

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-1026-2015
v.	:	
	:	
STACEY T. COOLEY,	:	PCRA- DISMISSAL
Defendant	:	

OPINION AND ORDER

On August 6, 2017, Defendant filed a Response to and Objection to the Dismissal of Defendant’s PCRA Petition. Initially, this Court notes that this Response was filed outside of the twenty (20) day deadline imposed by this Court’s July 13, 2017 Order. On receipt and review of Defendant’s Response to and Objection to the Dismissal of Defendant’s PCRA Petition, which does not set forth any grounds to delay the disposal of this matter, it is hereby ORDERED and DIRECTED that Defendant’s PCRA petition is DISMISSED.

Discussion

1) Timeliness of Defendant’s Objection to the Court’s Intent to Dismiss the PCRA Petition.

Defendant responded to this Courts order of July 13, 2017, objecting to this Court’s proposed dismissal. Currently housed at SCI-Huntingdon, Defendant’s response is dated August 1, 2017. The Court received the Defendant’s response on August 6, 2017. Although the response was received outside the 20 days as set forth

in this Court's order of July 13, 207, pursuant to the Prisoner Mailbox Rule¹, the Court will accept the Defendants response as timely.

2) Defense Counsel failed to object to the lab tests admitted at trial

Defendant alleges that trial counsel was ineffective for failing to raise any objections to the lab results admitted at trial without giving him the chance to cross-examine the technician in violation of Melendez-Diaz v. Massachusetts, 129 S. Ct. 2527, 174 L. Ed. 2d 314 (2009). As a result, Defendant believes that the court should allow PCRA counsel to remain in the case to assist him in raising this issue on appeal.

In Massachusetts, it is required by law that lab analysts prepare certificates and swear to their accuracy before a notary public after performing their testing. These certificates are submitted as *prima facie* evidence of the evidence found. Melendez-Diaz objected to their use at trial, asserting that Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177, required the analysts to testify in person. The U.S. Supreme Court agreed with Melendez-Diaz and held that it was a Sixth Amendment violation to merely rely on the certificates and not allow defendant the ability to confront and cross examine the analysts who performed the tests.

To be eligible for relief under the PCRA, the petitioner must plead and prove that his conviction or sentence resulted from ineffective assistance of counsel which so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place. 42 Pa. C. S. §9543(a)(2). A petitioner claiming

¹ According to the "prisoner mailbox rule," a document will be deemed filed on the date that the appellant deposits the appeal with prison authorities and/or places it in the prison mailbox. **See** Commonwealth v. Jones, 700 A.2d 423, 426 (Pa. 1997).

ineffective assistance of counsel must establish that: (1) the underlying claim has arguable merit; (2) no reasonable basis existed for counsel's actions or failure to act; and (3) the petitioner suffered prejudice as a result of counsel's error, with prejudice measured by whether there is a reasonable probability that the result of the proceedings would have been different. Commonwealth v. Cousar, 154 A.3d 287, 296 (Pa. 2017). Counsel is presumed effective and the burden is on the defendant to prove otherwise. Commonwealth v. Steele, 961 A.2d 786, 796 (Pa. 2008).

Defendant's defense at trial was that he was not a drug dealer, rather a drug user. When the police and Parole Board found the drugs in his room, Defendant acknowledged they were his and that they were in fact heroin. Defense counsel stipulated to the nature and quantity of the drugs at trial because of the statements made by Defendant; it was not an issue in question. Therefore, trial counsel had a reasonable basis for stipulating to the testimony of the lab analyst and Defendant suffered no prejudice as a result of that action.

3) PCRA counsel acted inappropriately in contacting Defendant's Parole Agent investigating the search of Defendant's residence

Defendant objects to PCRA counsel "contacting his parole agent and getting information from him that was false and not fully investigating what precipitated the search of the petitioner's residence". This issue raised by Defendant concerning trial counsel's failure to file a suppression motion was fully discussed in this Court's Opinion and Order dated July 13, 2017.

"[T]he failure to file a suppression motion under some circumstances may be evidence of ineffective assistance of counsel. However, if the grounds underpinning that motion are without merit, counsel will not be deemed ineffective for failing to so

move.” Commonwealth v. Metzger, 441 A.2d 1225, 1228 (Pa. Super. 1981). Regarding the ‘reasonable basis’ and ‘prejudice’ prongs, the Superior Court has held that “the defendant must establish that there was no reasonable basis for not pursuing the suppression claim and that if the evidence had been suppressed, there is a reasonable probability the verdict would have been more favorable.” Commonwealth v. Arch, 654 A.2d 1141, 1143 (Pa. Super. 1995) (citing Commonwealth v. Melson, 556 A.2d 836, 839 (Pa. Super. 1989)). In order to determine whether there was a reasonable basis, PCRA counsel had to investigate the facts which would have been presented should a suppression motion have been held.

PCRA counsel revealed that the particular circumstances surrounding the search of the Defendant’s home, including the known backgrounds of both the sender and recipient of the money orders, would have been sufficient to result in the denial of a motion to suppress had one been filed on the Defendant’s behalf. The fact that the Defendant’s name was on money orders in a house occupied by another parolee who was a drug user and drug dealer raised suspicion. Defendant was unemployed, had prior drug use and was on supervision for drug dealing; all establishing the reasonable suspicion of his parole agent to justify a search of Defendant’s home. The Defendant may not now allege that it was improper for PCRA counsel to investigate the reasons why both trial counsel chose not to file a motion to suppress or what facts may have existed to determine that a motion to suppress would not have been successful without identifying specific facts and circumstances to justify his claim. To deny PCRA counsel that opportunity would deprive Defendant of the opportunity to litigate what on its face appeared to be a meritorious claim.

ORDER

AND NOW, this 29th day of August, 2017, it is hereby ORDERED and DIRECTED the Defendant's PCRA Petition shall be dismissed.

Defendant is hereby notified that he has the right to appeal from this order to the Pennsylvania Superior Court. The appeal is initiated by the filing of a Notice of Appeal with the Clerk of Courts at the county courthouse, with notice to the trial judge, the court reporter and the prosecutor. The Notice of Appeal shall be in the form and contents as set forth in Rule 904 of the Rules of Appellate Procedure. The Notice of Appeal shall be filed within thirty (30) days after the entry of the order from which the appeal is taken. Pa.R.A.P. 903.

A copy of this order shall be mailed to the Defendant by certified mail, return receipt requested.

BY THE COURT,

Nancy L. Butts, P.J.

cc: DA (KO)
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