

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	CR-297-2017
	:	
SHALAMAR K. BROWN,	:	
Petitioner	:	PCRA

OPINION AND ORDER

On September 7, 2018, Counsel for the Petitioner 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 Petitioner has failed to raise any meritorious issues in his PCRA Petition, and his petition should be dismissed.

Background

Shalamar Brown (Petitioner) was charged with three (3) counts of Forgery,¹ felonies of the second degree; five (5) counts of Access Device Fraud,² misdemeanors of the first degree; and two (2) counts of Receiving Stolen Property,³ misdemeanors of the second degree. On March 6, 2017, Petitioner entered a guilty plea to one consolidated count of Forgery. On that date he was sentenced pursuant to that plea to nine (9) months minimum to twenty-four (24) months maximum and RRRRI was granted. No post-sentence motion or direct appeal was filed.

Petitioner sent the Court a letter dated April 3, 2018, requesting reconsideration of sentence. The Court treated the letter as a timely PCRA and appointed Attorney Martino on June 12, 2018. On September 7, 2018, Petitioner's counsel filed a Motion to Withdraw as Counsel

¹ 18 Pa. C.S. § 4101(A)(2).

² 18 Pa. C.S. § 4106(A)(1)(ii).

³ 18 Pa. C.S. § 3925(A).

following a *Turner/Finley* “No Merit Letter.” A PCRA conference was held on September 11, 2018. After consideration, this Court agrees with Attorney Martino 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 reduction in sentence due to mitigating circumstances. In a PCRA claim where a guilty plea was entered and honored by the sentencing Judge, the Court is directed to look to whether the plea was knowingly, intelligently, and voluntarily entered into. *See Commonwealth v. Moury*, 992 A.2d 162, 175 (Pa. Super. 2010) (Generally claims that sentencing Court did not adequately weigh mitigating factors does not raise a substantial question required for a PCRA). 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 Martino must undertake.

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 the 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 transcripts 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 element of the charge, to which he was pleading, and the maximum sentence and fine accompanying that charge. N.T., 3/6/2017, p. 4-5. Petitioner, on the record, admitted his guilt to using a credit card that he knew was not his and purported to be someone else at least three times. *Id.* at 8-9. In addition, the Petitioner filled out a written guilty plea colloquy highlighting many of these factors in greater detail, to which he stated that he understood. *Id.* at 9. According to Pennsylvania law, the Petitioner's guilty plea was entered knowingly, voluntarily, and intelligently.

Petitioner asks for reconsideration of 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 14. In addition, Commonwealth was generous in not making waiver of RRRI

part of the plea agreement, which the Court granted reducing the minimum to six (6) months and twenty-two (22) days. *Id.* at 5-6, 13. Petitioner also received credit for time between February 6, 2017 and March 5, 2017. *Id.* at 13-14. The record reflects that Petitioner's plea was intelligent, voluntary, and knowing and therefore his guilty plea will stand and not be reconsidered.

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 the Petitioner's PCRA Petition. The 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 24th day of September, 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 September 7, 2018, is hereby GRANTED and Donald Martino, Esq. may withdraw his appearance in the above captioned matter.
3. **Petitioner Shalamar Brown will be notified at the address below through means of certified mail.**

By the Court,

Nancy L. Butts, President Judge

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