

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

|                                     |   |                          |
|-------------------------------------|---|--------------------------|
| <b>COMMONWEALTH OF PENNSYLVANIA</b> | : |                          |
|                                     | : |                          |
| <b>v.</b>                           | : | <b>No. 795-CR-2010</b>   |
|                                     | : | <b>CRIMINAL DIVISION</b> |
| <b>DAMIEN G. THOMPSON,</b>          | : |                          |
| <b>Defendant</b>                    | : | <b>PCRA</b>              |

**OPINION AND ORDER**

On September 4, 2012, 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). 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***

Damien Thompson (Defendant) was charged with Delivery of a Controlled Substance,<sup>1</sup> an ungraded felony; Possession of a Controlled Substance,<sup>2</sup> an ungraded misdemeanor; and Criminal Use of a Communication Facility,<sup>3</sup> a felony of the third degree. On November 23, 2010, the Defendant pled guilty to Delivery of a Controlled Substance. On January 25, 2011, pursuant to a negotiated plea agreement, this Court sentenced the Defendant to eighteen (18) months to thirty-six (36) months in a State Correctional Institution. No post-sentence motion or direct appeal was filed.

The Defendant filed a *pro-se* PCRA Petition on September 14, 2011. Defendant's Petition stated that his counsel did not discuss the advantages or disadvantages of the plea

---

<sup>1</sup> 35 P.S. § 780-113(A)(30).

<sup>2</sup> 35 P.S. § 780-113(A)(16).

<sup>3</sup> 18 Pa.C.S.A. § 7512.

agreement and that his guilty plea was unlawfully induced. On September 20, 2011, Todd Leta, Esquire was appointed to represent the Defendant. After numerous PCRA conferences, Edward J. Rymsza was appointed to represent the Defendant. On September 4, 2012, the Defendant filed a Petition to Withdraw from Representation of Post-Conviction Collateral Relief and a Turner/Finley “No Merit Letter.” Subsequently, the Defendant’s case was again transferred to Trisha Hoover, Esquire, an associate of Attorney Rymsza, as his conflict contract expired. After an independent review of the record and an additional PCRA conference on November 27, 2012, the Court agrees with Attorneys Rymsza and Hoover that Defendant failed to raise any meritorious issues in his PCRA Petition.

***Whether the guilty plea was coerced***

The Defendant contends that his counsel did not advise him properly of his plea agreement and therefore his guilty plea was coerced. Further, the Defendant argues that his guilty plea colloquy was improper. 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. The Honorable Joy McCoy informed the Defendant of his right to a jury trial and of the maximum sentence and fine. N.T., 11/23/2010, p. 4. Defense counsel stated on the record the elements of the crime and the Defendant stated that he committed the offense in February of 2008 when he delivered approximately twenty-eight (28) grams of cocaine. Id. at 6. Judge McCoy stated that the Commonwealth must prove the elements of the crime beyond a reasonable doubt and that the Court does not have to accept the terms of the plea agreement. Id. at 4. In addition, the Defendant filled out a written guilty plea colloquy highlighting many of these factors in greater detail, to which he stated he understood. According to Pennsylvania law, the Defendant's guilty plea was entered knowingly, voluntarily, and intelligently.

The Defendant also indicated that he pled guilty because he committed the crime and that he was satisfied with his defense counsel:

COURT: Why is it that you wish to plead guilty?

DEFENDANT: Because I had did the crime.

COURT: And Mr. Lepley, has he been your attorney through this whole matter?

DEFENDANT: Yes.

COURT: And have you been satisfied with Mr. Lepley's representation

DEFENDANT: Yes.

COURT: And if you had any questions about any of this progress did he answer those for you?

DEFENDANT: Yes.

N.T., 11/23/2010, p. 5. There is no indication that the Defendant was coerced into pleading guilty or that the guilty plea colloquy was improper, as he alleges. In addition, much of the information that he argues his attorney did not inform him was given to him prior to him pleading guilty by Judge McCoy, such as the consequences of pleading guilty. The record reflects that the Defendant's plea was intelligent, voluntary, and knowing and therefore his guilty plea will not be withdrawn.

***Whether the police informant entrapped the Defendant***

The Defendant alleges that the police informant entrapped the Defendant into committing the crime. "Where the record clearly demonstrates that a guilty plea colloquy is conducted, during which it became obvious the defendant understood the nature of the charges against him, the voluntariness of the plea is established." Commonwealth v. Lewis, 634 A.2d 633 (Pa. Super. 1993). The entry of a plea of guilty "usually constitutes a waiver of all defects and defenses

except those concerning the jurisdiction of the court, legality of sentence, and validity of plea.” Commonwealth v. Coles, 530 A.2d 453, 457 (Pa.Super.1987); Commonwealth v. Moyer, 444 A.2d 101 (1982); Commonwealth v. Casner, 461 A.2d 324 (1983).

As stated above, the Court finds the record is clear that the Defendant entered a guilty plea voluntarily. In doing so, Defendant waived all defects and defenses except those concerning the jurisdiction of the court, legality of sentence, and validity of the plea. Therefore, the Court finds that Defendant has waived the defense of whether he was entrapped into committing a crime.

### ***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 December, 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 September 4, 2012, is hereby **GRANTED** and Trisha Hoover, Esq. may withdraw her appearance in the above captioned matter.

By the Court,

Nancy L. Butts, President Judge

xc: DA (KO)  
Trisha Hoover, Esq.  
Damien Thompson #JX-0105  
SCI Waymart  
P.O. Box 256  
Waymart, PA 18472-0256