

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	DOCKET NO. 575-2005
v.	:	CRIMINAL DIVISION
	:	
JEROME EDWARD QUARTMAN,	:	PCRA
Defendant	:	

OPINION AND ORDER

AND NOW, this 26th day of September, 2012, upon review of Defendant's Response to Intent to Dismiss PCRA, it is hereby ORDERED and DIRECTED that Defendant's PCRA Petition is DISMISSED. In Defendant's response, he alleges that his counsel was ineffective because the constitutionality of Defendant's arrest was never argued; Defendant avers that his arrest was not supported by probable cause. After an independent review of the record, this Court finds that Defendant's argument is without merit. This Court believes that the issue raised in Defendant's response is the issue raised in Defendant's suppression motion, recast as an ineffectiveness claim.

Defendant filed a timely post-sentence motion challenging the denial of his motion to suppress evidence. In his post-sentence motion, Defendant alleged that the suppression Court erred by denying his motion to suppress because Defendant's continued detention by the arresting officer was not supported by reasonable suspicion, and, therefore, the contraband recovered was the fruit of an illegal detention. On appeal, our Superior Court found that the arresting officer had reasonable suspicion his continued detention of Defendant, and that the suppression Court properly denied Defendant's motion.

This Court believes that the instant claim is an attempt to recast Defendant's prior suppression issue into an ineffectiveness claim. Presently, Defendant argues that his counsel

was ineffective for failing to argue that not only was his continued detention not supported by reasonable suspicion, but that his arrest was not supported by probable cause. Our Supreme Court has repeatedly held that a previously litigated claim cannot be recast into an ineffectiveness claim to support a new theory of relief. *Commonwealth v. Faulkner*, 735 A.2d 67, 69 (Pa. 1999). Nevertheless, after a review of the record, this Court finds that probable cause existed to support Defendant's arrest.

In *Commonwealth v. Rodgers*, 849 A.2d 1185 (Pa. 2004), our Supreme Court held that "the police have probable cause where the facts and circumstances within the officer's knowledge are sufficient to warrant a person of reasonable caution in the belief that an offense has been or is being committed." *Id.* at 1192 (citing *Commonwealth v. Gibson*, 638 A.2d 203, 206 (Pa. 1994)). *See also Commonwealth v. Hernandez*, 935 A.2d 1275, 1284 (Pa. 2007). Probable cause is determined under a totality of the circumstances standard. 935 A.2d at 1284.

In this instance, after reviewing the totality of the circumstances, the Court finds that Defendant's arrest was supported by probable cause because the circumstances surrounding the vehicle stop and detention would warrant a person of reasonable caution that an offense is being committed. Defendant argues that his arrest was not supported by probable cause because the arresting officer did not see the cocaine in his possession until Ms. Gardner consented to the search of her vehicle. However, this fact does not lead to the conclusion that the officer lacked probable cause to arrest Defendant. Both our Superior Court and the suppression Court found that the totality of the circumstances supported the officer's determination that Defendant was engaging in criminal conduct. The officer's seven years

of experience with the Williamsport Bureau of Police supported his conclusion that criminal activity was afoot when he witnessed Defendant's nervous behavior and the clear baggies in the glove compartment. The arresting officer knew that cocaine is packaged in clear baggies. When the officer questioned Defendant about the clear baggie, Defendant lied about his possession of a baggie; additionally, Defendant tried to move the baggie several times. These facts not only support the reasonable suspicion that permitted Defendant's continued detention, but the also support the probable cause that caused Defendant's ultimate arrest.

Accordingly, it is hereby ORDERED and DIRECTED as follows:

ORDER

AND NOW, this 26th day of September, 2012, upon review of Defendant's Response to Intent to Dismiss PCRA, which does not set forth any grounds to delay the disposal of this matter, it is hereby ORDERED and DIRECTED that Defendant's PCRA Petition is DISMISSED.

Defendant is hereby notified that he has the right to appeal from this order to the Pennsylvania Superior Court. The appeal is initiated by the filing of a Notice of Appeal with the Clerk of Courts at the county courthouse, with notice to the trial judge, the court reporter and the prosecutor. The Notice of Appeal shall be in the form and contents as set forth in Rule 904 of the Rules of Appellate Procedure. The Notice of Appeal shall be filed within thirty (30) days after the entry of the order from which the appeal is taken. Pa.R.A.P. 903.

If the Notice of Appeal is not filed in the Clerk of Courts' office within the thirty (30) day time period, Defendant may lose forever his right to raise these issues. **A copy of this order shall be mailed to Defendant by certified mail, return receipt requested.**

BY THE COURT,

Date

Richard A. Gray, J.

RAG/abn

cc: DA (KO)
Lori Rexroth, Esquire
Jerome Edward Quartman #HF-8745
SCI Greensburg, 165 SCI Lane, Greensburg, PA 15601-9103
Gary L. Weber, Esquire (Lycoming Reporter)