

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1436-2012
:
vs. : CRIMINAL DIVISION
:
:
STEVEN PATRICK TAWNEY, II, :
Defendant :

OPINION AND ORDER

This matter came before the court on Defendant Steven Tawney’s Post Conviction Relief Act (PCRA) petition. The relevant facts follow.

On July 18, 2012, Tawney was on state probation/parole supervision. His probation/parole agent, Matthew Kieski, received information that Tawney was selling cocaine. Kieski, along with other agents, went to Tawney’s residence. Over 100 grams of cocaine, 56 steroid capsules, 3 vials of DECA 250 steroids, drug paraphernalia, and tens of thousands of dollars in cash, the majority of which was in \$100 bills were discovered in Tawney’s residence and vehicles. The parole agents contacted the police. Tawney signed a consent to search form and the police seized the items discovered by the probation/parole agents. While the currency was being counted, Tawney said more than once “You guys can have all that if you make this go away.”

Tawney was charged with three counts of possession with intent to deliver a controlled substance, three counts of possession of a controlled substance, possession of drug paraphernalia, and bribery.

On August 16, 2013, Tawney entered a guilty plea to a consolidated count of possession with intent to deliver a controlled substance in exchange for a sentence of 4 to 8

years of incarceration in a state correctional institution, as well as forfeiture of \$46,606.15, a white Ford Aerostar van and a tan Lincoln sedan. Tawney requested immediate sentencing, and the court imposed a sentence of 4 to 8 years of incarceration in a state correctional institution. The court also entered a separate stipulated forfeiture order, which was signed by both Tawney and the prosecutor. Tawney did not file any post sentence motions or an appeal.

Tawney filed a timely PCRA petition in which he asserted counsel was ineffective for failing to file a motion to suppress evidence, he was coerced into pleading guilty, and the items should not have been forfeited. The court appointed counsel to represent Tawney and gave counsel an opportunity to file either an amended PCRA petition or a no merit letter pursuant to Commonwealth v. Turner, 544 A.2d 927 (Pa. 1988) and Commonwealth v. Finley, 550 A.2d 213 (Pa. Super. 1988). Counsel filed a Turner/Finley no merit letter, which was attached to his motion to withdraw as counsel.

After an independent review of the record, the court also finds that Tawney's guilty plea was knowingly, intelligently and voluntarily entered. Therefore, he cannot prevail on his claims.

To prevail on a claim of ineffective assistance of counsel, a petitioner must plead and prove that the underlying claim is of arguable merit; counsel's actions had no reasonable basis designed to effectuate petitioner's interests; and prejudice, i.e., but for counsel's deficient performance there is a reasonable probability that the results of the proceedings would have been different. Commonwealth v. Baumhammers, 92 A.3d 708, 719 (Pa. 2014). Counsel is presumed effective and the petitioner has the burden of proving

otherwise. Commonwealth v. Busanet, 54 A.3d 35, 45 (Pa. 2012). If the petitioner fails to satisfy any of the three prongs, the claim will be denied. Id.

A petitioner must also establish that his claims have not been waived. 42 Pa.C.S.A. §9543(a)(3). For purposes of the PCRA, “an issue is waived if the petitioner could have raised it but failed to do so before trial, at trial, during unitary review, on appeal or in a prior state post conviction proceeding.” 42 Pa.C.S.A. §9544(b).

Tawney’s first and third issues relate to counsel’s alleged ineffectiveness related to his home and vehicles. Tawney’s first claim is that trial counsel was ineffective in failing to seek suppression of the evidence found as a result of his probation officer’s search of his home and vehicles, which was conducted in violation of petitioner’s privacy rights as guaranteed by the United States and Pennsylvania constitutions. His third claim is that trial counsel was ineffective in allowing the Commonwealth to proceed with the forfeiture of his property knowing that the forfeiture was a result of an illegal search and seizure.

Tawney’s avenues of relief are limited by the fact that he entered a guilty plea. When a defendant pleads guilty, he waives all claims and defenses other than those sounding in the jurisdiction of the court, the validity of the plea and the legality of his sentence. Commonwealth v. Eisenberg, 98 A.3d 1268, 1275 (Pa. 2014); Commonwealth v. Jones, 929 A.2d 205, 212 (Pa. 2007). In the written guilty plea colloquy, Tawney was specifically asked the following questions:

14. Do you understand that if you plead guilty you are waiving, or giving up, your right to present any defenses that either you or your attorney may think that you have to the crime or crimes charged?

15. a. 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?

b. Do you understand that you are giving up your right to appeal any adverse decisions on any motions already heard by the court?

Tawney answered each of these questions in the affirmative. Moreover, this is not a case where Tawney was unaware of the potential suppression issue. In his petition, Tawney indicates that he brought the issue up with his attorney before he entered his guilty plea, but his attorney told him the law books he was reading were old and he shouldn't get his hopes up. His attorney also told him he was going to see what kind of plea agreement he could get. Tawney then consulted with a second lawyer who told him his concerns with the search were valid. Tawney, however, could not afford to pay the second attorney to represent him and he took the plea agreement, which included forfeiture of two vehicles and a large amount of currency. Based on the record in this case, the court finds that Tawney waived his right to file a suppression motion. Furthermore, as will be elaborated in the court's discussion of Tawney's remaining issue, his guilty plea was knowingly, intelligently and voluntarily entered.

Tawney also claims that trial counsel was ineffective in permitting a plea of guilty that was the product of coercion. He contends that he was coerced into taking the plea due to counsel's ineffectiveness related to the suppression issue and law enforcement threatening that if he did not take the plea they would make things "harder on him", his wife would be locked up, and a maximum sentence would be sought against him.

A defendant who pleads guilty has a duty to answer questions truthfully. Commonwealth v. Pollard, 832 A.2D 517, 524 (Pa. Super. 2003); Commonwealth v. Cortino, 563 A.2d 1259, 1262 (Pa. Super. 1989). "[W]here the record clearly demonstrates that a

guilty plea colloquy 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. Moser, 921 A.2d 526, 529 (Pa. Super. 2007), quoting Commonwealth v. McCauley, 797 A.2d 920, 922 (Pa. Super. 2001). Furthermore, the “desire of an accused to benefit from a plea bargain is a strong indicator of the voluntariness of his plea.” Pollard, 832 A.2d at 524.

The record makes clear that Tawney’s guilty plea was made knowingly, voluntarily and intelligently. In response to question 22 of the written guilty plea colloquy which inquired why he desired to plead guilty, Tawney wrote, “I am guilty.” He also indicated in his written colloquy that he had sufficient time to speak with his attorney, he was satisfied with the representation of his attorney and he understood the rights he was giving up by pleading guilty including the right to a jury trial and the presumption of innocence.

Tawney’s verbal answers during the guilty plea hearing also establish the voluntariness of his plea. Tawney pled to a consolidated charge of possession with intent to deliver encompassing the cocaine as well as the steroids. The court explained the nature of that charge to Tawney and he indicated that he understood. Transcript of Guilty Plea and Sentencing Hearing, 8/16/13, at 2-3. Tawney admitted that he possessed over 100 grams of cocaine, 700 milligrams of an anabolic steroid and 55 dosages of another steroid. Transcript, 8/16/13 at 8-9. He also admitted that he intended to deliver or sell those substances to other individuals. Transcript, 8/16/13, at 9. He responded in the affirmative when asked if he understood he was giving up his right to proceed to a jury trial, his right to be presumed innocent and the right to have the Commonwealth prove him guilty beyond a reasonable

doubt and indicated that it was his decision to plead guilty. Transcript, 8/16/13, at 6. When asked if anybody was forcing, pressuring or coercing him into pleading guilty or giving him any promises or inducements to cause him to plead guilty, he said, “No.” Transcript, 8/16/13, at 6. He indicated that he had sufficient time to discuss his case and his decision to plead guilty with his attorney, he was satisfied with his attorney’s representation and his attorney had not done anything wrong or failed to do anything that in any way caused him to plead guilty. Transcript, 8/16/13, at 6. Tawney also understood that the judge was not bound by the terms of the plea agreement unless it was accepted. Transcript, 8/16/13, at 4-5.

Although Tawney was told the incorrect maximum penalties, under the facts and circumstances of this case such error was harmless. See Commonwealth v. Lincoln, 72 A.3d 606, 610 (Pa. Super. 2013). Tawney was told that the maximum penalties were 15 years of incarceration and a fine of \$250,000. That is the maximum penalty for a first drug trafficking conviction for heroin. 35 P.S. §780-113(f)(1). Tawney was not charged with any heroin offense; the charge to which he pled guilty was a consolidated count of possession with intent to deliver cocaine and steroids. Possession with intent to deliver cocaine carries a maximum of 10 years of incarceration and a \$100,000 fine for a first conviction but where, as here, a defendant has a prior drug trafficking conviction the maximum doubles to 20 years of incarceration and a \$200,000 fine. 35 P.S. §780-113(f)(1.1.); 35 P.S. §780-115.

Tawney was advised of the correct standard sentencing guideline ranges for his charge. Due to the significant quantity of cocaine possessed by Tawney, the charge carried an offense gravity score of 11. Tawney also had a prior record score of 5. Therefore, the standard range was 72 to 90 months or 6 to 7 ½ years. Transcript, 8/16/13, at 15. The

mitigated range was 5 to 6 years and the aggravated range was 7 ½ to 8 ½ years.

The plea agreement provided for a minimum of 4 years and a maximum of 8 years, which was well below the mitigated sentencing guideline range and the statutory maximum. Not only did Tawney admit his own involvement in the delivery of controlled substances, he cooperated with the Commonwealth in connection with other pending or prospective cases, which was the reason for the extremely favorable plea agreement in this case.

Since it is clear that Tawney waived his right to file a pre-trial suppression motion and his guilty plea was knowing, intelligent and voluntary, he is not entitled to relief.

Accordingly, the following Order is entered:

ORDER

AND NOW, this ___ day of December 2014, 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 dismiss his PCRA petition without holding an evidentiary hearing. Tawney 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.

The court agrees with appointed counsel's assessment that Tawney's petition lacks merit. Therefore, the court grants counsel's motion to withdraw. Tawney may hire private counsel or represent himself, but the court will not appoint counsel to represent him in this matter.

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
Donald F. Martino, Esquire
Steven P. Tawney, #LE3536
SCI Laurel Highlands, 5706 Glades Pike, PO Box 631, Somerset PA 15501-0631
Gary Weber, Esquire (Lycoming Reporter)
Work file