

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, : CR – 1529-2014; 1145-2015
v. :
JUSTIN STERLING HARNER, : OTN: T 563137-1; T 477114-1
Defendant :
 : PCRA (DISMISSAL)

OPINION AND ORDER

Before the Court is a Petition for Post-Conviction Relief filed by Justin Harner on October 15, 2015, pursuant to the Post Conviction Relief Act (PCRA), 42 Pa. C.S. §§ 9541-9546 and a Motion to Withdraw as Counsel filed by court appointed counsel, Donald F. Martino, Esq., on December 28, 2016 pursuant to Commonwealth v. Turner, 544 A.2d 927 (Pa. 1988), and Commonwealth v. Finley, 550 A.2d 213 (Pa. Super. 1988) (Turner/Finley). After conducting an independent review of Harner’s petition and considering appointed counsel’s motion, for the reasons provided below, the Court finds that Harner’s petition is without merit and that counsel’s motion to withdraw should be granted. Mr. Harner is hereby notified of the Court’s intention to dismiss the PCRA Petition, **unless he files an objection to dismissal within twenty days (20) of today’s date.**

I. Factual and Procedural Background

By information dated June 7, 2016, under docket 14-1145, as amended by Order dated August 4, 2014, the Commonwealth charged Mr. Harner with ten counts – listing the following offenses: Burglary – overnight accommodations – person present, a felony of the first degree, criminal trespass (breaks into), a felony of the second degree, criminal conspiracy – objective burglary, a felony of the second degree, criminal conspiracy – objective criminal trespass, a felony of the second degree, criminal conspiracy – objective criminal trespass, a felony of the

second degree, criminal conspiracy – objective burglary, a felony of the second degree, firearms not to be carried without a license, a misdemeanor of the first degree, and person not to possess, use, manufacture, control sell or transfer firearms, a felony of the second degree.¹ On December 19, 2014, upon motion of the Commonwealth, without objection from the Defense, Count 5 was amended as to grading to reflect a felony of the first degree.

At a hearing held on December 19, 2014, the Court accepted Harner’s guilty plea pursuant to a plea agreement. Harner plead guilty to an amended count 5, conspiracy with the objective of burglary – overnight accommodations – person present, a felony of the first degree, count 4, criminal trespass, a felony of the second degree, and count 9, unlicensed possession of a firearm.

In accordance with the plea agreement, the Court sentenced Harner to 73 to 146 months, with a consecutive period of 5 years’ probation. This represented the lowest number of months for the minimum sentence in the standard range for each of the counts to which he plead guilty. Count 5 was 21, Count 4 was 40 and Count 9 was 12, for a total of 73 months as the minimum. Harner’s prior record score fell within the RFEL status. Defendant was ordered to pay restitution in the amount of \$1,844.46. After pleading guilty to counts 4, 5, and 9, the remaining counts were dismissed. Harner did not file any post sentence motion or direct appeal. On October 15, 2015, Harner filed the instant PCRA petition. The Court appointed Donald F. Martino, Esq., to represent Harner and directed him to either file an amended petition or a Turner/Finley letter. On December 8, 2015, attorney Martino sent a no-merit letter to Mr. Harner. On December 28, 2015, attorney Martino filed a motion to withdraw pursuant to Turner/Finley.

In his petition, Harner contends he is eligible for relief pursuant to the PCRA for ineffective assistance of counsel which so undermined the truth-determining process that no

¹ 18 Pa. C.S.A. § 3502 (a)(1); 18 Pa. C.S.A. § 3503(a)(1)(ii); 18 Pa. C.S.A. § 3921(a); 18 Pa. C.S.A. § 3503 (a)(1)(ii); 18 Pa. C.S.A. § 903 (a)(1) 18 Pa. C.S.A. § 6106 (a)(2); 18 Pa. C.S.A. § 6105(a)(a).

reliable adjudication of guilt or innocence could have taken place. *PCRA petition*, at 2. Harner did not allege that his guilty plea was unlawfully induced under circumstances which make it likely that the inducements caused the petitioner to plead guilty and the petitioner is innocent. Mr. Harner does not allege that he is innocent. *PCRA petition*, at 2. Mr. Harner's complaint is based mostly on the fact that he only provided transportation for the co-defendant but the co-defendant received a much lesser sentence than he did. Mr. Harner contends that his petition for relief is based upon there being no evidence to prove the charge of criminal trespass against him. Specifically, Mr. Harner stated that his reason for the PCRA was as follows.

Blood evidence around the area where burglaries were committed are not my own. Clinton Bailey JR had already admitted to everything and also to cutting his knuckles and bleeding. I admitted to transportation and that was it. As stated in my affidavit. *PCRA petition*, at 4.

Harner also alleges that his attorney ignored him and his wife, failed to discuss defenses, was "extremely improper and ineffective" and barely kept in touch with him and his wife. Harner summed up his grievance as follows: "I feel if I had a more committed attorney that my sentence would have been more justified." *PCRA petition*, at 8.

The Court finds that Court appointed counsel complied with the mandates of Turner/Finley in conducting an independent review of the record and in determining there is no merit to the PCRA petition. The Court has conducted its own independent review and has likewise concluded that there is no merit to Harner's petition. The court provides the following discussion as to the reasons for concluding that the petition lacks merit.

Discussion - Lack of Merit.

In order to succeed on a claim for ineffective assistance of counsel, Defendant must overcome the presumption of counsel effectiveness by proving the following three factors, that: (1) Defendant's underlying claim has arguable merit, (2) trial counsel had no reasonable basis for

her action or inaction, and (3) the performance of trial counsel prejudiced Defendant.

Commonwealth v. Chmiel, 612 Pa. 333, 361, 30 A.3d 1111, 1127 (Pa. 2011); Commonwealth v. Pierce, 527 A.2d 973, 975-76 (Pa. 1987)). *See also*, Strickland v. Washington, 466 U.S. 668, 687-91, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); Commonwealth v. Sampson, 900 A.2d 887, 890 (Pa. Super. 2006), *appeal denied*, 907 A.2d 1102 (Pa. 2006) (*citing* Commonwealth v. Lynch, 820 A.2d 728, 733 (Pa. Super. 2003)). A claim of ineffectiveness will be denied if the petitioner's evidence fails to satisfy any one of these prongs. Commonwealth v. Busanet, 618 Pa. 1 54 A.3d 35, 45 (Pa. 2012).

In the context of a guilty plea, a claim of ineffectiveness must show that plea counsel's ineffectiveness induced the plea and there is a causal nexus between counsel's ineffectiveness and an unknowing or involuntary plea. Commonwealth v. Flood, 426 Pa. Super. 555, 627 A.2d 1193, 1199 (Pa. Super. 1993) (citations omitted); *see also*, Commonwealth v. Johnson, 2005 PA Super 159, 875 A.2d 328, 331 (Pa. Super. 2005). The focus is the guilty plea hearing and whether the accused was misled or misinformed or acted under misguided influence. Flood, *supra*, *citing*, Commonwealth v. Broadwater, 330 Pa. Super. 234, 243, 479 A.2d 526, 531 (1984). A defendant who pleads guilty has a duty to answer questions truthfully. Commonwealth v. Pollard, 2003 PA Super 334, 832 A.2d 517, 523-24 (Pa. Super. 2003) (citations omitted).

The Court finds that there is no merit to the underlying claims of ineffectiveness related to his Mr. Harner's guilty plea and that the record demonstrates the voluntariness of the plea. The Court imposed the exact sentence that Mr. Harner accepted in his plea agreement. Significantly, that plea agreement allowed Mr. Harner to plead guilty to 3 counts, with the remaining 7 counts being dismissed. The counts dismissed included count 1, burglary – overnight accommodations – person present, a felony of the first degree, and count 10, person not to possess, use,

manufacture, control sell or transfer firearms, a felony of the second degree. Given Harner's RFEL status, count 1 and count 10 would have carried an additional minimum sentence of 60 to 72 months of state incarceration each, had they not been dismissed. See, 204 Pa. Code § 303.15 – 303.16.

The record demonstrates that Mr. Harner was in fact guilty of the offenses for which he plead guilty. At the guilty plea hearing, Mr. Harner testified that he trespassed in the resident of a friend without permission. Notes of Testimony, guilty plea hearing held December 19, 2014, (N.T.) 5:7-10, 6:3-5. Harner further testified that on June 9, 2014, he agreed with another individual to steal items and break into a home located at 1420 Sherman Street. N.T. 5:17-20. Harner also testified that he broke into property at 1401 Catherine Street. N.T. 5:24-25. Mr. Harner testified that he did not have permission to enter those premises. N.T. 6:3-5. Mr. Harner testified that he possessed a Phoenix Arms. 22 caliber pistol when he was not licensed to carry in the course of one of the break-ins Harner. N.T. 6:12-20.

The record demonstrates the voluntariness of the plea. At the guilty plea hearing, Mr. Harner testified that he was not coerced and chose to plead guilty because he did not want a trial. N.T. 8. Harner's attorney represented on the record that he believed the plea to be knowing, intelligent and voluntary. Harner's attorney represented to the Court that he spent a long time discussing the plea with Mr. Harner. N.T. 8: 12-13. Harner also confirmed that he had a chance to talk with his attorney about any questions he might have, and that his guilty plea was his own free decision to make. N.T. 7.

Mr. Harner executed a written guilty plea colloquy form (GPQ 04-2013) on December 19, 2014. Mr. Harner testified that he completed the guilty plea colloquy questions with truthful answers. N.T. 7: 13-16. In that written guilty plea colloquy, Mr. Harner indicated that it was

his decision to plead guilty and that he wished to plead guilty “[b]ecause I don’t want a trial.” GPQ ¶ 21, 22. Mr. Harner indicated that thoroughly discussed all of the facts and circumstances with his attorney, and that he was satisfied with the representation and advice of his attorney. GPQ ¶ 24 & 25. Mr. Harner further indicated that his plea was given freely without force threats, promises, pressure or intimidation. GPQ ¶ 34 & 35. Mr. Harner’s attorney certified that he thoroughly explained the written guilty plea colloquy.

Accordingly, the Court believes there are no issues of merit warranting a hearing.

II. Conclusion

Based upon the foregoing, the Court finds no basis upon which to grant the Harner’s PCRA Petition. As the Court finds that no purpose would be served by conducting any further evidentiary hearing regarding this matter, a hearing will not be scheduled. Pa.R.Crim.P. 909(B)(2); *See Commonwealth v. Walker*, 36 A.3d 1, 17 (Pa. 2011) (holding that a PCRA petitioner is not entitled to an evidentiary hearing as a matter of right, but only when the PCRA petition presents genuine issues of material facts). *See also Commonwealth v. McLaurin*, 45 A.3d 1131, 1135-36 (Pa. Super. 2012).

Pursuant to Pennsylvania Rules of Criminal Procedure 907(1), the parties are hereby notified of the Court’s intention to deny the 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 16th day of **May 2016**, Attorney Martino's Motion to Withdraw is GRANTED because there is no basis to grant Defendant's PCRA Petition. Defendant is notified that it is the Court's intention to dismiss his PCRA Petition unless he files an objection to that dismissal *within twenty days (20) of today's date*. This Opinion and Order will be served on Defendant as set forth in Pa.R.Crim.P. 907(1). **The Prothonotary is ORDERED AND DIRECTED to serve defendant by certified and regular mail.**

BY THE COURT,

May 16, 2016
Date

Richard A. Gray, Judge

cc: DA (KO)
Donald F. Martino, Esq.
Justin Harner, (by certified and regular mail)
Inmate # LV9184- SCI – Benner, 301 Institution Dr., Bellefonte, PA 16823
Prothonotary(Please serve Harner by certified and regular mail, please include inmate #)