



***Whether the guilty plea was voluntary, knowing, and intelligent***

Petitioner claims ineffective assistance of counsel because she was not made aware of the State Intermediate Punishment program (SIP) prior to entering her guilty plea and before sentencing. 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. *Commonwealth v. Moury*, 992 A.2d 162, 175 (Pa. Super. 2010).

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 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). 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 her plea knowingly, voluntarily, and intelligently. In addition, for Petitioner to receive the relief she is requesting it must be shown that she met the criteria to be eligible for SIP, that the District Attorney's office would have likely recommended her for SIP, and that the Court would have also likely recommended her for SIP. Due to Petitioner's lengthy criminal history and nature of her guilty plea being at the bottom end of the standard sentencing range, it is highly unlikely either the District Attorney's office or the Court would have recommended her. Besides this Petitioner is not an eligible candidate for SIP. An eligible offender as defined under the statute is "a defendant designated by the sentencing court as a person *convicted of a drug-related offense*" and does "not demonstrate a history of present or past violent behavior." 61 Pa. C.S. § 4103 (emphasis added). Petitioner's guilty plea was for one count of aggravated assault of a correctional officer during transport. This crime is not drug related as she was incarcerated at the time of the incident and is violent in nature. The statute was not created for this type of offense or offender and therefore she would not have been found eligible regardless of whether she was informed of the program or not. *See* 61 Pa. C.S. § 4103 (purposes of the statute).

*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 Petitioner's PCRA Petition. 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 16th day of October, 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 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 October 2, 2018, is hereby GRANTED and Ryan Gardner, Esq. may withdraw his appearance in the above captioned matter.
3. **Petitioner Shawna Wiggins will be notified at the address below through means of certified mail.**

By the Court,

Nancy L. Butts, President Judge

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