

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	<b>CR-1132-2013</b>
	:	
<b>v.</b>	:	
	:	<b>CRIMINAL DIVISION</b>
<b>SHAUNA MARIE GREENLY,</b>	:	
<b>Defendant</b>	:	<b>PCRA</b>

**OPINION AND ORDER**

On July 2, 2014, Shauna Greenly (Petitioner) filed a timely Post-Conviction Relief Act (PCRA) Petition.

**I. Background**

On July 29, 2013, Petitioner pled guilty to one count of Conspiracy to Commit Identity Theft, a third degree felony.<sup>1</sup> On August 8, 2013, Petitioner was sentenced to seven years of probation under the supervision of the Lycoming County Adult Probation Office. On August 21, 2013, Defense Counsel filed a Motion to Reconsider Sentence. On August 27, 2013, the Court denied the Motion to Reconsider Sentence. On September 11, 2013, Defense Counsel filed a Notice of Appeal. On November 15, 2013, the Superior Court quashed the appeal because it was untimely filed.

On August 18, 2014, PCRA Counsel sent a “No Merit” letter to Petitioner. On September 8, 2014, PCRA Counsel filed a Motion to Withdraw as Counsel. A court conference was held on September 30, 2014. PCRA Counsel and the attorney for the Commonwealth argued that the petition did not have merit.

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<sup>1</sup> Because the total value involved was less than \$2,000, the offense was a third degree felony under 18 Pa. C.S. § 4120(c)(1)(iii), which provides, “[R]egardless of the total value involved, if the offense is committed in furtherance of a criminal conspiracy as defined in section 903 (relating to criminal conspiracy), the offense is a felony of the third degree.”

On January 20, 2015, the Court held a conference to discuss whether Defense Counsel was potentially ineffective for advising that the Defendant enter a plea of guilty to the third degree felony rather than Conspiracy to Commit Identity Theft as a first degree misdemeanor. PCRA Counsel and the attorney for the Commonwealth asserted that Defense Counsel was not ineffective because there was a factual basis for the third degree felony and Petitioner furthered a conspiracy to commit Theft by Deception and Access Device Fraud.

## **II. Discussion**

### **A. Defense Counsel was not Ineffective Because Petitioner's Plea was Knowing and Voluntary.**

“Trial counsel is presumed to be effective and [a petitioner] has the burden of proving otherwise.” Commonwealth v. Pond, 846 A.2d 699, 708 (Pa. Super. 2004). [Pennsylvania courts] review allegations of counsel's ineffectiveness in connection with a guilty plea under the following standards:

The standard for post-sentence withdrawal of guilty pleas dovetails with the arguable merit/prejudice requirements for relief based on a claim of ineffective assistance of plea counsel, under which the defendant must show that counsel's deficient stewardship resulted in a manifest injustice, for example, by facilitating entry of an unknowing, involuntary, or unintelligent plea.

Commonwealth v. Morrison, 878 A.2d 102, 105 (Pa. Super. 2005).

“[C]laims of counsel's ineffectiveness in connection with a guilty plea will provide a basis for relief only if the ineffectiveness caused an involuntary or unknowing plea.”

Commonwealth v. Yager, 685 A.2d 1000, 1004 (Pa. Super. 1996).

“In determining whether a guilty plea was entered knowingly and voluntarily . . . a court is free to consider the totality of the circumstances surrounding the plea.” Commonwealth v. Bedell, 954 A.2d 1209, 1212 (Pa. Super. 2008).

“A valid plea colloquy must delve into six areas: 1) the nature of the charges, 2) the factual basis for the plea, 3) the right to a jury trial, 4) the presumption of innocence, 5) the sentencing ranges, and 6) the plea court’s power to deviate from any recommended sentence.” Morrison, 878 A.2d at 107.

Before the plea hearing, Petitioner signed a sworn statement that indicated the following. Petitioner’s attorney explained the elements of Conspiracy to Commit Identity Theft. Petitioner discussed with her attorney the facts and circumstances surrounding the charges. Petitioner knew the sentencing range for Conspiracy to Commit Identity Theft, a third degree felony. Petitioner understood the right to a jury trial. Petitioner understood the presumption of innocence. The judge would not be bound by the plea agreement. Petitioner was giving the plea freely and voluntarily without any force, threats, pressure, or intimidation.

During the plea hearing, the Court told Petitioner that she was giving a plea of guilty to a third degree felony, and she could receive a sentence of up to seven years confinement and a fine of up to \$15,000. N.T., 7/29/13, at 2. The Court told Petitioner that the Commonwealth would have to prove that she agreed with someone else to commit identity theft and then did something in furtherance of the agreement. Id. The Court told Petitioner that the Court was not bound by the plea agreement. Id. at 3. The Court told Petitioner that she had the right to a jury trial. Id. at 7. The Court asked Petitioner if the plea was the product of her own free will. Id. at 8. Petitioner responded that it was. Id. Finally, the Court asked Petitioner if it was her decision to plea. Petitioner responded that it was. Id. at 9.

Petitioner's co-defendant was Shannon Crotty (Crotty). The following was the factual basis for Conspiracy to Commit Identity Theft, a third degree felony:

**Court:** So you guys worked together. Tell me. Miss Crotty, start me out. Tell me what happened.

**Crotty:** I found a wallet in lost and found at my job. I took it. I held onto it for a while. I didn't do anything with it and then.

**Court:** Was there a credit card in it?

**Crotty:** Yes, ma'am.

**Court:** Okay. Then did you reach out to Miss Greenly or what happened?

**Crotty:** We were picked up by a friend and I went and put gas in his car and I went to the dollar store. I used the card.

**Court:** How was [Greenly] involved?

**Crotty:** [Greenly] was with me.

**Court:** Okay. Did you use the card at all?

**Greenly:** The access card.

**Court:** You used another card from the wallet?

**Greenly:** Yeah, there was two cards.

**Court:** Okay. So there were two cards and where Miss Crotty used one, you used the other?

**Greenly:** We used them at the same place, but yes.

**Court:** Okay. And then you both knew that you didn't have permission to use those cards?

**Crotty:** Yes, ma'am.

**Greenly:** Yes, ma'am.

**Court:** All right. Commonwealth.

**Prosecutor:** The cards were actually taken from a purse that was stolen out of a vehicle parked, I believe, at Penn College – at Penn College, one of their parking lots.

**Court:** I'm getting a look that that's not what they did. She admitted to taking a wallet from the lost and found.

**Crotty:** At Burlington Coat Factory where I worked.

**Court:** At Burlington Coat Factory.

**Crotty:** There was no purse, just a wallet.

**Prosecutor:** I'm simply reading the affidavit of probable cause that the victim reports that her purse and contents were stolen from her vehicle. The bank card was used by both Defendants on several occasions. Ultimately these two Defendants were arrested in Lewisburg for shoplifting.

**Court:** Is that where they found you?

**Crotty:** No, that was before this.

**Greenly:** That was prior.

**Court:** Your arrest for shoplifting happened before this incident?

**Greenly:** In October, yes, ma'am.

**Court:** Oh, okay. Did they issue a warrant for you and pick you up on the warrant?

**Crotty:** No.

**Greenly:** No.

**Court:** No? Oh, interesting. But you both agree that you didn't have entitlement to use the card that you used, is that correct?

**Crotty:** Yes

**Greenly:** Yes.

N.T., 7/29/13, at 3-6.

The Court agrees with PCRA Counsel and the Commonwealth that a factual basis for Conspiracy to Commit Identity Theft, a third degree felony, was established during the plea

hearing. Without permission, the Defendant and Crotty used another's bank cards to purchase items. In doing so, they furthered a conspiracy to commit Theft by Deception and Access Device Fraud.

Petitioner's signed statement and her responses during the hearing show that the plea was knowing and voluntary. Therefore, Defense Counsel was not ineffective.

**B. Defense Counsel was not Ineffective Because Counsel did not Have a Conflict of Interest.**

“[A] defendant must demonstrate that a conflict of interest actually existed at trial, because ‘dual representation alone does not amount to a conflict of interest.’” Commonwealth v. Evans, 451 A.2d 1373, 1375 (Pa. Super. 1982).

“[T]he United States Supreme Court held that until a defendant demonstrates that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance of counsel under the Sixth Amendment. The Court defined ‘actual conflict of interest’ for Sixth Amendment purposes as a conflict of interest that adversely affects counsel’s performance.” Commonwealth v. Williams, 980 A.2d 510, 522 (Pa. 2009) (citing Mickens v. Taylor, 535 U.S. 162 (2002)).

As PCRA counsel notes, both Greenly and her co-defendant voluntarily pled, so Defense Counsel did not have a conflict of interest. Therefore, Defense Counsel was not ineffective.

**C. Defense Counsel was not Ineffective for not Filing a Timely Notice of Appeal.**

“[T]he unjustified failure to file a requested direct appeal is ineffective assistance of counsel *per se* and . . . [a petitioner] need not show that he likely would have succeeded on

appeal in order to meet the prejudice prong of the test for ineffectiveness.” Commonwealth v. Bath, 907 A.2d 619, 622 (Pa. Super. 2006).

“[C]ounsel has a constitutional duty to consult with a defendant about an appeal where counsel has reason to believe either ‘(1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.’” Id. at 623 (quoting Commonwealth v. Touw, 781 A.2d 1250, 1254 (Pa. Super. 2001)).

Here, Petitioner has not shown that she timely demonstrated her interest in appealing. PCRA Counsel reviewed the correspondence between Petitioner and Defense Counsel and determined that the Petitioner’s request for Defense Counsel to appeal was untimely.

In addition, Petitioner has not shown that there was a non-frivolous ground for appeal. The Court has already determined that Petitioner’s plea was knowing and voluntary. “A plea of guilty effectively waives all nonjurisdictional defects and defenses.” Commonwealth v. Gibson, 561 A.2d 1240, 1242 (Pa. Super. 1989). “[C]hallenges to the legality of the sentence are never waived.” Commonwealth v. Berry, 877 A.2d 479, 482 (Pa. Super. 2005). “[I]f no statutory authorization exists for a particular sentence, that sentence is illegal and subject to correction.” Id. at 483 (quoting Commonwealth v. Lipinski, 841 A.2d 537, 539 (Pa. Super. 2004)).

“In imposing an order of probation the court shall specify at the time of sentencing the length of any term during which the defendant is to be supervised, which term may not exceed the maximum term for which the defendant could be confined . . . .” 42 Pa. C.S. § 9754(a). “[A] person who has been convicted of a felony may be sentenced to imprisonment as follows . . . [i]n the case of a felony of the third degree, for a term which shall be fixed by the court at not more than seven years.” 18 Pa. C.S. § 1103(c).

42 Pa. C.S. § 9754(a) in conjunction with 18 Pa. C.S. § 1103(c) provide that a defendant, who is guilty of a third degree felony, may be placed on probation for a maximum of seven years. Petitioner pled guilty to a third degree felony and was sentenced to seven years of probation. Thus, there is statutory authorization for the sentence, and the sentence is not illegal. Defense Counsel was not ineffective because Petitioner has not shown that she timely demonstrated her interest in appealing and because there were only frivolous grounds for appeal.

### **III. Conclusion**

Defense Counsel was not ineffective because the plea was knowing and voluntary. In addition, Counsel was not ineffective in dual representation because there was not a conflict of interest. Finally, Counsel was not ineffective for not filing a timely appeal because Petitioner did not timely demonstrate her interest in appealing and because there were only frivolous grounds for appeal.



**ORDER**

**AND NOW**, this \_\_\_\_\_ day of March, 2015, it hereby ORDERED and DIRECTED as follows:

1. Pursuant to Pennsylvania Rule of Criminal Procedure 907(1), the Petitioner is hereby notified that this Court intends to dismiss her PCRA petition for the reason discussed in the foregoing Opinion. The Defendant may respond to the proposed dismissal within 20 days of the date of the notice.
2. The Motion to Withdraw as Counsel, filed September 8, 2014, is hereby GRANTED, and Attorney may withdraw from the above-captioned case.

By the Court,

Nancy L. Butts, President Judge