

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	No. 405-CR-2013
	:	CRIMINAL DIVISION
DAKOTA FISHER,	:	
Defendant	:	PCRA

OPINION AND ORDER

On September 17, 2013, 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

On March 6, 2013, Dakota Fisher (Defendant) walked into his mother's home and refused to leave. Officers arrived on the scene and attempted to remove the Defendant from the residence. The Defendant resisted, which resulted in a struggle and officers using pepper spray and a Taser. The Defendant was charged with Resisting Arrest or Other Law Enforcement¹ and Criminal Trespass-Communication Defiant.² On April 15, 2013, the Defendant pled guilty to both charges without a plea agreement with the Commonwealth. On the same day the Defendant received an aggregate sentence of thirty-six (36) months of Intermediate Punishment with the first sixty (60) days to be served at the Pre-Release Center. The Defendant did not file a direct appeal to the Superior Court of Pennsylvania.

¹ 18 Pa.C.S. § 5104.

² 18 Pa.C.S. § 3503(B)(1)(I).

On June 17, 2013, the Defendant filed a *pro se* Post Conviction Relief Act (PCRA) Petition. The Defendant alleged many facts that the Court believes can be summarized into the following five (5) issues: 1) trial counsel coerced the Defendant into pleading guilty; 2) the Defendant was pressured to plead guilty by prison officials; 3) the Defendant was insane at the time of the offense and at the time of his guilty plea; 4) the officers lied about that facts of the case; and 5) trial counsel informed the Defendant that he would not be released on his minimum sentence unless he had a home plan. Donald Martino, Esquire was appointed to represent the Defendant for the PCRA Petition. On September 17, 2013, Attorney Martino filed a Petition to Withdraw as Counsel and a Memorandum Pursuant to Turner/Finley. After an independent review of the record and an additional PCRA conference, the Court agrees with Attorney Martino that Defendant failed to raise any meritorious issues in his PCRA Petition.

Whether the Defendant guilty plea was made knowingly, voluntarily, and intelligently

The Defendant argues that his guilty plea was coerced by his trial counsel and prison officials. In addition, the Defendant alleges that he was insane at the time of his guilty plea. 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. At the time of his guilty plea the Defendant was not allowed to possess writing instruments due to his conduct in the prison and could not fill out a written colloquy. This Court informed the Defendant of the charges and the elements for those charges. N.T., April 15, 2013, p. 5-7. Along with the elements, the Court informed the Defendant of the statutory maximum fine and sentence for each charge. Id. at 6-7. The Defendant gave the Court a factual basis for the guilty plea and was informed that he had the right to go to trial and to select a jury. Id. at 8-12, 18. According to Pennsylvania law, the Defendant's guilty plea was entered knowingly, voluntarily, and intelligently.

Whether trial counsel provided ineffective assistance by coercing the Defendant to plead guilty

The Defendant alleges trial counsel coerced him into pleading guilty. 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.

When a defendant alleges that his guilty plea was induced by ineffective counsel they must prove that their attorney was not competent and that it caused them to enter an involuntary or unknowing plea. “Allegations of ineffectiveness in connection with the entry of a guilty plea will serve as a basis for relief only if the ineffectiveness caused the defendant to enter an involuntary or unknowing plea.” Commonwealth v. Anderson, 995 A.2d 1184, 1192 (Pa. Super. 2010). “Where the defendant enters his plea on the advice of counsel, the voluntariness of the plea depends on whether counsel’s advice was within the range of competence demanded of attorneys in criminal cases.” Id.

First, the Defendant’s PCRA Petition merely states that “Public Defenders assured me that my best option would be to make a plea of guilty.” While the Defendant does not specifically allege that his trial counsel coerced him to plead guilty, PCRA counsel and this Court have treated this statement as such. Trial counsel’s statement alone, however, does not appear to be incompetent and the PCRA Petition does not allege facts or reasons why it was

ineffective counsel. See Pa.R.Crim.P. 902(A) (stating that a PCRA Petition is to contain the relief requested, the grounds for the relief requested, and the facts supporting each ground).

In addition, the Defendant alleges that trial counsel was ineffective because counsel told him that he would not be released on his minimum sentenced unless he had a home plan. As stated in Attorney Martino's Turner/Finley letter, "[t]his is actually accurate advice in that to be eligible for release on parole from a period of incarceration you must submit a parole plan which in part addresses where you will live and this residence must then be approved by the supervising agency working within the guidelines set forth by the sentencing court before you are eligible for release." The Court agreed with Attorney Martino and finds that the statement given to the Defendant was in fact accurate. Therefore, this Court does not find that this statement coerced the Defendant into pleading guilty.

Moreover, the Defendant's statements made on the record and under oath contradict the allegations made in the PCRA Petition:

COURT: Um, whose decision is it to plead guilty?

DEFENDANT: My decision.

COURT: And why is it you want to plead guilty?

DEFENDANT: Because I am guilty.

COURT: Okay. And you're sure you discussed everything with your attorney about your case?

DEFENDANT: I believe so, yes.

COURT: And were you satisfied with the help you received from you lawyer?

DEFENDANT: Yes, ma'am.

....

COURT: Is anybody forcing you or threatening you to get you to give up your right to a jury trial?

DEFENDANT: No, ma'am.

COURT: Is anybody forcing or threatening you to get you to give up your right to a trial just generally?

DEFENDANT: No, ma'am.

COURT: So is anybody pressuring you to plead guilty here today?

DEFENDANT: No. No, ma'am.

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

DEFENDANT: Yes, ma'am.

Id. at 23-24. Based upon the record, the Court finds that trial counsel did not coerce the Defendant into pleading guilty.

Similarly, the Court finds that the Defendant's allegation that prison officials coerced him into pleading guilty is also without merit. As stated above, the Defendant clearly testified that he was not coerced into pleading guilty and that it was his decision to do so. Further, the Defendant only stated in his PCRA Petition that prison officials told him that his solitary confinement would continue till he was stable, rational and not suicidal. The Defendant's allegation does not indicate that prison counselors were coercing him to plead guilty but explaining why he was in solitary while he was in prison. Therefore, the Court finds that the Defendant was not coerced into pleading guilty.

Whether the Defendant was insane at the time of his guilty plea

The Defendant contends that he was insane at the time of his guilty plea. The Court finds that this issue is without merit as it has already been found that the Defendant made his guilty plea knowingly, voluntarily, and intelligently. The Court, however, will further rely on the record where the Defendant states that he was competent:

COURT: Okay. Are you on any medication at the county prison?

DEFENDANT: I am on medication but the prison, um, there're only providing me about half of my medication I'm supposed to be on and – um, but the reason for suicidal attempts before wasn't because they didn't have me on depression meds, but they do have me on depression meds now. So it's not an issue anymore.

COURT: Okay. And what medication are you on right now for –

DEFENDANT: Right now I'm on Zoloft, I'm on Trazodone, and Risperdal.

COURT: Okay, do you think that those medications are affecting your understanding of what we're going to do here today?

DEFENDANT: No, No, ma'am.

....

COURT: Um, and I think you said this before but I just want to verify, but you feel comfortable in that you understand our conversation here today, that that medication that you're on for the prison isn't interfering with your ability to understand that?

DEFENDANT: That's correct, ma'am.

....

COURT: And we talked about the medication that you've had within the last 24 hours, and still again I'm going to ask you, do you think that's affecting your ability to understand what we're doing here right now?

DEFENDANT: No, ma'am.

COURT: Within the last year it sounds like you've been under the treatment or care of a doctor for mental or emotional problems?

DEFENDANT: Yes, ma'am.

COURT: Do you think that is affecting what you're doing here right now?

DEFENDANT: No, ma'am.

Id. at 3-4, 23.

Whether the Defendant was insane at the time of his offense and whether officers lied about the facts surrounding the offense

The Defendant alleges multiple defenses that could have been raised if his case continued to trial. The entry of a plea of guilty, however, “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). Thus, as it has been found that the Defendant entered a valid guilty plea, this Court also finds that the defenses in the Defendant's PCRA Petition have been waived.

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 October, 2013, 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 17, 2013, is hereby GRANTED and Donald Martino, Esq. may withdraw his appearance in the above captioned matter.

By the Court,

Nancy L. Butts, President Judge

xc: DA (KO)
Donald Martino, Esq.
Dakota Fisher
501 West Fourth Street, Apt 1
Williamsport, PA 17701