

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

<b>COMMONWEALTH</b>	: No. <b>CR-76-2016;</b>
	: <b>CR-417-2015;</b>
<b>vs.</b>	: <b>CR-743-2014;</b>
	: <b>CR-1318-2013;</b>
	: <b>CR-1665-2013;</b>
	: <b>CR-1966-2013</b>
<b>LESLIE PRICE,</b>	: <b>Notice of Intent to Dismiss PCRA</b>
<b>Defendant</b>	: <b>Without Holding an Evidentiary Hearing</b>
	: <b>and Order Granting Counsel's Motion to</b>
	: <b>Withdraw</b>

**OPINION AND ORDER**

This matter came before the court on Leslie Price's Post Conviction Relief Act (PCRA) petition. The relevant facts follow.

On January 20, 2014, Mr. Price entered guilty pleas and was sentenced in cases 1318-2013, 1665-2013, and 1966-2013. Under case 1318-2013, Mr. Price pled guilty to forgery, a felony of the third degree, arising out of taking a \$50 check that he received for sealing an individual's driveway and altering it to a \$150 check. Under case 1665-2013, Mr. Price pled guilty to theft by unlawful taking, a felony of the third degree, related to taking copper heat exchangers from his employer's premises and selling them as scrap metal for cash. Under 1966-2013, Mr. Price pled guilty to theft by deception, a misdemeanor of the second degree, related to taking an elderly woman with Alzheimer's disease to her bank, posing as her grandson, and obtaining \$100 cash from her. Mr. Price was sentenced to serve 24 months' on the Intermediate Punishment (IP) program with the first five months to be served at the Pre-Release Center (PRC) for theft by unlawful taking, a consecutive term of 24 months' probation for forgery and a consecutive term of 12 months' probation for theft by deception. These sentences were consecutive to any sentence Mr. Price was already serving.

On May 25, 2014, under case 743-2014, Mr. Price pled guilty to theft by deception and receiving stolen property, misdemeanors of the first degree, arising out of an incident on October 16, 2013 where Mr. Price removed a PS3 Move game system and two video games valued at \$1109.70 from a residence. Mr. Price took these items to Elite Games, represented that he owned them, and sold them for cash. Mr. Price was sentenced to two years' probation for theft by deception and a consecutive one-year probationary term for receiving stolen property to be served consecutive to any sentences he was serving.

On April 22, 2015, under case 417-2015, Mr. Price pled guilty to forgery, a felony of the third degree, arising out of an incident that occurred between June 30, 2015 and July 5, 2014, in which Mr. Price took a check he received for \$50 and altered it to a \$150 check. Price was sentenced to 24 months' probation consecutive to any sentence he was serving.

On June 17, 2015, under case 777-2015, Mr. Price pled guilty to furnishing drug free urine, a misdemeanor of the third degree, arising out of an incident on September 11, 2014 in which Mr. Price was instructed to provide a urine sample to his probation officer. The probation officer had received a tip that Mr. Price was going to provide a false urine sample, so the probation officer directed Mr. Price to pull down his pants and underwear before taking the drug test. When Mr. Price did so, the probation officer observed a device with a bag of urine. Mr. Price was sentenced to serve 12 months' probation consecutive to any sentences he was presently serving.

On June 1, 2016, Mr. Price came before the court for a guilty plea and sentencing hearing under case 76-2016 and a probation violation hearing and re-sentencing

under cases 1318-2013, 1665-2013, 1966-2013, 743-2014, 1680-2014, 1688-2014, 1692-2014, 417-2015, and 777-2015.

Under case 76-2016, Mr. Price pled guilty/no contest to a consolidated count of simple assault that encompassed counts 3 and 4 of the Information in exchange for a consecutive period of incarceration, the minimum of which was nine months. Mr. Price was serving several probationary sentences and tested positive for opiates. Mr. Price resisted the probation agents who were trying to detain him in the Adult Probation Office and then he resisted the sheriff deputies that tried to put him in the back of the transport vehicle to take him to the Lycoming County Prison. One of the probation agents was injured when Mr. Price shoved her head into a filing cabinet, and one of the sheriff deputies was injured when Mr. Price kicked him in the thigh/groin area.

The court sentenced Mr. Price to an aggregate term of five years, three months to 17 years' incarceration in a state correctional institution. This sentence consisted of nine months to two years' incarceration for simple assault in case 76-2016, a consecutive term of one to four years' incarceration for forgery in case 1318-2013, a consecutive term of one to four years' incarceration for theft by unlawful taking in case 1665-2013, a consecutive term of one to two years' incarceration for theft by deception in case 743-2014, a consecutive term of six months to two years' incarceration for theft by deception in case 1966-2013, a consecutive term of six months to two years' incarceration for forgery in case 417-2015 and a consecutive term of six months to one year of incarceration for furnishing a drug free urine in case 777-2015. Mr. Price filed a motion for reconsideration of sentence, which the court

summarily denied.

Although Mr. Price wished to appeal his sentence, his court-appointed counsel failed to perfect his appeal in a timely manner. Mr. Price filed a PCRA petition, and the court reinstated his appeal rights nunc pro tunc. In his appeal, Mr. Price asserted that the sentence of the court on the new charge and the probation revocation was excessive and unduly harsh in light of the underlying crimes and Mr. Price's involvement with treatment court. In a memorandum decision filed on November 20, 2017, the Superior Court affirmed Mr. Price's judgment of sentence.

On December 6, 2017, Mr. Price filed a PCRA petition in which he asserted the following claims: (1) counsel provided ineffective assistance by not filing a requested appeal or post sentence motions in a timely manner; (2) counsel coerced him into pleading guilty by telling him if he pled guilty he would do 9 months for the simple assault and then go to long term rehabilitation for the probation revocation; and (3) he asked counsel to withdraw his plea and counsel refused. The court appointed counsel to represent Mr. Price and directed counsel to file either an amended PCRA petition or a "no merit" letter pursuant to *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988) and *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988)(en banc). Counsel filed a no merit letter and a motion to withdraw as counsel.

After an independent review of the record, the court finds that Mr. Price is not entitled to relief.

It is well-settled that counsel is presumed to have been effective. *Commonwealth v. Wholaver*, 177 A.3d 136, 144 (Pa. 2018). To overcome this presumption,

Mr. Price must plead and prove that: (1) the underlying claim has arguable merit; (2) counsel did not have a reasonable basis for his act or omission; and (3) the petitioner suffered prejudice as a result of counsel's deficient performance, that is, there is a reasonable probability that but for counsel's act or omission, the outcome of the proceedings would have been different. *Id.*; *Commonwealth v. Mason*, 634 Pa. 359, 130 A.3d 601, 618 (2015). A failure to satisfy any prong of this test will defeat an ineffectiveness claim. *Wholaver, id.*; *Mason, id.*

Mr. Price first asserts that counsel provided ineffective assistance by failing to file requested post sentence motions and appeal in a timely manner. Mr. Price is not eligible for relief on this claim because it was previously litigated. To be eligible for relief, Mr. Price must plead and prove that the allegation of error has not been previously litigated or waived. 42 Pa. C.S. §9543(a)(3). An issue has been previously litigated if the highest appellate court in which the petitioner could have had review as a matter of right has ruled on the merits of the issue or it has been raised and decided in a proceeding collaterally attacking the conviction or sentence. 42 Pa. C.S. §9544(a). Mr. Price raised this issue in his first PCRA petition. His appeal rights were reinstated and the Superior Court addressed his underlying sentencing claim. The Superior Court found that Mr. Price did not raise a substantial question regarding the appropriateness of his sentence under the Sentencing Code but, even assuming that he had raised a substantial question, the sentencing court did not abuse its discretion.

Mr. Price next contends counsel coerced him into pleading guilty by telling him he would do 9 months for the simple assault and then he would go to long term

rehabilitation for the probation revocation. This claim is belied by the record. Mr. Price knew he did not have a plea agreement for long term rehabilitation on his probation revocation. The only plea agreement Mr. Price had was for a 9 month minimum sentence for simple assault. The cover sheet of the written plea colloquy, which stated the plea agreement, even noted that whether this 9-month minimum sentence was to be consecutive or concurrent to his PV (his revocation sentence) was to be determined.

Although Mr. Price and his counsel argued for a sentence that would keep Mr. Price on Drug Court and send him to rehabilitation, Mr. Price was aware that he was facing a state sentence on his probation revocation. The adult probation officer noted on the record that his recommendation was for a 6 to 14 year state sentence. Transcript, June 1, 2016, at 27.

Furthermore, prior to the hearing, Mr. Price made statements that showed he knew he was facing a sentence of state incarceration. Mr. Price was evaluated by Dr. Anzalone on April 8, 2016. During that interview, Mr. Price “reported that he believes he is going to be discharged from Drug Treatment Court and sentenced to a State Correctional Institute.” Dr. Anzalone’s Evaluation, p. 4, para. 3. Similarly, Mr. Price wrote a letter to the court in May of 2016. In that letter, he realized he was facing a state sentence, but asked the court for a treatment based sentence to allow him to get help for his addiction. That letter was specifically discussed at his sentencing hearing. The court stated:

I also received a letter from Mr. Price. He’s asking for a treatment based sentence. Please allow me to get the help I need for my addiction. I would like to accept responsibility. It is not my goal to make excuses or try to minimize what I’ve done. I recognize the seriousness of my situation and now I’m facing a state sentence.

Transcript, at 25.

Mr. Price also indicated on the record during the hearing that: (1) no one told him or promised him what the actual sentence would be; (2) it was his decision to plead guilty; (3) nobody was forcing or pressuring him to plead guilty; (4) there were no promises or inducements for him to plead guilty other than the plea agreement; and (5) his attorney did not do anything wrong or fail to do anything which was in any way causing him to plead guilty. Transcript, at 7-8.

“A criminal defendant who decides to plead guilty has a duty to answer questions truthfully.” *Commonwealth v. Cortino*, 563 A.2d 1259, 1262 (Pa. Super. 1989); *Commonwealth v. Cappelli*, 489 A.2d 813, 819 (Pa. Super. 1985). A petitioner may not obtain PCRA relief by alleging that he lied under oath during his colloquy. *Commonwealth v. Bishop*, 645 A.2d 274, 277 (Pa. Super. 1994). Accordingly, this claim clearly lacks merit.

Mr. Price’s final claim is that he asked counsel to withdraw his plea, but counsel refused. Mr. Price, however, has not stated any reason to withdraw his plea. “[T]here is no absolute right to withdraw a guilty plea.” *Commonwealth v. Carrasquillo*, 631 Pa. 692, 115 A.3d 1284, 1291 (2015). When a defendant files a motion to withdraw his guilty plea prior to sentencing, the court should liberally allow the withdrawal when the defendant shows a fair and just reason, unless withdrawal would work a substantial prejudice to the Commonwealth. *Id.* at 1292. Post-sentence motions to withdraw a guilty plea, however, are subject to higher scrutiny to discourage the entry of guilty pleas as sentence-testing devices. *Commonwealth v. Kelly*, 5 A.3d 370, 377 (Pa. Super. 2010)(quoting *Commonwealth v. Broaden*, 980 A.2d 124, 129 (Pa. Super. 2009), *appeal denied*, 992 A.2d 885 (Pa. 2010)). “A

defendant must demonstrate that manifest injustice would result if the court were to deny his post-sentence motion to withdraw his guilty plea.” *Id.* Manifest injustice is shown only when the record establishes that the plea was entered into involuntarily, unknowingly, and unintelligently. *Id.*; *Commonwealth v. Muhammad*, 794 A.2d 378, 383 (Pa. Super. 2002). Disappointment by a defendant in the sentence actually imposed does not represent manifest injustice. *Id.*; *Commonwealth v. Munson*, 615 A.2d 343, 350 (Pa. Super. 1992).

The record in this case shows that Mr. Price entered his plea knowingly, voluntarily and intelligently to the simple assault charge. Both the written guilty plea colloquy and the oral colloquy conducted during the hearing held on June 1, 2016 establish that Mr. Price was aware of the nature of the charge, the permissible range of sentence, and the rights he was giving up. Transcript at 3-4, 7-8; Written Guilty Plea Colloquy, at 1-4. He provided a factual basis for the plea during the oral colloquy. Transcript at 10-14. In addition, he was advised that the court was not bound by the plea agreement but if the court did not accept the agreement, he could petition to withdraw his plea. Transcript at 5-6; Written Guilty Plea Colloquy, at 2 (Questions 3 and 4). The court complied with the plea agreement and sentenced Mr. Price to a 9-month minimum sentence for simple assault. Mr. Price was aware that by pleading guilty to simple assault he was admitting to violating his probation and intermediate punishment sentences. Transcript at 9. There was no agreement with respect to the sentence to be imposed for the probation and intermediate punishment violations, and Mr. Price was aware that the court could impose a state prison sentence. Although Mr. Price was disappointed that the court imposed an aggregate sentence of 5 years and 3 months to 17 years’ state incarceration instead of a 9 month minimum county prison



sentence and inpatient rehabilitation or another opportunity to participate in Drug Court, such does not amount to manifest injustice. As the record establishes that Mr. Price's guilty plea was entered knowingly, intelligently and voluntarily, his counsel was not ineffective for failing to file a motion to withdraw his guilty plea.

**ORDER**

AND NOW, this \_\_\_ day of July 2018, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the court finds that no purpose would be served by conducting an evidentiary hearing in this case; therefore, none will be scheduled and the parties are hereby notified of this court's intention to deny Mr. Price's PCRA petition. Mr. Price 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.

The court also grants PCRA counsel's motion to withdraw. Mr. Price may represent himself or hire private counsel but the court will not appoint counsel to represent Mr. Price unless Mr. Price's response convinces the court that his claim or claims have merit.

By The Court,

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Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)  
Ryan Gardner, Esquire  
Leslie Price, MP-7262  
SCI Mercer, 801 Butler Pike, Mercer PA 16137  
Work file