

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-1672-2011
 :
 ORONDE DANIELS, :
 Defendant :

OPINION AND ORDER

Before the court are Defendant's Post Conviction Relief Act (PCRA) petition and his attorney's motion to withdraw as counsel. The relevant facts follow.

Defendant was on parole for firearm and drug offenses. His parole agent received a letter from an inmate at the county prison, who knew and previously resided with Defendant. The letter indicated that Defendant possessed guns and controlled substances in his residence. The parole agent went to Defendant's residence and asked to enter and look around, which Defendant allowed. When the agent entered Defendant's bedroom, he smelled the odor of raw marijuana. The agent then began to search the bedroom for marijuana. The agent picked up a pair of pants and found a gun in one of the pockets. The agent then called the Williamsport police who, based on the agent's observations, obtained a search warrant for Defendant's residence. The search warrant resulted in the discovery of another firearm, marijuana, and drug paraphernalia, including a digital scale.

Defendant was charged with person not to possess a firearm, possession with intent to deliver a controlled substance, and possession of drug paraphernalia. He filed a motion to suppress to challenge the search of his residence by his parole agent, which was denied.

On October 2, 2012, Defendant entered a guilty plea to person not to possess a firearm and possession with intent to deliver a controlled substance in exchange for a sentence of 5 to 10 years of incarceration. On that date, the court sentenced Defendant in accordance with the plea agreement.

On June 3, 2013, Defendant filed a PCRA petition in which he asserted in a vague and conclusory manner that there was a conflict of interest; the trial court improperly denied his motion to suppress; the sentencing judge abused his discretion; and his guilty plea was illegally obtained or induced by ineffective counsel. The court appointed counsel for Defendant and gave counsel the opportunity to either file an amended PCRA petition or a “no merit” letter in accordance with Commonwealth v. Turner, 518 Pa. 491, 544 A.2d 927 (1988) and Commonwealth v. Finley, 379 Pa. Super. 390, 550 A.2d 213 (1988). After obtaining a transcript of the guilty plea and sentencing hearing and corresponding with Defendant, counsel filed a motion to withdraw, which included a Turner/Finley no merit letter.

After a review of the record, the court finds that Defendant’s claims lack merit.

Defendant first claims that there was a conflict of interest. He fails to specify who had a conflict of interest or what the alleged conflict was. Defendant did not file a motion to recuse any of the judges who handled his case or a motion for different counsel, and there is nothing in the record to show that anyone had a conflict of interest.

Defendant’s second claim is that the judge improperly denied his suppression

motion. Defendant, however, waived this claim when he pled guilty.

A plea of guilty waives all defects and defenses except those concerning the jurisdiction of the court, the validity of the plea and the legality of the sentence.

Commonwealth v. Jones, 593 Pa. 295, 929 A.2d 205, 212 (2007); Commonwealth v. Reichle, 404 Pa. Super. 1, 589 A.2d 1140, 1141 (Pa. Super. 1991).

This claim does not concern the jurisdiction of the court, the validity of the plea, or the legality of Defendant's sentence. Moreover, the written guilty plea colloquy specifically advised Defendant that he was waiving this claim. Question 15(a) stated, "Do you understand that by pleading guilty you are waiving, or giving up, your right to file any pre-trial motions and waiving any such motions already filed?" Question 15(b) stated, "Do you understand that you are giving up your right to appeal any adverse decisions on any motions already heard by the court?" Defendant answered these questions in the affirmative. A criminal defendant who decides to plead guilty has a duty to answer questions truthfully and may not challenge his plea by asserting that he lied. See Commonwealth v. Yeomans, 24 A.3d 104, 1047 (Pa. Super. 2011), quoting Commonwealth v. Pollard, 832 A.2d 517, 523-24 (2003)(citations omitted); Commonwealth v. Cortino, 387 Pa. Super. 210, 563 A.2d 1259, 1262 (1989). Therefore, Defendant knowingly, voluntarily, and intelligently waived his right to pursue any claim that the court erred in deciding his suppression motion.

Defendant next asserts the sentencing judge abused his discretion. The court cannot agree. Defendant was sentenced in accordance with the negotiated plea agreement. Furthermore, the sentence imposed also was not an abuse of discretion because the minimum

sentences were within the standard guideline ranges and the maximum sentences were the lowest possible sentences that could correspond with the minimum sentence imposed.

Defendant had a prior record score of four, based on prior felony drug convictions. The offense gravity score for persons not to possess a firearm and possession with intent to deliver marijuana were 10 and 3, respectively. Thus, the standard minimum guideline ranges were 48 to 60 months for the firearm offense and 3 to 14 months for the drug offense. The court imposed a four year (or 48 month) minimum sentence for persons not to possess a firearm and a consecutive one year (or 12 month) minimum for possession with intent to deliver marijuana.

Section 9756(b) of the Judicial Code states, “The court shall impose a minimum sentence of confinement which shall not exceed one-half of the maximum sentence imposed.” 42 Pa.C.S. §9756(b). Therefore, given the minimum sentences, the court was required by law to impose a maximum sentence of at least eight years of confinement for persons not to possess a firearm and a maximum sentence of at least two years for possession with intent to deliver marijuana.

The court also notes that Defendant could have received a mandatory five year sentence for possession with intent to deliver marijuana pursuant to 42 Pa.C.S. §9712.1 because a firearm was found in close proximity to the controlled substances. Commonwealth v. Hawkins, 45 A.3d 1123 (Pa. Super. 2012)(presence of both controlled substance and firearm in same residence satisfied the close proximity requirement of section 9712.1), appeal denied, 53 A.3d 756 (Pa. 2012).

Under these facts and circumstances, the court clearly did not abuse its discretion when it sentenced Defendant. Therefore, this claim lacks merit.

Defendant's final claim is that his guilty plea was unlawfully induced by ineffective assistance of counsel. This claim is belied by the record.

"Where the record clearly demonstrates that a guilty plea is conducted, during which it became evident that the defendant understood the nature of the charges against him, the voluntariness of the plea is established." Commonwealth v. Lewis, 430 Pa. Super. 336, 634 A.2d 633, 635 (1993).

The court advised Defendant on the record of the elements of the offenses to which he was pleading guilty as well as the maximum penalties for those offenses. Guilty Plea Transcript, p. 2. Defendant also provided a factual basis for the guilty pleas. He admitted that he possessed 109 grams of marijuana and he probably would have shared it, sold it or given it to others. Guilty Plea Transcript, p. 8-9. He also acknowledged that there was a firearm found in a pair of pants in his bedroom that had his fingerprints on it and he had prior drug convictions that prevented him from possessing a firearm. Guilty Plea Transcript, p. 9-10, 20. About a week before the guilty plea hearing, Defendant was advised of and voluntarily waived his right to a jury trial. Defendant also was advised of and waived his right to a trial in the written colloquy and during the guilty plea hearing. Written Guilty Plea Colloquy, Questions 8 and 16; Guilty Plea Transcript, p. 5. Defendant also understood that he was presumed innocent until found guilty. Guilty Plea Transcript, p. 5; Written Guilty Plea Colloquy, Questions 9, 12, and 13. Defendant was also advised that the judge

was not bound by the terms of the plea agreement unless the judge accepted the plea agreement. Guilty Plea Transcript, p. 5; Written Guilty Plea Colloquy, Question 3.

Defendant specifically acknowledged that it was his decision to plead guilty; no one was forcing or pressuring him into pleading guilty; and no one had given him any promises or inducements to plead guilty. Guilty Plea Transcript, p. 5-6. Written Guilty Plea Colloquy, Questions 6, 21, 34 and 35. As previously stated, a defendant must answer truthfully and he cannot challenge his guilty plea by asserting that he lied during the guilty plea proceedings. See Yeoman, supra; Cortino, supra. Thus, Defendant's claim that his guilty plea was induced or coerced by counsel also lacks merit.

Accordingly, the following order is entered:

ORDER

AND NOW, this ___ day of November 2013, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the parties are hereby notified of this Court's intention to deny Defendant's PCRA Petition without holding an evidentiary hearing. 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.

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow (ADA)

Donald F. Martino
Oronde Daniels, aka Michael Walker, GF 7921
SCI Huntingdon, 1100 Pike Street, Huntingdon PA 16654-1112
Work file