

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	CR-2117-2016
	:	CR-2138-2016
	:	
KIAM ALFORD,	:	
Petitioner	:	PCRA

OPINION AND ORDER

On December 3, 2018, Counsel for Kiam Alford (Petitioner) filed a Petition to Withdraw from Representation of Post-Conviction Collateral Relief 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 Petitioner has failed to raise any meritorious issues in his PCRA Petition, and that his petition should be dismissed.

Background

Under the two dockets, Petitioner was charged with three counts of Manufacturing, Delivering, or Possession with the Intent to Manufacture or Deliver a Controlled Substance,¹ ungraded felonies, one count of Criminal Use of a Communication Facility,² a felony of the third degree, one count of Possession of a Firearm with Altered Manufacturer's Number,³ a felony of the second degree, one count of Firearms Not to be Carried Without a License,⁴ a felony of the third degree, Possession of a Controlled Substance,⁵ an ungraded misdemeanor, one count of

¹ 35 P.S. § 780-113(A)(30).

² 18 Pa. C.S. § 7512(A).

³ 18 Pa. C.S. § 6110.2.

⁴ 18 Pa. C.S. § 6106.

⁵ 35 P.S. § 780-113(A)(16).

Possession of Drug Paraphernalia,⁶ an ungraded misdemeanor, and one count of Tampering with Physical Evidence,⁷ a misdemeanor of the second degree. On April 5, 2018, Petitioner entered a guilty plea to Possession of a Firearm Not to be Carried Without a License, Possession of Heroin, and one count of Possession with the Intent to Deliver. On that date he was sentenced pursuant to that plea to an aggregate of three and a half years minimum to seven years maximum, ineligible for RRRI, and he received credit time for his five hundred and four days served. No post-sentence motion or direct appeal was filed.

Petitioner filed a Petition for Post-Conviction Collateral Relief on June 27, 2018, requesting “release from custody and discharge and correction of sentence.” The Court treated the filing as a timely PCRA and appointed Trisha Hoover Jasper on July 18, 2018. On December 3, 2018, Petitioner’s counsel filed a Petition to Withdraw from Representation of Post-Conviction Collateral Relief following a *Turner/Finley* “No Merit Letter.” A PCRA conference was held on December 3, 2018. After consideration, this Court agrees with Attorney Hoover Jasper that Petitioner failed to raise any meritorious issues in his PCRA Petition.

Whether the guilty plea was voluntary, knowing, and intelligent

Petitioner wishes for a dismissal of or reduction in sentence due to his juvenile record being considered when evaluating his prior record score for sentencing. In a PCRA claim where a guilty plea was entered and honored by the sentencing Judge, the Court is directed to look at whether the plea was knowingly, intelligent, and voluntary entered into. *Commonwealth v. Moury*, 992 A.2d 162, 175 (Pa. Super. 2010) Although Petitioner does not allege that counsel did not properly advise him and therefore his guilty plea amounted to ineffective assistance of counsel, this is the analysis the Court and Attorney Hoover Jasper must undertake.

⁶ 35 P.S. § 780-113(A)(32).

⁷ 18 Pa. C.S. § 4910(1).

Manifest injustice is required to withdraw guilty pleas which are requested after a sentence has been imposed. *Commonwealth v. Flick*, 802 A.2d 620, 623 (Pa. Super. 2002). Such a manifest injustice occurs when a plea is not tendered knowingly, intelligently, voluntarily, and understandingly. *Commonwealth v. Persinger*, 615 A.2d 1305 (Pa. 1992). It does not matter if Petitioner is pleased with the outcome of his decision to plead guilty as long as he did so knowingly, voluntarily, and intelligently. *Commonwealth v. Yager*, 685 A.2d 1000, 1004 (Pa. Super. 1996). Petitioner must demonstrate “miscarriage of justice has taken place which no civilized society could tolerate, in order to be entitled to relief.” *Commonwealth v. Allen*, 732 A.2d 582, 588 (Pa. 1999).

The minimum inquiry required of a trial court must include the following six areas: (1) Does the Petitioner understand the nature of the charges to which he is pleading guilty? (2) Is there a factual basis for the plea? (3) Does the Petitioner understand that he has a right to trial by jury? (4) Does the Petitioner understand that he is presumed innocent until he is found guilty? (5) Is the Petitioner aware of the permissible ranges of sentences and/or fines for the offenses charged? (6) Is the Petitioner aware that the judge is not bound by the terms of any plea agreement tendered unless the judge accepts such agreement?

Commonwealth v. Young, 695 A.2d 414, 417 (Pa. Super. 1997).

In *Yeomans*, the Superior Court further summarized:

In order for a guilty plea to be constitutionally valid, the guilty plea colloquy must affirmatively show that the Petitioner understood what the plea connoted and its consequences. This determination is to be made by examining the totality of the circumstances surrounding the entry of the plea. Thus, even though there is an omission or defect in the guilty plea colloquy, a plea of guilty will not be deemed invalid if the circumstances surrounding the entry of the plea disclose that the Petitioner had a full understanding of the nature and consequences of his plea and that he knowingly and voluntarily decided to enter the plea.

Commonwealth v. Yoemans, 24 A.3d 1044 (Pa. Super. 2011) (citing *Commonwealth v. Fluharty*, 632 A.2d 312, 314 (Pa. Super. 1993)).

A review of the transcript of the guilty plea and sentencing hearing in this case confirms that Petitioner did in fact enter into his plea knowingly, voluntarily, and intelligently. This Court

informed Petitioner of the right to a jury trial, the elements of the charge, to which he was pleading, and the maximum sentence and fine accompanying that charge. N.T., 4/5/2018, p. 2-6. Petitioner, on the record, admitted his guilt that on July 29, 2016 he possessed .39 grams of heroin for the purpose of “resale, transfer, or delivery to other people.” *Id.* at 7-8. He also admitted that on November 17, 2016 he did possess a firearm, which he did not have a valid permit to carry and he had heroin in his possession. *Id.* at 8-9. Petitioner also went through a written guilty plea colloquy with his attorney highlighting many of these factors in greater detail, to which he stated that he understood. *Id.* at 9-11. According to Pennsylvania law, Petitioner’s guilty plea was entered knowingly, voluntarily, and intelligently and he will not be released from custody or his charges dismissed.

Petitioner alternatively asks for the relief of reconsideration of his sentence. But it is evident that Petitioner received the benefit of the bargain and this Court sentenced him in accordance with the guilty plea agreement. *Id.* at 20. Petitioner also received credit time for his five hundred and four days served prior to sentencing. Petitioner’s specific claim addresses the consideration of his juvenile convictions in evaluating his prior record score of four. The provision Petitioner alludes to states:

- (a) Juvenile adjudication criteria. Prior juvenile adjudications are counted in the Prior Record Score when the following criteria are met:
 - (1) The juvenile offense occurred on or after the offender's 14th birthday, and
 - (2) There was an express finding by the juvenile court that the adjudication was for a felony or one of the Misdemeanor 1 offenses listed in § 303.7(a)(4).

204 Pa. Code § 303.6.

Petitioner was born on January 11, 1997, therefore he would have turned fourteen on January 11, 2011. He was adjudicated delinquent on a charge of Robbery, a felony of the second degree, on December 31, 2011. On January 29, 2015, Petitioner was adjudicated delinquent for Possession

with Intent to Deliver, an ungraded felony. Both charges occurred subsequent to Petitioner turning fourteen and are felonies. Under 204 Pa. Code § 303.6, both juvenile adjudications are to be contributed to Petitioner's prior record score and each carry two points. *See* 204 Pa. Code § 303.7. Therefore, Petitioner's calculated prior record score of four was proper and he was properly sentenced within the guidelines. *See* N.T., 4/5/2018, p. 15.

Conclusion

Based upon the foregoing, the Court finds no basis upon which to grant Petitioner'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 Pennsylvania Rule of Criminal Procedure 907(1), the parties are hereby notified of this Court's intention to deny Petitioner's PCRA Petition. Petitioner 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 7th day of December, 2018, it is hereby ORDERED and DIRECTED as follows:

1. Petitioner 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 December 3, 2018, is hereby GRANTED and Trisha Hoover Jasper, Esq. may withdraw her appearance in the above captioned matter.
3. **Petitioner Kiam Alford will be notified at the address below through means of certified mail.**

By the Court,

Nancy L. Butts, President Judge

xc: DA
Trisha Hoover Jasper, Esq.
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NLB/kp