

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CP-41-CR-125-2014
	: CP-41-CR-892-2014
	:
vs.	: CRIMINAL DIVISION
	:
PAULA TAYLOR,	: Notice of Intent to Dismiss PCRA without
Defendant	: Holding an Evidentiary Hearing and
	: Order Granting Counsel's
	: Motion to Withdraw

OPINION AND ORDER

This matter came before the court on the Post Conviction Relief Act (PCRA) petition filed by Paula Taylor (“Taylor”). The relevant facts follow.

On October 17, 2014, Taylor entered an open guilty plea to retail theft, a felony of the third degree, under Information 125-2014, as well as retail theft and receiving stolen property, both felonies of the third degree, under Information 892-2014.

On November 17, 2014, the court sentenced Taylor to an aggregate term of forty (40) months to ten (10) years of incarceration in a state correctional institution, consisting of sixteen (16) months to five (5) years for retail theft under Information 125-2014 and a consecutive term of twenty-four (24) months to five (5) years for retail theft under Information 892-2014. Taylor filed a motion for reconsideration of sentence, which the court summarily denied.

Taylor filed an appeal in which she asserted that the court abused its discretion when imposing sentence. On August 12, 2015, the Pennsylvania Superior Court affirmed Taylor’s judgment of sentence. Taylor filed a petition for allowance of appeal, which the Pennsylvania Supreme Court denied on February 17, 2016. The record was

remitted to the Lycoming County Clerk of Courts on March 10, 2016.

On May 1, 2016, Taylor filed a pro se PCRA petition. In the petition, Taylor asserts that: (1) she was offered a plea and she agreed on it but she was not given the amount of time upon which she agreed; (2) there were crimes listed on her police records that were not hers; (3) counsel was ineffective; (4) the court was not in compliance with the plea agreement; (5) the sentence was over the guidelines; and (6) the court did not take into consideration her physical and mental health disabilities. She claims that she was not given a fair trial and her constitutional rights were violated. She requests the plea agreement that was offered to her and her sentences be served concurrent to each other.

As this was Taylor's first PCRA petition and she appeared to be indigent, the court appointed counsel to represent her and gave counsel an opportunity to file 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)(en banc).

On August 4, 2016, counsel filed a 'no merit' letter and a motion to withdraw as counsel. The letter did not address Taylor's claim regarding her prior record. At a conference held on August 25, 2016, counsel indicated that he believed Taylor's prior record score was correct. Therefore, the court directed counsel to file a supplemental no merit letter within 30 days. Counsel filed the supplemental letter on or about September 20, 2016.

After an independent review of the record, the court agrees that Taylor's petition lacks merit.

In her first and fourth issues, Taylor asserts that she was offered a plea and she agreed on it, but she was not sentenced to that amount of time and the court was not in

compliance with the plea agreement.

The prosecutor has the ability and discretion to withdraw a plea offer at any time before it is accepted by the court. See *Commonwealth v. Spence*, 627 A.2d 1176, 1184 (Pa. 1993)(prior to a plea being entered on the record and accepted by the court, the defendant has no right to the specific performance of an “executory” agreement); *Commonwealth v. McElroy*, 665 A.2d 813, 815 (Pa. Super. 1995)(the offer of a negotiated plea agreement which has not yet been accepted by the trial court is not enforceable against the Commonwealth). The only plea agreement presented to and accepted by the court was an open plea, i.e., a plea for which there was no agreement regarding the length of the sentence. Therefore, these issues lack merit.

In her second and third issues, Taylor asserts that there were crimes listed on her record that were not hers, and counsel was ineffective.

Counsel is presumed to have rendered effective assistance and the burden is on the PCRA petitioner to prove otherwise. *Commonwealth v. Treiber*, 121 A.3d 435, 445 (Pa. 2015); *Commonwealth v. Philistine*, 53 A.3d 1, 10 (Pa. 2012). To prevail on an ineffective assistance of counsel claim, the petitioner must plead and prove: (1) his or her underlying claim is of arguable merit; (2) counsel had no reasonable basis for his action or inaction; and (3) the petitioner suffered actual prejudice as a result, *Commonwealth v. Spatz*, 84 A.3d 294, 311 (Pa. 2014).

Taylor’s prior record score would have been well in excess of five points if it were not for a statutory cap. In fact, the Commonwealth noted at sentencing that, if fully calculated, Taylor’s score would have been a fourteen. (See N.T. Sentencing, 11/12/14, at 7).

Taylor disagrees with some of the information contained in her Pre-Sentence Investigative (PSI) report. Specifically, she challenges her 2005 DUI conviction from Westmoreland County, the notation that she was sentenced to 11 ½ to 23 months incarceration for a felony retail theft offense that occurred on January 10, 2008 in Allegheny County, and the notation that she was incarcerated for 6 months for a felony retail theft that occurred on November 13, 2008 in Allegheny County. Even if the convictions that Taylor contests were removed from the calculation, her prior record score would still remain capped at five points. Since Taylor was not prejudiced by counsel's error, she is not entitled to relief.

In her fifth and sixth issues, Taylor asserts that her sentences were “over the guidelines” and the court did not take into account her physical and mental disabilities.

To be eligible for relief, the petitioner must plead and prove that the allegation of error has not been previously litigated or waived. 42 Pa.C.S.A. §9543(a)(3). An issue has been previously litigated if the highest appellate court in which the petitioner could have had review as a matter of right has ruled on the merits of the issue. 42 Pa.C.S.A. 9544(a).

These issues have been previously litigated. Taylor challenged in her direct appeal the discretionary aspect of her sentencing, including her claims regarding the sentencing guidelines and her mental and physical disabilities. In its decision filed on August 12, 2015, the Pennsylvania Superior Court rejected these claims on the merits.¹ Therefore, these claims have been previously litigated and Taylor is not entitled to relief as a matter of law.

In a letter sent to the court on November 20, 2016, Taylor also asks the court

¹ See 2019 MDA 2014 and 2020 MDA 2014

to grant her a recidivism risk reduction incentive (RRRI). As the court noted in its sentencing order, Taylor is not eligible for RRRI due to a prior robbery conviction. 61 Pa.C.S.A. §4503 (an eligible offender is an individual who has not been found guilty of a personal injury crime); 18 P.S. §11.103 (defining “personal injury crime” to include an act which would constitute a misdemeanor or a felony under 18 Pa.C.S. Ch. 37 relating to robbery).

ORDER

AND NOW, this ___ day of December 2016, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the court finds that no purpose would be served by conducting a hearing in this matter. Therefore, none will be scheduled and the parties are hereby notified of this court's intention to dismiss Taylor’s PCRA petition. Taylor 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 the motion of PCRA counsel to withdraw. Taylor may represent herself or hire private counsel but the court will not appoint counsel to represent her unless Taylor’s response shows that there is an issue which would entitle her to relief.

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
Jerry Lynch, Esquire
Paula Taylor, #OW 1276