

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CP-41-CR-1386-2012
	: No. CP-41-CR-1312-2013
	:
vs.	: CRIMINAL DIVISION
	:
	:
KEITH ANDERSON,	: Order giving Notice of the Court’s Intent
Defendant	: to Dismiss Defendant’s PCRA &
	: Granting Counsel’s Motion to Withdraw

OPINION AND ORDER

This matter came before the court on the Post Conviction Relief Act (PCRA) petition, which was filed by Defendant Keith Anderson (“Anderson”).

Under Information 1312-2013, Anderson pled guilty on September 19, 2014 to Count 3, possession with intent to deliver a controlled substance, an ungraded felony. The plea agreement reached between Anderson and the Commonwealth was that Anderson would plead guilty to Count 3 and waive RRRI and boot camp eligibility in exchange for 18-36 months of incarceration in a state correctional institution. On October 23, 2014, consistent with the plea agreement, the court sentenced Anderson to undergo incarceration in a state correctional institution for an indeterminate term, the minimum of which was 18 months and the maximum of which was 36 months.

Under Information 1386-2012, on March 28, 2013, Anderson was sentenced to four years of intermediate punishment with respect to Count 1, possession within intent to deliver a controlled substance, an ungraded felony. In an order dated October 23, 2014, the court found that Anderson violated the conditions of his intermediate punishment by committing a new criminal offense, namely the possession with intent to deliver offense to

which Anderson pled guilty under Information 1312-2013.

As a result, the court revoked Anderson's intermediate punishment sentence and re-sentenced Anderson with respect to Count 1, possession with intent to deliver a controlled substance, an ungraded felony, to undergo incarceration in a state correctional institution in an institution for an indeterminate term, the minimum of which was one year and the maximum of which was two years. This sentence was to run consecutive to the sentence imposed under Information CR-1312-2013.

Anderson did not appeal either sentence. Instead, on October 22, 2015, he filed an uncounseled PCRA petition alleging ineffective assistance of counsel and the unlawful inducement of his guilty plea. As this was his first PCRA petition and he appeared to be indigent, the court appointed counsel to represent Anderson and gave counsel the 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. 1998).

On December 28, 2015, appointed counsel filed a motion to withdraw as counsel. The motion included a Turner/Finley letter, in which counsel concluded that the issue raised by Anderson lacked merit.

After an independent review of the record, the court agrees with counsel's no merit letter.

Anderson claims that his plea of guilty was unlawfully induced where the circumstances made it likely that the inducement caused him to plead guilty in that he was coerced to plead guilty because his probation officer, Robert Thompson, told him that if he

did not accept the terms of the plea agreement, that Mr. Thompson would request a greater period of incarceration than the one year to two year sentence Anderson received for his intermediate punishment violation.

“Where the record clearly demonstrates that a guilty plea colloquy was 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. Lewis*, 430 Pa. Super. 336, 634 A.2d 633, 635 (1993).

Prior to entering his guilty plea on September 19, 2014, Anderson completed a written guilty plea colloquy. The coversheet of the guilty plea colloquy clearly sets forth the charge Anderson was to plead guilty to, correctly lists the maximum fine and maximum period of incarceration and sets forth the plea agreement. In the body of the guilty plea colloquy, Anderson noted that he was pleading guilty because “I am guilty, I want to get this done with and get on with my life.” Written Guilty Plea Colloquy (“Colloquy”), Question 22. Anderson also stated that he had thoroughly discussed his case with his attorney, that he was satisfied with the representation of his attorney and that his guilty plea was “given freely and voluntarily without any force, threats, pressure or intimidation.” Colloquy, Questions 24, 25 and 35.

During his guilty plea hearing, Anderson stated that he had read the guilty plea colloquy form, answered and understood all of the questions and that he was acting voluntarily. Guilty Plea Hearing Transcript (“Plea Transcript”), 9-19-2015, at 2-4. Anderson then proceeded to explain that he was guilty of the offense he was pleading guilty to. Anderson admitted that his co-defendant delivered heroin and that he aided him in that

process. Plea Transcript, at 6-8.

“A criminal defendant who decides to plead guilty has a duty to answer questions truthfully.” *Commonwealth v. Cortino*, 387 Pa. Super. 210, 563 A.2d 1259, 1262 (1989)(citation omitted). The record is clear that Anderson’s admission to the charge of possession with intent to deliver was made voluntarily. Anderson’s statements to the court during the guilty plea proceeding further support the conclusion that his guilty plea was not coerced and that he was aware of the rights he was waiving by entering the guilty plea. The trial court noted on the record the charge Anderson was entering a guilty plea to and Anderson acknowledged that this was correct. Plea Transcript, at 4.

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. [A] plea of guilty will not be deemed invalid if the circumstances surrounding the entry of the plea disclosed 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.

Our law presumes that a defendant who enters a guilty plea was aware of what he was doing. He bears the burden of proving otherwise. [W]here the record clearly demonstrates that a guilty plea colloquy was conducted, during which it became obvious that the defendant understood the nature of the charges against him, the voluntariness of the plea is established.

Commonwealth v. Rush, 909 A.2d 805, 808 (Pa. Super. 2006)(citations and internal quotation marks omitted).

Further, even if the statements made by Mr. Thompson impacted Anderson’s decision to plead guilty, said statements are not sufficient to establish that his guilty plea was coerced or involuntary. Anderson conceded in his written guilty plea colloquy that no one threatened him in any manner or said anything that would force him or put pressure on him to plead guilty. Colloquy, Question 34. He also acknowledged that his plea of guilty would

constitute a violation of his supervision and that he could be sentenced to prison as a result of that violation caused by his guilty plea. Colloquy, Question 37. In fact, Anderson's sentencing did not take place on September 19, 2014 because it was made clear to the court and Anderson on the record that he had a probation violation. Plea Transcript, at 9. It was also made clear that this sentence would run consecutive to his "PV." Plea Transcript, at 10.

At Anderson's sentencing and final PV hearing on October 23, 2014, the issue was discussed in detail. Anderson considered arguing for less time on his PV and was not sure whether he wanted to withdraw his plea. Sentencing Transcript, October 23, 2014, at 5-6.

Mr. Thompson made it clear that if Anderson "continued to drag" these matters on, he was "going to change [his] recommendation." Sentencing Transcript, at 7. As the court explained to Anderson, with respect to the recommendation by Mr. Thompson, "if you're not going to accept it then he is not going to offer it anymore and he's going to argue for something that he thinks is more appropriate in light of what he sees as a continuing course of manipulation on your behalf." Sentencing Transcript, at 8. The court specifically noted as well that it did not want to "put pressure" on Anderson and explained that sentencing on the intermediate punishment violation was ultimately the court's decision. Sentencing Transcript, at 8.

Following further explanation, the court asked Anderson whether he wanted more time to talk with his attorney. He indicated that he did. A recess was taken and after the recess, Anderson agreed to be sentenced on that date. Sentencing Transcript, at 9.

Anderson's assertion that his guilty plea was unlawfully induced or that it was

in some manner involuntary is not supported by the guilty plea documents, the record of the guilty plea hearing or the record of the sentencing hearing. According, the following Order is entered:

ORDER

AND NOW, this ___ day of February 2016, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, as no purpose would be served by conducting any further hearing, none will be scheduled and the parties are hereby notified of this court's intention to dismiss the PCRA petition. Anderson 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 also grants counsel's motion to withdraw from representation. Keith Anderson is notified that he has the right to represent himself or to hire private counsel, but the court will not appoint another attorney to represent him unless he sets forth facts in his response to show that his PCRA petition contains an issue of arguable merit.

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
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Work file