

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	No. 1521-CR-2010
	:	CRIMINAL DIVISION
ADAM WYLAND,	:	
Defendant	:	PCRA

OPINION AND ORDER

On August 13, 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 that his petition should be dismissed.

Background

On September 14, 2010, Adam Wyland (Defendant) was charged with Statutory Sexual Assault, a felony of the second degree; Corruption of Minors, a misdemeanor of the first degree; and Indecent Assault of a person less than sixteen (16) years old, a misdemeanor of the second degree. On May 24, 2011, the Defendant, pursuant to a plea agreement, pled guilty to Count 1 Statutory Sexual Assault in exchange for receiving a bottom end of the standard range sentence, according to the Pennsylvania Sentencing Guidelines, and for the sentence to run consecutive to any other sentences the Defendant may be serving. On July 26, 2011, the Defendant was sentenced by this Court to nine (9) months to five (5) years at a State Correctional Institution. As the standard range was nine (9) to sixteen (16) with a prior record score of one (1), the Court sentenced the Defendant at the bottom of the standard range.

On June 21, 2012, the Defendant filed a PCRA Petition. The Defendant alleges that he was coerced to plead guilty because his attorney stated that if he did not he would face more charges. In addition, the Defendant states that he wanted his guilty plea to be withdrawn and his attorney did not do so. Finally, the Defendant alleges that his attorney incorrectly told him he faced a prison sentence of one and a half (1 ½) to three (3) years. Donald F. Martino, Esquire, was appointed to represent Defendant on his PCRA Petition. On August 13, 2012, Attorney Martino filed a Motion to Withdraw as Counsel as he determined that the PCRA Petition lacked merit. After an independent review of the record, the Court agrees with Attorney Martino and finds that Defendant fails to raise any meritorious issues in his PCRA Petition.

Discussion

Defense Counsel's Turner-Finley letter to the Defendant sets forth with specificity the issues raised in the Defendant's PCRA Petition and additional problems raised through their correspondence: 1) trial counsel coerced the Defendant into pleading guilty by telling him that by not pleading guilty the District Attorney's Office would file additional charges; 2) trial counsel failed to file a motion to withdraw the Defendant's guilty plea; 3) counsel failed to file a motion in accordance with Pennsylvania Rule of Criminal Procedure 600; 4) counsel failed to adequately conduct any pre-trial investigation; and 5) counsel was ineffective for failing to file a Motion to Suppress in regards to statements the Defendant made during an interview conducted by police.

Trial counsel coerced the Defendant into pleading guilty by telling him that by not pleading guilt that the District Attorney's Office would file additional charges

Defendant contends that his guilty plea was coerced because his counsel told him that if he did not plead guilty he would face additional charges filed by the District Attorney's Office. 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 along with a review of the written colloquy confirms that the Defendant did in fact enter into his plea knowingly, voluntarily, and intelligently. This Court explained the charges against him, the elements the Commonwealth would have to prove beyond a reasonable doubt, that the Defendant had a right to a trial, and the

maximum sentences and fines. N.T., 5/24/2011, p 2-3. A factual basis for the charge was also established. Id. at 3-4. The Court explained that the plea agreement was not binding and that the Judge does not have to accept the agreement. Id. at 2. In addition, the Defendant filled out a written guilty plea colloquy highlighting many of these factors in greater detail. Id. at 4-5.

Further, the record reveals that the Defendant was not coerced into pleading guilty:

COURT: Is anyone forcing you or threatening you in any way to get you to plead guilty here today?

DEFENDANT: No.

COURT: Are you doing this of your own free will?

DEFENDANT: Yes.

COURT: Have you had enough time to talk with Ms. Longo about your case?

DEFENDANT: Yes.

COURT: Were you satisfied with her help or information?

DEFENDANT: Yes.

.....

COURT: Okay, whose decision is it to plead guilty here today?

DEFENDANT: Mine.

There is no indication that the Defendant was improperly coerced into pleading guilty, as evidenced by his responses. This Court explained the plea agreement and the Defendant subsequently stated that he wanted to plead guilty to the charges. The record reflects that the Defendant's plea was intelligent, voluntary, and knowing.

Trial counsel failed to file a motion to withdraw the Defendant's guilty plea

Defendant alleges that counsel failed to file a motion to withdraw the Defendant's guilty plea. In cases where a petition to withdraw a guilty plea is submitted after sentencing, the

withdrawal must demonstrate prejudice in the nature of manifest injustice before it is granted. Commonwealth v. Starr, 301 A.2d 592, (Pa. 1973). “A defendant incurs manifest injustice upon the court’s denial of his motion to withdraw and where the plea was entered either involuntarily or without knowledge of those charges filed against him. Commonwealth v. Campbell, 455 A.2d 126, 128 (Pa. Super. 1983).

Here, the Defendant never stated on the record that he wanted to withdraw his guilty plea before sentencing, at sentencing, or afterwards, despite being advised of his appellate rights. Defendant alleges in his PCRA Petition, for the first time, his request to withdraw his guilty plea. As stated above, the Defendant has made an intelligent, voluntary, and knowing guilty plea and cannot point to anything in the record to establish he attempted to and was ignored or denied the opportunity to withdraw before sentencing. Therefore, the Defendant’s claim that counsel failed to withdraw his guilty plea is without merit.

Counsel failed to file a motion in accordance with Pennsylvania Rule of Criminal Procedure 600

Defendant contends that counsel failed to file a motion alleging a Pa.R.Crim.P. 600 violation. 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.

Rule 600 states that “trial in a court case in which a written complaint is filed against the defendant, when the defendant is at liberty on bail, shall commence no later than 365 days from the date on which the complaint is filed.” Pa.R.Crim.P. 600(A)(3). “[A] Trial court must grant a Rule 600(G) motion to dismiss unless it finds that the Commonwealth has exercised due diligence and that the circumstances occasioning the postponement were beyond its control.” Commonwealth v. Meadius, 870 A.2 802, 805 (Pa. 2005) (citing Pa.R.Crim.P. 600(G)). The exercise of “due diligence” requires the Commonwealth to do everything reasonable within its power to guarantee that a trial begins on time. See id. at 807-08.

Where the defendant is incarcerated, the trial “shall commence no later than 180 days from the date on which the complaint is filed.” Pa.R.Crim.P. 600(A)(2). “Any defendant held in excess of 180 days is entitled upon petition to immediate release on nominal bail.” Pa.R.Crim.P. 600(E). In determining when the trial should commence, the unavailability of the defendant’s attorney or any continuances granted at the request of the defendant’s attorney are excluded. Pa.R.Crim.P. 600(C)(3).

The Criminal Complaint in this case was dated September 14, 2010. As it appears the Defendant was incarcerated, 180 days would have ended on March 14, 2010. Jury selection was originally scheduled for January 11, 2011, however, the Commonwealth filed a continuance on December 30, 2010. The continuance was requested due to DNA analysis not being received and Pennsylvania State Police still needing to examine the Defendant’s and the victim’s computers. The Continuance states that the application was “not opposed” by defense counsel. In addition, the Commonwealth received another continuance by an Order dated February 1, 2011, which was opposed by defense counsel. The Defendant pled guilty on May 24, 2011. If there was a Pa.R.Crim.P. 600 violation, it would have been the 180 days and the right to nominal bail. The Defendant was not entitled to have his case dismissed.

In addition, 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). Irregularities in proceedings prior to a guilty plea are reviewed only for the extent they effected voluntariness of the plea. Commonwealth v. Riviera, 385 A.2d 976 (Pa. Super. 1978) (explaining that a statutory right to a speedy trial did not influence the voluntariness of a defendant’s guilty plea). Therefore, even if the Defendant was deprived of a 600(E) release on a nominal bail motion, his entry of a guilty plea has waived that defect.

Counsel failed to adequately conduct any pre-trial investigation

Defendant alleges that he received ineffective assistance of counsel because his attorney failed to conduct any pre-trial investigation. 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.

Counsel is not deemed to be *per se* ineffective because they spent a short amount of time with their client. Commonwealth v. Bundy, 421 A.2d 1050 (Pa. 1980). In order to establish ineffectiveness, the defendant “must establish that counsel inexcusably failed to raise issues which, had they been raised, would have afforded Appellant relief.” Commonwealth v. Porter, 728 A.2d 890, 896 (Pa. 1999). Here, the Defendant did not allege or raise any issues that should

have been raised by his attorney and that also had merit. The Defendant even indicated that he was satisfied with his representation during his guilty plea. N.T., 5/24/2011, p 5-6. Therefore, the Court finds that the Defendant's broad issue that does not allege any specific information or instances that trial counsel failed to investigate is without merit.

Counsel was ineffective for failing to file a Motion to Suppress in regards to statements the Defendant made during an interview conducted by police

Defendant alleges that counsel failed to file a Motion to Suppress. As stated before, 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).

In this case the Defendant pled guilty to the offenses of Statutory Sexual Assault. The Defendant is not raising an issue of jurisdiction of the court, legality of sentence, or validity of plea. Therefore, the Defendant has waived the issue of whether statements the Defendant made to police would have been suppressed.

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 November, 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 March 2, 2012, is hereby GRANTED and Donald Martino, Esq. may withdraw her appearance in the above captioned matter.

By the Court,

Nancy L. Butts, President Judge

xc: DA
Donald Martino, Esq.
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