

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

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
v.	:	No. 2000-2008
	:	CRIMINAL DIVISION
LAWRENCE LEWIS,	:	
Defendant	:	PCRA

OPINION AND ORDER

On July 15, 2011, the Defendant filed a *Pro Se* Post Conviction Relief Act (PCRA) Petition. Prior 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 (Pa. 1988) and Commonwealth v. Finley, 550 A.2d 213 (Pa. Super. 1988). Current counsel, Kyle Rude, Esquire and Amy Boring, Esquire, were re-assigned to the case shortly afterwards. The Court finds that prior counsel failed to address all the issues raised in Defendant's PCRA Petition and therefore the Motion to Dismiss is denied. The Court, however, after an independent review finds that he has failed to raise any meritorious issues in his PCRA Petition, and that his Petition should be dismissed.

Background

On November 3, 2009, Lawrence Lewis (Defendant) was found guilty during a jury trial of Delivery of a Controlled Substance and Criminal Conspiracy. On January 8, 2010, the Defendant received an aggregate sentence of five (5) years to ten (10) years in a State Correctional Institution followed by five (5) years of supervision by the Pennsylvania Board of Probation and Parole. The Defendant filed a Notice of Appeal on February 8, 2010. The Superior Court of Pennsylvania affirmed the Defendant's sentence on December 30, 2010.

Defendant filed a PCRA Petition on July 15, 2011. Defendant raised three issues: 1) that trial counsel failed to challenge the sufficiency of evidence in general, in accord to Pa.R.Crim.P. 606(A)(1), (2), (5), (6), (7); 2) that trial counsel failed to argue defendant's actual innocence of criminal conspiracy, as defendant has shared no criminal intent with another person to commit a crime jointly together; 3) that trial counsel failed to file pretrial motions (Motions to Suppress Evidence). Lori Rexroth, Esquire, was appointed to represent Defendant on his PCRA Petition. On June 14, 2012, Attorney Rexroth filed a Motion to Withdraw as Counsel as she determined that the PCRA Petition lacked merit. Attorney Rexroth then re-filed the motion on July 9, 2012 and July 13, 2012, making changes to the Motion. On July 5, 2012, the case was reassigned to Kyle Rude, Esquire and Amy Boring, Esquire. After an independent review of the record, the Court finds that the Defendant failed to raise any meritorious issues in his PCRA Petition.

Trial Counsel failed to challenge the sufficiency of evidence in general, pursuant to Pa.R.Crim.P. 606(A)(1), (2), (5), (6), (7)

Defendant alleges that trial counsel was ineffective because they failed to challenge the sufficiency of the evidence. 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.

A claim challenging the sufficiency of the evidence is a question of law. Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt. Commonwealth v. Karkaria, 625 A.2d 1167 (Pa. 1993). A court is required to review the evidence in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence. Commonwealth v. Chambers, 599 A.2d 630 (Pa. 1991). “A person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he . . . agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime.” 18 Pa.C.S. § 903. Delivery of a Controlled Substance prohibits “manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State Board” 35 P.S. § 780-113(a)(3).

When viewing the evidence in the light most favorable to the Commonwealth as the verdict winner, the Court finds it is clear that the evidence was sufficient to find the Defendant guilty of Delivery of a Controlled Substance and Criminal Conspiracy. The testimony of Commonwealth witness Bernard Travers (Travers) at trial clearly showed there was an agreement between Travers and the Defendant to supply cocaine to an undercover police officer.

COMMONWEALTH: Tell us about the conversation you had with Mr. Lewis regarding getting the officer an ounce?

TRAVERS: Well, I told him that I had a boy that lived up in Lock Haven that was hustling, he needed an ounce of cocaine.

COMMONWEALTH: What did Mr. Lewis say, if you remember?

TRAVERS: He said he know somebody that might be able to get it from.

COMMONWEALTH: And did you make arrangements with Mr. Lewis to bring the cocaine to your residence or did he ever come to your residence that day?

TRAVERS: Well, he came, but Officer Deets wasn't there at the time so we waited for him to come.

....

TRAVERS: So I assume he might have been upstairs. I asked the mother can I go to the bathroom without her knowing. So I went upstairs and I used the bathroom, but at the time I used the bathroom Lawrence was coming out of the bathroom that's when we started talking. I asked him where was the cocaine or what happened? What's going on? So he gave me the cocaine. I left. Got in the car with Deets I explained to Officer Deets as far as my credibility as far as him trusting me and a stranger and that was that.

COMMONWEALTH: Do you remember where the Defendant retrieved the cocaine?

TRAVERS: Out of the bathroom in his house.

N.T., November 2, 2009, p.14-21. When the Defendant initially went to obtain the cocaine, the undercover police officer and Travers followed along. See id. at 17. During the transaction the Defendant was reminded that Travers brokered the drug transaction and expected compensation for doing so. See id. at 15-16. Further, Travers testified about getting the cocaine from the Defendant and then giving it to the undercover police officer. The Court finds, under the light most favorable to the Commonwealth, that there was sufficient evidence for a guilty verdict of Delivery of a Controlled Substance and Criminal Conspiracy. A direct appeal would not have resulted in a different result and therefore the Defendant was not prejudiced and his ineffective assistance of counsel claim lacks merit.

Trial counsel failed to argue Defendant's actual innocence of Criminal Conspiracy, as Defendant has shared no criminal intent with another person to commit a crime jointly together

Defendant contends that he shared no criminal intent with another person to commit a crime jointly and therefore his trial counsel failed to argue his actual innocence of Criminal

Conspiracy. “A person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he . . . agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime.” 18 Pa.C.S. § 903.

As discussed above, the Commonwealth gave sufficient evidence that the Defendant was guilty of Criminal Conspiracy. The testimony of Travers indicates that the Defendant was contacted in order to obtain cocaine for an undercover police officer, that the Defendant and Travers went to retrieve the cocaine, and that the Defendant delivered the cocaine to Travers for the purpose of giving it to the undercover police officer. The Court finds the Defendant’s contention that he was innocent of Criminal Conspiracy without merit. In addition, the Defendant’s trial counsel then cross-examined Travers and attempted to discredit him on his history of drug use and his co-operation with police in order to improve his position in three pending cases against him. See id. at 28-31, 43. The Court finds that Defense Counsel adequately represented the Defendant.

Trial Counsel failed to file pre-trial motions (Motion to Suppress Evidence)

The Defendant alleges that trial counsel failed to file pre-trial motions or specifically a motion to suppress. “When, as in this case, an assertion of ineffective assistance of counsel is based upon the failure to pursue a suppression motion, proof of the merit of the underlying suppression claim is necessary to establish the merit of the ineffective assistance of counsel claim.” Commonwealth v. Carelli, 546 A.2d 1185, 1189 (Pa. Super. 1988) (citations omitted). The Defendant does not specifically state what he would have wanted suppressed. An appeal of his judgment to the Superior Court of Pennsylvania, however, raised the following issues: 1)

Commonwealth witness asserted her Fifth Amendment privileges during re-direct examination; 2) Defendant revealed that he had been incarcerated; and 3) testimony revealed that Defendant had been in a probation office at the time of his arrest. Commonwealth v. Lewis, No. 242 MDA 2010 (Pa. Super. Jan. 8, 2010). The Superior Court found that these issues were harmless error. Further, after a review of the record, this Court is unable to find any suppression motions the Defendant could have raised that would have had merit. Therefore, the Court finds that the Defendant's contention that counsel was ineffective because they failed to file a motion to suppress lacks merit.

ORDER

AND NOW, this _____ day of August, 2012, the Defendant and his current attorney are notified that it is the intention of the Court to dismiss the Defendant's PCRA petition because it does not raise a genuine issue concerning any material fact. The Court will dismiss Defendant's claim unless Defendant files an objection to that dismissal within twenty days (20) of today's date. Prior counsel's Motion to Dismiss pursuant to Commonwealth v. Turner, 544 A.2d 927 (Pa. 1988) and Commonwealth v. Finley, 550 A.2d 213 (Pa. Super. 1988) is DENIED because it failed to cover all the issues raised by the Defendant's PCRA Petition.

By the Court,

Nancy L. Butts, President Judge

xc: Ken Osokow, Esq.
Kyle Rude, Esq/Amy Boring, Esq.