

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-78-2015; CR-113-2015;
: CR-824-2015; CR-825-2015;
vs. : CR-826-2015
:
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:
RICHARD BENNETT, : Notice of Intent to Dismiss PCRA Petition
Defendant : Without Holding an Evidentiary Hearing

OPINION AND ORDER

This matter came before the court on the Post Conviction Relief Act (PCRA) petition filed by Defendant, Richard Bennett (hereinafter “Bennett”). The relevant facts follow.

On December 23, 2014, Bennett went into a Kwik Fill gas station pointed what appeared to be a silver handgun at the employees and demanded cash. On December 29, 2014, Bennett went into a Subway restaurant, ordered a sandwich, and when it came time to pay, he produced what appeared to be a silver handgun and demanded cash. As a result, Bennett was charged with two counts each of burglary, robbery, theft, receiving stolen property, and simple assault under Information 78-2015.

Under Information 113-2015, Bennett was charged with robbery, theft, receiving stolen property and conspiracy to commit each of those offenses. On December 31, 2014, Bennett entered Smoker’s Express. He approached the cash register to buy cigars and, when the clerk opened the register to make change for him, he lunged over the counter and grabbed money from the cash register.

Under Information 20-2015, Bennett was initially charged in Union County with two counts of robbery, burglary, two counts of terroristic threats, theft, receiving stolen

property, and two counts of simple assault. These charges arose out of an incident on December 28, 2014, in which Bennett entered the Mifflinburg Sunoco, brandished what appeared to be a handgun at a customer and an employee, said “give me all your money,” and took money from the cash register. On May 7, 2015, those charges were transferred to Lycoming County and were filed under case number 824-2015.

Under Information 56-2015, Bennett was charged in Union County with robbery, conspiracy to commit robbery, terroristic threats, theft, receiving stolen property, conspiracy to commit theft, and simple assault. These charges arose out of an incident on December 25, 2014, in which Bennett entered a Sunoco gas station, wielding a large knife. Bennett pointed the knife at an employee and demanded money out of the cash register. These charges were transferred to Lycoming County case number 826-2015.

Under Information 82-2015, Bennett was charged in Union County with forgery, receiving stolen property, and driving under suspension. He took one of his father’s checks, wrote it out to himself in the amount of \$200, drove to the bank, and cashed the check. These charges were transferred to Lycoming County case 826-2015.

On October 6, 2015, Bennett enter a guilty plea to Count 3, robbery, a felony of the first degree in case 78-2015; Amended Count 1, robbery, a felony of the first degree, in case 113-2015; Count 1, robbery, a felony of the first degree, in case 824-2015; Count 1, robbery, a felony of the first degree, in case 825-2015; and Count 2, receiving stolen property, in case 826-2015. In exchange for his plea, Bennett would receive an aggregate sentence of eight (8) to twenty (20) years’ incarceration in a state correctional institution, consisting of a minimum sentence of 48 months for robbery under case 78-2015, a

consecutive minimum sentence of 48 months for robbery under case 113-2015, a concurrent minimum sentence of 36 months for robbery under case 824-2015, a concurrent minimum sentence of 36 months for robbery under case 825-2015, and a concurrent minimum sentence of 3 months for receiving stolen property under case 826-2015.

The court accepted Bennett's guilty plea. Bennett waived preparation of a Pre-Sentence Investigation (PSI) report and requested immediate sentencing. The court sentenced Bennett in accordance with the negotiated plea agreement.

On August 29, 2016, Bennett filed a pro se Post Conviction Relief Act (PCRA) petition. In his petition, Bennett alleged:

I was not granted counsel until 8 months of incarceration which went against the Rule 600, also I was talked into a plea deal to accept said sentence or lose at trial, my public defender talked with me a total of 20 minutes and said if I didn't take the deal I would certainly be found guilty in court, all charges should have been globalled (sic) into one plea, not 5 individual cases.

On September 7, 2016, the court appointed counsel to represent Bennett and gave counsel an 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. 1988). Counsel received extensions to obtain the transcript of the guilty plea and sentencing hearing and to comply with the court's directive to file an amended PCRA petition or no merit letter. Ultimately, counsel filed a no merit letter, which concluded that Bennett's claims were belied by the record and lacked merit.

After an independent review of the record, the court concludes that Bennett's petition lacks merit and he is not entitled to relief as a matter of law.

Bennett first asserts that he was not granted counsel until 8 months of

incarceration which went against Rule 600. Contrary to Bennett's assertions, he was represented by counsel throughout his cases.

In case 78-2015, assistant public defender Jeffrey Frankenburger represented Bennett at his preliminary hearing and waived his formal court arraignment. In case 113-2015, assistant public defender Joshua Bower represented Bennett at his preliminary hearing and waived his formal court arraignment. Mr. Bower formally entered his appearance in the Court of Common Pleas on both these cases on March 11, 2015.

In Union County cases 20-2015, 56-2015, and 82-2015, Bennett was represented by Brian Ulmer from the Union County Public Defender's office from his preliminary hearing until the cases were transferred to Lycoming County and became cases 824-2015, 825-2015, and 826-2015. On July 15, 2015, Joshua Bower entered his appearance.

Bennett also waived any Rule 600 claim when he entered his guilty plea. See *Commonwealth v. Gibson*, 561 A.2d 1240, 1242 (Pa. Super. 1989)(a guilty plea waives all nonjurisdictional defects and defenses; therefore, a Rule 1100 [renumbered Rule 600] violation may not be challenged where it does not affect the voluntariness of the plea). Furthermore, Bennett was advised in his written guilty plea colloquy that by pleading guilty he was waiving, or giving up, his right to file any pre-trial motions, waiving any such motions already filed, and giving up his right to appeal any adverse decisions on any motions already heard by the court. Written Guilty Plea Colloquy, Question 15. Bennett was also advised that once he pled guilty and was sentenced, he could only challenge his conviction based on four grounds: (a) that his guilty plea was not a knowing, understanding, and

voluntary act; (b) that the court did not have jurisdiction to accept his plea; (c) that the sentence was improper or in excess of a plea agreement or illegal; and (d) that his attorney was not competent. Written Guilty Plea Colloquy, Question 20.

Bennett next asserts that he was talked into the plea deal in that his counsel only talked to him for 20 minutes and told him if he didn't take the deal he would be found guilty at trial. This claim also does not entitle Bennett to an evidentiary hearing or relief.

“[I]t is well-settled that the amount of time an attorney spends consulting with his client before trial is not, by itself, a legitimate basis for inferring the total extent of counsel's pre-trial preparation, much less the adequacy of counsel's preparation.”

Commonwealth v. Harvey, 741 A.2d 708, 715 (Pa. 2002); see also *Commonwealth v. Watley*, 153 A.3d 1034, 1046 (Pa. Super. 2016)(“counsel is not deemed ineffective *per se* merely because of the short amount of time he had met with his client.”). Rather, to establish ineffective assistance of counsel, a petitioner must establish that counsel inexcusably failed to raise issues which, had they been raised, would have afforded the petitioner relief. *Watley, id.* (citing *Commonwealth v. Porter*, 728 A.2d 890, 896 (Pa. 1999)). Therefore, the mere fact that counsel allegedly only talked to Bennett for 20 minutes does not entitle Bennett to relief.

Plea counsel had an obligation not merely to present the plea offer to Bennett, but also to advise him of the pros and cons of the offer including Bennett's likelihood of success at trial should he reject the plea offer. In this case, Bennett likely would have been found guilty if he had gone to trial. The affidavits of probable cause indicate that Bennett's robberies were captured on video surveillance and Bennett confessed to the police his

involvement in the crimes.

Both the written guilty plea colloquy and the transcript of Bennett's guilty plea and sentencing hearing establish that Bennett's plea was entered knowingly, voluntarily and intelligently. Moreover, the court specifically asked Bennett if he had enough time to discuss his decision to plead guilty with his attorney, and Bennett responded, "Yes, I have." (Guilty Plea Transcript, at 6.) The court then asked if his attorney had done anything wrong or failed to do anything which caused him to plead guilty, and Bennett replied, "No, sir." (Id. at 7) Bennett also indicated that he was not forced or pressured into pleading guilty and he was satisfied with the representation of his attorney. (Id. at 6-7)

"A criminal defendant who pleads guilty has a duty to answer questions truthfully." *Commonwealth v. Cortino*, 563 A.2d 1259, 1262 (Pa. Super. 1989). He is bound by the statements he makes in open court while under oath and he may not challenge his plea by asserting that he lied under oath, even if he alleges that counsel induced the lies. *Commonwealth v. Pollard*, 832 A.2d 517, 523 (Pa. Super. 2003). Therefore, Bennett's second claim also lacks merit.

Bennett's final claim is that all of his charges should have been "globalled" into one plea, not five individual cases. This claim makes no sense. Bennett's robbery cases from Union County were transferred to Lycoming County and he did, in fact, receive a single, global plea offer for an aggregate sentence of 8 to 20 years' incarceration. Bennett accepted that plea offer, and the court sentenced him in accordance with his negotiated plea agreement.

If, by chance, Bennett is asserting that all of his sentences should have been

concurrent to each other such that his sentence would have been 4 to 10 years' incarceration, this was not the plea agreement he accepted from the Commonwealth, and Bennett was not entitled to such a volume discount for his crimes.

ORDER

AND NOW, this ___ day of July 2017, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, it is clear to the court that Bennett's claims lack merit.

As no purpose would be served by conducting an evidentiary hearing, none will be scheduled and the parties are hereby notified of this court's intention to dismiss Bennett's PCRA petition without holding an evidentiary hearing. Bennett 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. Bennett may represent himself or hire private counsel to represent him, but the court will not appoint counsel new counsel to represent him.

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
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