

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	CR-1367-2014
	:	
RANDELL PETERSON,	:	
Defendant	:	PCRA

OPINION AND ORDER

On June 25, 2018, Counsel for the Defendant filed a Motion to Withdraw as Counsel along with a Motion to Dismiss 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 Defendant has failed to raise any meritorious issues in his PCRA Petition, and his petition should be dismissed.

Background

Randell Peterson (Defendant) was charged with four (4) counts of Delivery and Possession with the Intent to Deliver a Controlled Substance,¹ an ungraded felony; three (3) counts of Possession of a Controlled Substance,² an ungraded misdemeanor; and one (1) count of Possession of Drug Paraphernalia,³ an ungraded misdemeanor. On July 18, 2016, Defendant entered an open guilty plea in this case and an additional matter. Both were scheduled for sentencing on September 27, 2016. On that date he was sentenced on the additional matter and indicated his wishes to withdraw his guilty plea in the present case. A Praecipe to Withdraw Plea was thereafter filed on October 28, 2016 by his trial counsel Robert Cronin, Esq. Conflict counsel Trisha Hoover Jasper was then appointed. Defendant wished to withdraw his Petition to

¹ 35 P.S. § 780-113(A)(30).

² 35 P.S. § 780-113(A)(16).

³ 35 P.S. § 780-113(A)(32).

Withdraw Plea and continued to sentencing on March 30, 2017. This Court sentenced the Defendant to forty-five (45) months minimum to ninety-six (96) months maximum in a State Correctional Institution to run consecutive to the sentence already received in his additional matter with RRRI eligibility in thirty-seven (37) months and fifteen (15) days. A post-sentence motion was filed on April 5, 2017, which was denied. The matter was appealed on August 17, 2017 and subsequently the sentence was affirmed.

The Defendant filed a timely *pro-se* PCRA Petition on March 14, 2018. Defendant's Petition claims both Trial and Conflict counsel, Mr. Cronin and Ms. Jasper respectively, were ineffective for failing to allow Defendant to withdraw his guilty plea. He claims the failure to withdraw his guilty plea was based upon "the Commonwealth threatening to file unwarranted charges against the Defendant, and Trial Counsel coercing the Defendant to accept an open plea, or Trial Counsel would withdraw." PCRA Petition, 3/9/18 at 1. Donald Martino, Esquire was appointed to represent the Defendant. On June 25, 2018, Defendant's counsel filed a Motion to Withdraw as Counsel following a *Turner/Finley* "No Merit Letter." A PCRA conference was held on August 7, 2018. After consideration, this Court agrees with Attorney Martino that Defendant failed to raise any meritorious issues in his PCRA Petition.

Whether the guilty plea was voluntary, knowing, and intelligent

The underlying issue Defendant raises is whether his plea was knowingly, intelligent, and voluntary entered into. The Defendant alleges that counsel did not properly advise him and therefore his guilty plea was coerced amounting to ineffective assistance of counsel. 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 Defendant 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). Defendant 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 defendant understand the nature of the charges to which he is pleading guilty? (2) Is there a factual basis for the plea? (3) Does the defendant understand that he has a right to trial by jury? (4) Does the defendant understand that he is presumed innocent until he is found guilty? (5) Is the defendant aware of the permissible ranges of sentences and/or fines for the offenses charged? (6) Is the defendant 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 defendant 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 defendant 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 Defendant did in fact enter into his plea knowingly, voluntarily, and intelligently. This Court informed Defendant of the right to a jury trial, the elements of each charge to which he was pleading, and the maximum sentence and fine accompanying those charges. N.T.,

7/18/2016, p. 2-6. This Court asked Defendant if he went to trial would a jury find the elements of his charged crimes beyond a reasonable doubt. *Id.* at 8-10. Defendant, on the record, plead his guilt to distributing/delivering cocaine and heroin. *Id.* at 10-11. In addition, the Defendant filled out a written guilty plea colloquy highlighting many of these factors in greater detail, to which he stated that he understood. According to Pennsylvania law, the Defendant's guilty plea was entered knowingly, voluntarily, and intelligently.

Defendant contends both trial and conflict counsel did not allow him to withdraw. To the contrary trial counsel did file his Petition to Withdraw and then had to be replaced for conflict. Ms. Jasper on multiple occasions throughout his sentencing told, asked, and informed him "are you saying now that you don't – you're not pleading? You want to withdraw your plea to that?;" "You have two choices. You go forward with the motion to withdraw plea or you go forward with sentencing;" and "You get sentenced or you withdraw your entire plea. You need to decide. We talked about this at length." *Id.* at 21, 23. Defendant was given ample opportunity to withdraw, filed a Petition to withdraw, and went back to go through with sentencing, where he yet again was given ample opportunity by this Court and his defense counsel to withdraw his petition and proceed to a trial. Instead he acknowledged culpability for the crimes charged, understood his right to withdraw and move forward with a jury trial, and was aware of his proceedings due to the extended amount of time both trial counsel and conflict counsel spent with him in making sure of this as evidenced in the record. The record reflects that Defendant's plea was intelligent, voluntary, and knowing and therefore his guilty plea will not be withdrawn.

Conclusion

Based upon the foregoing, the Court finds no basis upon which to grant Defendant'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 Defendant's PCRA Petition. The Defendant 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 21st day of August, 2018, it is hereby ORDERED and DIRECTED as follows:

1. Defendant is hereby notified pursuant to Pennsylvania Rule of Criminal Procedure No. 907(1), that it is the intention of the Court to dismiss her 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 June 25, 2018, is hereby GRANTED and Donald Martino, Esq. may withdraw his appearance in the above captioned matter.
3. **Defendant Randell Peterson will be notified at the address below through means of certified mail.**

By the Court,

Nancy L. Butts, President Judge

xc: DA
Donald Martino, Esq.
25 West Third Street, Suite 302
Williamsport, PA 17701
Randell Peterson #MS-4910
SCI Dallas

1000 Follies Road
Dallas, PA 18612