

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	No. 204-CR-2009
	:	CRIMINAL DIVISION
GERALD JORDAN,	:	
Defendant	:	PCRA

OPINION AND ORDER

On May 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 his petition should be dismissed.

Background

Gerald Jordan (Defendant) pled guilty to Indecent Assault of a child less than thirteen (13) year old and Endangering the Welfare of Children on July 28, 2009. The Defendant's plea agreement was that he would be sentenced within the standard range sentence on Indecent Assault and receive a consecutive term of probation on the Endangering the Welfare of Children charge. On December 1, 2009, Judge Kenneth D. Brown sentenced the Defendant to ten (10) months to five (5) years in a State Correctional Institution, which was within the standard range.¹ Additionally, the Defendant received a consecutive period of five (5) years probation for the Endangering the Welfare of Children charge. The Defendant filed a Motion for Reconsideration of Sentence, which was denied following a hearing on December 16, 2009. The Defendant filed

¹ Judge Brown retired from active judicial service on December 31, 2009.

a direct appeal to the Superior Court of Pennsylvania. Defendant's counsel filed an Anders brief and on September 1, 2010 the Superior Court granted counsel's request to withdraw.²

The Defendant filed a *pro-se* PCRA Petition on October 7, 2011. Defendant's Petition simply stated that he was tricked into pleading guilty. On October 18, 2011, Lori Rexroth, Esquire was appointed to represent the Defendant. On December 1, 2011, a PCRA conference was held and transcripts of the Defendant's guilty plea were requested. After a second PCRA conference on February 29, 2012, Counsel was ordered to file an amended PCRA petition or a Turner-Finley letter within forty-five (45) days. Attorney Rexroth filed a Turner-Finley letter and a Petition to Withdraw from Representation on May 2, 2012.

Discussion

The Defendant contends that he was tricked into pleading guilty. 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).

² Anders v. California, 386 U.S. 738 (1967); Commonwealth v. McClendon, 434 A.2d 1185 (Pa. 1981).

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 informed the Defendant of his right to a jury trial, what the Commonwealth would have to prove in order for the Defendant to be found guilty, and that by entering into an open plea, there was no agreement as to the length of sentence or the location as to where the Defendant may be ordered to serve that sentence. N.T., 7/28/09, p. 2-7, 17-18. The Court reviewed with the Defendant the elements of each charge to which he pled and informed the Defendant of the maximum sentence and fine of each. N.T., 7/28/09, p. 6-8. A factual basis for each of the cases was also established. N.T., 7/28/09, p. 8-13. According to Pennsylvania law, the Defendant's guilty plea was entered knowingly, voluntarily, and intelligently.

The only potential area of confusion occurred when the Defendant recounted the incident. The Defendant appeared to state that the incident he was alleged to have done was an accident. After conferring with his attorney the Defendant indicated that he would like to waive that defense to plead guilty. The Court then explained the difference between an accident and actions done with intent in order to make sure the Defendant was pleading guilty knowingly, voluntarily, and intelligently:

COURT: Okay. I do want to see if I can confirm. I will give you an example, okay? Let's say there was a young girl in a room where I was. And she was off to my right. And I was talking to somebody and I was getting expressive using my arms to make some point. And as I did that, put my arm out, I didn't see the young girl, and let's say that my arm went out and hit and touched her breasts. That would be an accident. I didn't intend to do it, I just happened to put my arm out, and it came in contact with her body. That would be an example of I mean when I talk about accident as a defense. There would be no criminal intent. I really wouldn't be guilty of the crime.

But if we change the facts, let's say that for whatever reason I wanted to touch her breasts and that she was at the location and at some point I quickly turned around and I put my hand under her shirt and touched her breasts, that would be indecent assault.

DEFENDANT: A-huh.

COURT: I intended to do it. And the reason I intended to do it is it was arousing some sexual desire in me to do that. That's what indecent assault is. But I am trying to pin

down here whether you are acknowledging that you did some intentional action to arouse a sexual desire in yourself or whether in essence you're saying like my example, you simply moved and there was this indecent touching. Do you understand the difference?

DEFENDANT: Yeah.

COURT: Okay. Are you admitting to me that some of the contact of your penis to her body or her anal area in fact was for the purpose of allowing some sexual desire in yourself?

DEFENDANT: Yes.

COURT: You are admitting there was some arousal or sexual desire in yourself?

DEFENDANT: Yes.

COURT: And is it correct that it was your penis that touched her anal area?

DEFENDANT: Yes, yes.

There is no indication that the Defendant was tricked into pleading guilty, as he alleges. This Court explained the circumstances to the Defendant and he still indicated that he wanted to plead guilty to the charges. The record reflects that the Defendant's plea was intelligent, voluntary, and knowing.

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 July, 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 May 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

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