

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

**COMMONWEALTH OF PENNSYLVANIA**

**v.**

**JOHN PAUL MILLER,  
Defendant**

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**No. 680-CR-2011; 385-CR-2010  
CRIMINAL DIVISION  
PCRA**

**OPINION AND ORDER**

On December 13 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***

On July 27, 2010, in docket number 385-2010, John Miller (Defendant) pled guilty to Simple Assault – Mutual Consent, a misdemeanor of the third degree.<sup>1</sup> The Defendant was sentenced by this Court to twelve (12) months probation under the supervision of the Adult Probation Office of Lycoming County. On June 6, 2011, in docket number 680-2011, the Defendant pled no contest to Terroristic Threats-Cause Evacuation in exchange for a negotiated plea agreement of 60 days in prison and county supervision.<sup>2</sup> On July 25, 2011, the Honorable Marc Lovecchio sentenced the Defendant for the charges under 680-2011 and for a probation violation under 385-2010, as a result of the new charges. In accordance with the plea agreement for the Terroristic Threats charge, the Defendant received a period of five (5) years in the

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<sup>1</sup> 18 Pa.C.S. § 2701(B)(1).

<sup>2</sup> 18 Pa.C.S. § 2706(A)(2).

Lycoming County Intermediate Punishment Program, with sixty (60) days to be served at the Lycoming County Prison. For the probation violation the Defendant was sentenced to eleven (11) to thirty-three (33) days in the Lycoming County Prison.

On September 1, 2011, the Defendant had a hearing in front of this Court on another probation violation in which he threatened family members with a knife. The Defendant's supervision was violated under docket number 680-2011 and he was sentenced to nine (9) to twenty-four (24) months in a State Correctional Institution. The Defendant did not file any subsequent appeals.

On July 25, 2012, the Defendant filed a *pro se* PCRA Petition. The Defendant alleges that his trial counsel was ineffective because they told him that if he pled guilty he would not go to prison and would be placed in a state mental hospital. Julian Allatt, Esquire was appointed to represent the Defendant for the PCRA Petition. On December 13, 2012, Attorney Allatt filed a Petition to Withdraw from Representation of PCRA and a Memorandum Pursuant to Turner/Finley. After an independent review of the record and an additional PCRA conference, the Court agrees with Attorney Allatt 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 original plea agreement and therefore his guilty plea was coerced. 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 no contest plea hearing in this case confirms that the Defendant did in fact enter into his plea knowingly, voluntarily, and intelligently. Judge Lovecchio informed the Defendant of his right to a jury trial, the maximum sentence and fine for the charge, and that he did not have to accept the terms of the plea agreement. N.T., 6/6/2011, p. 2-4. The Defendant was made aware of the elements of the crime and that the Commonwealth must prove the elements of the crime beyond a reasonable doubt. Id. at 3, 5. The Defendant stated that the Commonwealth would be able to prove the facts articulated at the hearing as to

what he allegedly did. Id. at 3. 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 was not coerced, that he was satisfied with his representation, and that he was not promised anything besides his plea agreement:

COURT: Has anyone or is anyone forcing you or coercing you into doing this?

DEFENDANT: No.

COURT: Has anyone given you any promises that might make you do this, other than the plea agreement recommendation?

DEFENDANT: No.

COURT: Okay, are your pleas of guilty being given in a knowing, intelligent and voluntary manner?

DEFENDANT: Yes.

....

COURT: Are both of you satisfied with the representation you have received from your attorney to this point?

DEFENDANT: Yes.

N.T., 11/23/2010, p. 5. There is no indication that the Defendant was coerced into pleading guilty. The record reflects that the Defendant's plea was intelligent, voluntary, and knowing and therefore his guilty plea will not be withdrawn.

Further, the Defendant argues that he was never aware he would receive prison for pleading guilty. The Defendant, however, was sentenced according to his plea agreement. N.T., 7/25/2011, p.3. The Defendant received sixty (60) days to be served in the Lycoming County

Prison and also a five (5) year IP sentence. The Defendant never objected or expressed confusion of his plea agreement in his oral colloquy, written colloquy, or at sentencing. “Where the plea agreement contains a negotiated sentence which is accepted and imposed by the sentencing court, there is no authority to permit a challenge to the discretionary aspects of that sentence.” Commonwealth v. Dalberto, 648 A.2d 16, 19 (Pa. Super. 1994). As there is no indication that the Defendant was promised anything besides his plea agreement and he was sentenced according to his plea agreement, the Court finds that this issue is without merit. See also Commonwealth v. Edwards, 612 A.2d 1077 (Pa. Super 1992).

### ***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 February, 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 December 13, 2012, is hereby GRANTED and Julian Allatt, Esq. may withdraw his appearance in the above captioned matter.

By the Court,

Nancy L. Butts, President Judge

xc: DA (KO)  
Julian Allatt, Esq.  
John Paul Miller #KE-6228  
SCI-Retreat  
660 State Route 11  
Hunlock Creek, PA 18621