required when an individual is in custody. They are not required "where general on-the-scene investigatory questioning is conducted to determine whether a crime has been committed or is in progress." Commonwealth v. Grimes, 648 A.2d 538, 541 (Pa. Super. 1994), citing Miranda v. Arizona, 384 U.S. 436, 477-78 (1966).

Third, Miranda warnings do not apply to questions seeking biographical

information. Commonwealth v. Daniels, 537 Pa. 464, 644 A.2d 1175, 1181 (1994).

Last, and certainly not least, the false reports and false information to law enforcement charges that were based on Defendant's false answers to questions about his name, address, and date of birth were dismissed.

Since this Court's independent review of the record reveals that Defendant's PCRA claims lack merit, the Court will grant defense counsel's motion to withdraw.

Accordingly, the following Order is entered:

ORDER

AND NOW, this ___ day of July 2012, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the parties are hereby notified of this Court's intention to deny the 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.

The Court also GRANTS defense counsel's motion to withdraw.

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
Edward J. Rymysza, Esquire
Jonathon Gadra, JV 9580
SCI-Coal Township, 1 Kelley Drive, Coal Township PA 17866

Gary Weber, Esquire (Lycoming Reporter)
Work file