

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

COMMONWEALTH OF PENNSYLVANIA	:	CR 1956-2015
	:	
v.	:	
	:	
BYSIL SYMADEEM YOUNG	:	
Defendant	:	PCRA

OPINION AND ORDER

On July 18, 2016, Counsel for the Defendant filed a Motion to Withdraw as Counsel pursuant to Commonwealth v. Turner, 544 A.2d 927 (Pa. 1988) and Commonwealth v. Finley, 550 A.2d 213 (Pa. Super.1988). After an independent review of the entire record, the Court agrees with PCRA Counsel and finds that the Defendant has failed to raise any meritorious issues in his PCRA Petition, and his petition should be dismissed.

Background

On November 23, 2015 Defendant entered a plea of guilty to one (1) count of Possession with Intent to Deliver a Controlled Substance (heroin), an ungraded felony. Defendant was sentenced that date to a period of state incarceration of twenty-four (24) to forty-eight (48) months. Defendant did not take a direct appeal from his order of sentence.

On March 7, 2016, Defendant filed a “Motion for Post Conviction Collateral Relief, claiming that his plea was not voluntary because he was coerced by the public defender into pleading guilty and that counsel was ineffective in failing to seek to suppress the evidence. On April 4, 2016, this Court issued an Order appointing counsel in accordance with Pa.R.Crim.P.

904(C),¹ and scheduling a conference for July 18, 2016. Appointed counsel filed a Motion to Withdraw as Counsel and a Turner-Finley letter on July 18, 2016, prior to the conference. Following the conference, and after thorough review, this court finds that there are no genuine issues of material fact and that Defendant is not entitled to post-conviction collateral relief, and no purpose would be served by any further proceedings.

Discussion

Under the Post Conviction Relief Act (PCRA), Defendant has one year after his judgment of sentence becomes final to request Post Conviction Relief unless circumstances exist that prevented Defendant from filing within one year and he files within 60 days of when his claim could have been presented. Defendant was sentenced on November 23, 2015. He did not file post sentence motions or take a direct appeal to the Superior Court and as such his Judgment of Sentence became final on December 23, 2015. Defendant had until December 23, 2016, to file a request for Post Conviction Relief and thus his Petition is timely.

Voluntariness of Plea

Defendant asserts that he was coerced by the public defender into entering the plea, and was promised boot camp and therefore entered the plea expecting to receive boot camp. A review of the guilty plea hearing shows otherwise. Defendant brought up the issue during the oral colloquy:

The Court: Does anybody have any questions about this form for me? Mr. Young.

Defendant: On question number six they asked me was I – was I promised anything about this.

The Court: Right.

¹ “[W]hen an unrepresented defendant satisfies the judge that the defendant is unable to afford or otherwise procure counsel, the judge shall appoint counsel to represent the defendant on the defendant’s first petition for post-conviction collateral relief.” Pa.R.Crim.P. 904.

Defendant: For this plea agreement and I was, [the public defender] told me the DA said they were going to give me boot camp now they're telling me they are not giving me bootcamp.

Probation Officer: I can clarify that. He's on state parole so that might have something to do with it as well.

The Court: It says not eligible for boot camp. It doesn't say you're waiving it, it means because of your circumstances.

Defendant: What about RRRI, you know what I'm saying, like God damn.

The Court: Part of this plea agreement means that you're giving up the right to be considered for RRRI. If you don't want to accept the plea agreement it's a package deal, that's the issue. What's the alternative if you want to plead and you plead open to me you have no guarantee of what you're going to get from me.

Defendant: Yeah.

The Court: Okay. So that's the question for me. ...

N.T., November 23, 2015, at 15-16. The court then emphasized to Defendant that he would not be eligible for boot camp later in the proceeding:

The Court: So you're here on a plea offer for 2 to 4 years. Do you want me to take that?

Defendant: I got no choice.

The Court: Well, you understand you're not getting RRRI because your – it's part of the agreement you're giving it up; but that you're not eligible for boot camp because you're on parole.

Defendant: All right.

Id. at 32-33. Defendant thus knew that he was *not* eligible for boot camp and he knew why. He could not have entered the plea based on a promise that he would receive boot camp. And the remainder of the colloquy shows that there was no coercion:

The Court: You guys understand that you have the right to a jury trial on this charge and by pleading guilty you're giving up that right?

Defendant: Yes.

The Court: Is anybody forcing you or threatening you in any way to get you to do that?

Defendant: No.

The Court: You are entering this plea of your own free will?

Defendant: Yes.

The Court: Including you, Mr. Young?

Defendant: Yes.

The Court: So nobody is forcing you or threatening you in any way to get you to plead guilty here today?

The Court: You may not like the plea agreement, but they're not forcing you, it's your choice, correct, Mr. Young?

Defendant: Yes.

Id. at 17-18. "[W]here 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. Rush, 909 A.2d 805 (Pa. Super. 2006), quoting Commonwealth v. McCauley, 797 A.2d 920, 922 (Pa. Super. 2001). This issue is thus without merit.

Failure to seek suppression of the evidence

Defendant argues that his prior counsel was ineffective because he did not investigate the circumstances surrounding the stop of his vehicle or seek to suppress the evidence from that stop. This issue has been waived. Once a defendant pleads guilty, all non-jurisdictional defects and defenses are waived. Commonwealth v. Coles, 530 A.2d 453 (Pa. Super. 1987). Defendant was so informed at the time of his plea by way of the written colloquy, which asked whether he

understood that “you are waiving, or giving up, your right to file any pre-trial motions and waiving any such motions already filed”. Written Guilty Plea Colloquy, dated November 23, 2015. When questioned by the court, Defendant indicated that he understood the form and, other than the question about boot camp and RRRI, had no questions about it. This issue is also therefore without merit.

Conclusion

Based upon the foregoing, the Court finds no basis upon which to grant the Defendant’s PCRA petition. Additionally, the Court finds that no purpose would be served by conducting any further hearing. As such, no further hearing will be scheduled. Pursuant to Pa.R.Crim.P. 907(1), the parties are hereby notified of this Court’s intention to deny the Defendant’s PCRA 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 _____ day of August 2016, it is hereby ORDERED and DIRECTED as follows:

1. Defendant is hereby notified pursuant to Pennsylvania Rule of Criminal Procedure No. 907(1), that it is the intention of the Court to dismiss his PCRA petition unless he files an objection to that dismissal within twenty (20) days of today's date.
2. The application for leave to withdraw appearance filed July 18, 2016, is hereby GRANTED and Donald Martino, Esq. may withdraw his appearance in the above captioned matter.

BY THE COURT,

Nancy L. Butts, President Judge

cc: DA (TC)
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