

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :  
 :  
 v. : CR-1684-2016  
 :  
 BRENDA STERNER, :  
 Defendant : PCRA

**OPINION AND ORDER**

On June 15, 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 her PCRA Petition, and her petition should be dismissed.

***Background***

Brenda Sterner (Defendant) was charged with Burglary,<sup>1</sup> a felony of the first degree; Robbery,<sup>2</sup> a felony of the first degree; Unlawful Restraint/Serious Bodily Injury,<sup>3</sup> a misdemeanor of the first degree; Possession of a Weapon,<sup>4</sup> a misdemeanor of the first degree; False Imprisonment,<sup>5</sup> a misdemeanor of the second degree; Simple Assault,<sup>6</sup> a misdemeanor of the second degree; Theft by Unlawful Taking,<sup>7</sup> a misdemeanor of the second degree; Receiving Stolen Property,<sup>8</sup> a misdemeanor of the second degree; and the accompanying Conspiracy

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<sup>1</sup> 18 Pa.C.S.A. § 3502(A)(1).

<sup>2</sup> 18 Pa.C.S.A. § 3701(A)(1)(ii).

<sup>3</sup> 18 Pa.C.S.A. § 2902(A)(1).

<sup>4</sup> 18 Pa.C.S.A. § 907(B).

<sup>5</sup> 18 Pa.C.S.A. § 2903(A).

<sup>6</sup> 18 Pa.C.S.A. § 2701(A)(1).

<sup>7</sup> 18 Pa.C.S.A. § 3921(A).

<sup>8</sup> 18 Pa.C.S.A. § 3925(A).

charges for each of the above listed.<sup>9</sup> On April 3, 2017, the Defendant pled guilty to Burglary and Conspiracy to Robbery. Pursuant to a negotiated plea agreement, this Court sentenced the Defendant to five (5) years to ten (10) years in a State Correctional Institution. No post-sentence motion or direct appeal was filed.

The Defendant filed a timely *pro-se* PCRA Petition on March 28, 2018. Defendant's Petition stated that her counsel did not discuss the advantages or disadvantages of the plea agreement and that her guilty plea was unlawfully induced. Ryan Gardner, Esquire was appointed to represent the Defendant. On June 15, 2018, the Defendant's counsel filed a Petition to Withdraw from Representation of Post-Conviction Collateral Relief and a *Turner/Finley* "No Merit Letter." A PCRA conference was held on June 15, 2018. After consideration, this Court agrees with Attorney Gardner that Defendant failed to raise any meritorious issues in her PCRA Petition.

***Whether the guilty plea was coerced***

The Defendant contends that her counsel did not advise her properly of her plea agreement and therefore her 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 her decision to plead guilty as long as she 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

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<sup>9</sup> 18 Pa.C.S.A. § 903.

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 hearing in this case confirms that the Defendant did in fact enter into her plea knowingly, voluntarily, and intelligently. This Court informed the Defendant of her right to a jury trial, the elements of each charge to which she was pleading, and the maximum sentence and fine accompanying those charges. N.T., 4/3/2017, p. 4-5, 15-16, 18. This Court stated that the Commonwealth must prove the elements of the crime beyond a reasonable doubt and that the Court does not have to accept the terms of the plea agreement. *Id.* at 4-5. Defendant, on the record, stated that she committed the crimes when she entered the house of another without permission with the intent to take the property of another,

before that homeowner was tied up and robbed at gun point by the individual with which she conspired. *Id.* at 7-9. In addition, the Defendant filled out a written guilty plea colloquy highlighting many of these factors in greater detail, to which she stated she understood. According to Pennsylvania law, the Defendant's guilty plea was entered knowingly, voluntarily, and intelligently.

There is no indication that Defendant was coerced into pleading guilty or that the guilty plea colloquy was improper, as she alleges. The record reflects that the Defendant's plea was intelligent, voluntary, and knowing and therefore her 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 15th 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 she files an objection to that dismissal within twenty (20) days of today's date.

2. The application for leave to withdraw appearance filed June 15, 2018, is hereby GRANTED and Ryan Gardner, Esq. may withdraw his appearance in the above captioned matter.
3. **Defendant Brenda Sterner will be notified at the address below through means of certified mail.**

By the Court,

Nancy L. Butts, President Judge

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