

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 :
 :
 v. : **No. 1464-CR-2009**
 : **CRIMINAL DIVISION**
 :
 EMIL COOPER, :
 Defendant : **PCRA**

OPINION AND ORDER

On February 10, 2014, 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 August 1, 2009, Emil Cooper (Defendant) and the victim were arguing on the 600 Block of Second Street in Williamsport. During the argument, the Defendant stabbed the victim in the chest-torso area, which resulted in serious injuries. The Defendant was charged with Criminal Attempt to Commit Homicide,¹ two counts of Aggravated Assault,² two counts of Simple Assault,³ and one count of Possessing Instruments of a Crime.⁴

On August 4, 2010, the Defendant pled guilty before the Honorable Marc F. Lovecchio to Aggravated Assault with a Deadly Weapon and Possessing Instruments of a Crime. On September 8, 2010, at the time of sentencing, the Defendant expressed a desire to withdraw his plea and his sentencing was continued to September 28, 2010. On September 28, 2010, the

¹ 18 Pa.C.S. § 901(a).

² 18 Pa.C.S. 2702(a)(1), 18 Pa.C.S. 2702(a)(4).

³ 18 Pa.C.S. 2701(a)(2); 18 Pa.C.S. 2701(a)(1).

⁴ 18 Pa.C.S. 907(a).

Defendant filed a Motion to Withdraw his Guilty Plea. On February 8, 2011, Judge Lovecchio granted the Defendant's Motion.

Following the non-jury trial on June 8, 2011 and July 8, 2011, this Court found the Defendant guilty of Criminal Attempt (Homicide), two counts of Aggravated Assault, two counts of Simple Assault, and Possession of an Instrument of Crime. On October 31, 2011, this Court sentenced the Defendant to eighteen (18) to thirty-six (36) years in a State Correctional Institution followed by five (5) years of supervision with the Pennsylvania Board of Probation and Parole.

On November 3, 2011, the Defendant filed timely post-sentence motions, which were denied by this Court by operation of law pursuant to Pa.R.Crim.P. 720(B)(3)(a). The Defendant filed a Notice of Appeal to the Superior Court of Pennsylvania on March 7, 2012. On September 19, 2012, the Superior Court affirmed the Defendant's sentence and found that there was sufficient evidence to support the Defendant's convictions.

On September 16, 2013, the Defendant filed a *pro se* Post Conviction Relief Act (PCRA) Petition. The Defendant alleges that trial counsel was ineffective because they coerced him into pleading guilty and that there was insufficient evidence to sustain his conviction. Julian Allatt, Esquire was appointed to represent the Defendant for the PCRA Petition. On February 10, 2014, Attorney Attlatt 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 Allatt that Defendant failed to raise any meritorious issues in his PCRA Petition.

Whether trial counsel was ineffective for coercing the Defendant to plead guilty

The Defendant contends that his trial counsel was ineffective because they 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.

This Court cannot find that trial counsel was ineffective for two reasons: 1) the Defendant made a knowing, intelligent, and voluntary guilty plea; and 2) the Defendant was not prejudiced. In support of the Courts first determination that the Defendant’s PCRA Petition is without merit, a showing of manifest injustice is required to justify the withdrawal of a guilty plea which are requested after sentence has been imposed. Commonwealth v. Flick, 802 A.2d

620, 623 (Pa. Super. 2002). Manifest injustice occurs when a plea is not tendered knowingly, intelligently, voluntarily, and understandingly. Commonwealth v. Persinger, 615 A.2d 1305 (Pa. 1992). Whether the Defendant is pleased with the outcome of his decision to plead guilty is not relevant 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. Judge Lovecchio informed the Defendant of the charges and the elements of those charges. N.T., August 4, 2010, p. 2-3. Along with the elements, the Court informed the Defendant of the

statutory maximum fine and sentence for each charge. Id. at 3. The Court reviewed the plea agreement and informed the Defendant that the Court is not bound by the agreement at sentencing. Id. at 3, 15. 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 17-20, 13. In addition, the Defendant completed a written guilty plea colloquy explaining many of these factors in greater detail, to which he stated he understood.⁵ According to Pennsylvania law, the Defendant's guilty plea was entered knowingly, voluntarily, and intelligently.

In addition, the record establishes that the Defendant was not coerced or threatened to plead guilty:

COURT: Have you had a sufficient amount of time to discuss your case with Miss Spring as well as your decision to plead guilty?

DEFENDANT: Yes.

COURT: Alright. Are you satisfied with her representation up to this point?

DEFENDANT: Yeah.

.....

COURT: Alright. Has anybody forced you or in any way pressured or coerced you into pleading guilty?

DEFENDANT: No.

COURT: Is your plea of guilty being given in a knowing, intelligent and voluntary manner?

DEFENDANT: Yeah.

COURT: Has anybody given you any promises that might induce you to plead guilty or cause you to plead guilty other than the plea recommendation?

COURT: No.

⁵ Judge Lovecchio's Order dated August 4, 2010 found that the Defendant knowingly, voluntarily and intelligently entered his guilty plea.

Id. at 11, 13. Therefore, this Court does not find merit that the Defendant was coerced to plead guilty.

Finally, this Court finds that the Defendant's PCRA Petition is also without merit because he was not prejudiced by pleading guilty. The Defendant pled guilty for a plea agreement of forty-three (43) months in a State Correctional Institution. The Defendant subsequently withdrew his guilty plea and proceeded to trial before this Court with another attorney. This Court did not know of the Defendant's withdrawn guilty plea during the non-jury trial. Further, after being found guilty, this Court sentenced the Defendant to eighteen (18) to thirty-six (36) years in a State Correctional Institution. Trial counsel's recommendation for the Defendant to take the plea agreement was warranted and clearly within the range of competence demanded of attorneys in criminal cases. Based on the record, the Court finds that this issue is without merit.

Whether there was sufficient evidence to sustain the Defendant's conviction

The Defendant argues that there was insufficient evidence to sustain his conviction, which is not an issue cognizable with the PCRA. To have a claim under the PCRA a Defendant must prove by a preponderance of the evidence:

(2) That the conviction or sentence resulted from one or more of the following:

- (i) A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
- (ii) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
- (iii) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.

(iv) The improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.

(v) Deleted.

(vi) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.

(vii) The imposition of a sentence greater than the lawful maximum.

(viii) A proceeding in a tribunal without jurisdiction

42 Pa.C.S. § 9543. Here, the Defendant is not making a claim cognizable under PCRA.

Further, this issue has already been addressed in the Defendant's post-sentence motions and on appeal with the Superior Court of Pennsylvania. Commonwealth v. Cooper, No. 565 MDA 2012 (Pa. Super. Filed September 19, 2012)

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 March, 2014, 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 February 10, 2014, 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.
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