

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,

CR – 1878 - 2014

v.

SEAN FORD,
Defendant - Petitioner

PCRA

OPINION AND ORDER

Before the Court is a petition for post-conviction relief filed by Petitioner Sean Ford on May 30, 2017, pursuant to the Post Conviction Relief Act (PCRA), 42 Pa. C.S. §§ 9541-9546, and a motion to withdraw as counsel filed by court-appointed counsel on October 11, 2017 pursuant to Commonwealth v. Turner, 544 A.2d 927 (Pa. 1988), and Commonwealth v. Finley, 550 A.2d 213 (Pa. Super. 1988). After conducting a conference and independent review of the record, for the reasons set forth below, the Court concludes that Mr. Ford is ineligible for PCRA relief and that court-appointed counsel complied with the mandates of Turner / Finley, supra. Sean Ford is hereby notified of the Court's intention to dismiss the PCRA Petition, unless he files an objection to dismissal within twenty days (20) of today's date.

PROCEDURAL BACKGROUND

A criminal complaint was filed on February 9, 2016 against Mr. Ford by Williamsport Police Officer Ryan Brague. By information filed on March 11, 2016, the Commonwealth charged Ford with count 1, false identification to law enforcement, a misdemeanor of the third degree, count 2, possession of small amount of marijuana for personal use, a misdemeanor, and count 3, possession of drug paraphernalia, an ungraded misdemeanor.

On May 27, 2016, Mr. Ford entered a plea of guilty to count 3, possession of drug paraphernalia, an ungraded misdemeanor. The Court sentenced Mr. Ford to a minimum of one

day to a maximum of six months incarceration at a state correctional institution. The Court specifically indicated that “[t]he Sentence is to run concurrent to his current sentence in the state system.” *Sentencing Order dated May 27, 2016*. Counts 1 and 2 were dismissed by motion of the Commonwealth.

According to the guilty plea colloquy signed by Mr. Ford on that date, the terms of the plea agreement were: “GP to Ct. 3 PDP for 1 day to six months.” GPQ 09-2015, front page, dated May 27, 2016. The OGS was 1 and PRS was 5. Mr. Ford completed the colloquy form, answering that he was aware of the nature of pleading guilty and the rights he was giving up. Mr. Ford answered affirmatively that he had discussed all of the facts and circumstances surrounding the charges with his attorney and was satisfied with the representation and advice of his attorney. Mr. Ford affirmed that it was his decision to plead guilty and that he wished to plead guilty because, he wrote: “I am guilty.” Mr. Ford did not file a direct appeal.

On October 24, 2016, under a commitment sentence of 1 day – 6 months parole, effective May 27, 2016, Mr. Ford was paroled on October 24, 2016 “to PBPP detainer” pursuant to a commitment/bail/release memorandum of order issued by the Undersigned. Consequently, Mr. Ford was not and is not serving a sentence of imprisonment, probation or parole for the crime for which he was sentenced on May 27, 2016 at the time he filed his PCRA or any time thereafter.

On May 30, 2017, Mr. Ford filed the instant petition. This is Mr. Ford’s first PCRA. The PCRA petition asserts that (1) the plea of guilty was unlawfully induced, (2) the Constitution was violated and (3) counsel provided ineffective assistance, all three of which he claims undermined the truth-determining process.

DISCUSSION

The PCRA provides specific requirements for eligibility for post-conviction relief.

To be eligible for relief ..., the petitioner must plead and prove by a preponderance of the evidence ...that the petitioner has been convicted of a crime under the laws of this Commonwealth and is at the time relief is granted:(i) currently serving a sentence of imprisonment, probation or parole for the crime[.] 42 Pa.C.S. § 9543(a)(1).

In the instant case, Mr. Ford is not currently serving a sentence of imprisonment, probation or parole for the crime for which he entered a plea of guilty and for which was sentenced on May 27, 2016. Therefore, Mr. Ford is ineligible for relief under the PCRA, 42 Pa.C.S. § 9543(a)(1).

Even if Mr. Ford was serving the sentence imposed on May 27, 2016, his claims that (1) the plea of guilty was unlawfully induced, (2) the Constitution was violated and (3) counsel provided ineffective assistance, are without merit. It is well settled that all non-jurisdictional defects and defenses are waived by a plea of guilty. Commonwealth v. Jones, 929 A.2d)). 205, 212 (Pa.2007) (*quoting*, Commonwealth v. Montgomery, 401 A.2d 318, 319 (Pa.1979). A failure to litigate the issue of guilt as to possession of drug paraphernalia, an ungraded misdemeanor, appears to be a rational, strategic or tactical decision by counsel where the count of false identification to law enforcement, a misdemeanor of the third degree, and the count of possession of small amount of marijuana for personal use, a misdemeanor were dismissed and where MR. Ford had a prior record score of 5. Further, the circumstances of the guilty plea in this case established a voluntary and knowing plea.

CONCLUSION & NOTICE OF INTENT TO DISMISS

Based upon the foregoing, the Court finds no basis upon which to grant Mr. Ford's PCRA Petition. As the Court finds that no purpose would be served by conducting any further evidentiary hearing regarding this matter, a hearing will not be scheduled. Pa.R.Crim.P. 909(B)(2); See, Commonwealth v. Walker, 36 A.3d 1, 17 (Pa. 2011) (holding that a PCRA

petitioner is not entitled to an evidentiary hearing as a matter of right, but only when the PCRA petition presents genuine issues of material facts). *See also* Commonwealth v. McLaurin, 45 A.3d 1131, 1135-36 (Pa. Super. 2012).

Pursuant to Pennsylvania Rules of Criminal Procedure 907(1), the parties are hereby notified of the Court's intention to deny the petition. Mr. Ford 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.**

Accordingly, the Court enters the following Order.

ORDER

AND NOW, this 26th day of February, 2018, for the foregoing reasons, it is ORDERED and DIRECTED that Sean Ford is hereby notified that it is the Court's intention to dismiss his PCRA Petition, unless he files an objection to that dismissal *within twenty days (20) of today's date*. It is further Ordered that PCRA Counsel's motion to withdraw is GRANTED. This Opinion and Order will be served on Petitioner as set forth in Pa.R.Crim.P. 907(1). **The Prothonotary is ORDERED AND DIRECTED to serve Petitioner by certified and regular mail.**

BY THE COURT,

February 26, 2018
Date

Richard A. Gray, J.

cc: DA (KO)
Sean Ford (Petitioner) Inmate # LF 0266
SCI Rockview, Box A, Bellefonte, PA 16823
Donald F. Martino, Esquire (PCRA Counsel)
Prothonotary – please see mailing instructions.