

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1672-2011

vs. :

ORONDE DANIELS, :  
(a/k/a/ Michael Walker) :  
Defendant :

ORDER

AND NOW, this \_\_\_\_ day of February 2014, after review of Defendant’s response to the Court’s Order giving notice of its intent to dismiss Defendant’s Post Conviction Relief Act (PCRA) petition, the Court DISMISSES Defendant’s PCRA petition.

The court rejects Defendant’s conflict of interest claim. “A defendant cannot prevail on a conflict of interest claim absent a showing of actual prejudice.” Commonwealth v. Weiss, 2013 Pa. LEXIS 2617, \*61 (October 31, 2013), quoting Commonwealth v. Spatz, 587 Pa. 1, 896 A.2d 1191, 1231 (2006). While “it is true that prejudice is presumed when counsel is burdened by an actual conflict of interest, this is only if the defendant demonstrates that counsel ‘actively represented conflicting interests’ and ‘that an actual conflict of interest adversely affected his lawyer’s performance.’” Spatz, 896 A.2d at 1231-32(citations omitted); see also Commonwealth v. Small, 602 Pa. 425, 980 A.2d 549, 563 (2009).

A defendant must **plead** and prove facts to establish his eligibility for relief under the PCRA. 42 Pa.C.S.A. §9542. Defendant has not pled either actual prejudice or an actual conflict of interest. Defendant doesn’t even name the inmate who allegedly wrote a letter to his parole agent that triggered the agent’s visit to Defendant’s home. Nonetheless, he claims the inmate sent the letter to “gain some type of leniency or favorable treatment for the

situation that he was in.”<sup>1</sup> Defendant admits that the inmate was not a co-defendant in the above-captioned case.

The inmate also was never a witness in this case. The only witness in this case was Defendant’s parole agent, who testified at Defendant’s suppression hearing. After the suppression motion was denied,<sup>2</sup> Defendant knowingly, voluntarily, and intelligently entered a guilty plea in this case. Even if Defendant had not entered a guilty plea, the inmate would not have been a Commonwealth witness at Defendant’s trial. Instead, the Commonwealth would have called the parole agent and police officers to prove that Defendant possessed the firearm, marijuana and packaging material and that he possessed the marijuana with the intent to deliver it.

Defendant also does not plead how the alleged conflict of interest adversely affected counsel’s performance. Even if the inmate wrote the letter to try to gain some benefit in his case, the allegations that Defendant possessed firearms and controlled substances were corroborated by the parole agent’s observations. Furthermore, none of Defendant’s allegations change the fact that Defendant possessed the items in question, which greatly limited defense counsel’s ability to present a defense with any real chance of

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<sup>1</sup> According to the suppression decision, the inmate was Bilal Sabur. This court handled Mr. Sabur’s aggravated assault case, which was not in any way related to this case. Mr. Sabur did not receive any leniency or favorable treatment from allegedly sending the letter to Defendant’s parole agent. Mr. Sabur’s case went to trial, he was convicted, and he received a lengthy sentence. The case is presently on appeal before the Pennsylvania Superior Court.

There was a period of time where Mr. Sabur was represented by a member of the public defender’s office. At some point, however, a conflict attorney was appointed for Mr. Sabur due to irreconcilable differences between Mr. Sabur and the assistant public defender assigned to his case. The court does not know whether that occurred before or after Defendant’s suppression hearing and/or guilty plea in this case.

<sup>2</sup> Recent case law holds that a visit and walk through of a parolee’s home to ensure the parolee’s compliance with his conditions of supervision is not considered a search. Commonwealth v. Braheem Smith, 2014 PA Super 14 (January 31, 2014). Therefore, even without the letter, the parole agent could have gone to Defendant’s residence and walked through the rooms, including Defendant’s bedroom where he smelled the odor of marijuana which provided the agent with both reasonable suspicion and probable cause to conduct a

success.

Defendant is hereby notified that he has the right to appeal from this order to the Pennsylvania Superior Court. The appeal is initiated by the filing of a Notice of Appeal with the Clerk of Courts at the Lycoming County courthouse, and sending a copy to the trial judge, the court reporter and the prosecutor. The form and contents of the Notice of Appeal shall conform to the requirements set forth in Rule 904 of the Rules of Appellant Procedure. The Notice of Appeal shall be filed within thirty (30) days after the entry of the order from which the appeal is taken. Pa.R.App.P. 903. If the Notice of Appeal is not filed in the Clerk of Courts' office within the thirty (30) day time period, Defendant may lose forever his right to raise these issues.

**The Prothonotary shall mail a copy of this order to the defendant by certified mail, return receipt requested.**

By The Court,

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Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)  
Oronde Daniels, aka Michael Walker, GF 7921 (certified mail)  
1100 Pike Street, Huntingdon PA 16654-11112  
Work file  
Suzanne Fedele, Prothonotary/Clerk of Courts

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search.