

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1778-2016
vs. : CRIMINAL DIVISION
ANTHONY BARASKY, :
Defendant :

OPINION AND ORDER

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

On September 19, 2016, Petitioner Anthony Barasky was charged with Possession With Intent to Deliver (PWID), Fleeing or Attempting to Elude Law Enforcement, Possession of a Controlled Substance, Possession of Drug Paraphernalia, Accidents Involving Damage to Attended Property, Criminal Mischief, Recklessly Endangering Another Person (REAP), Tampering With Physical Evidence, and summary traffic offenses.

On March 29, 2018, Barasky pled guilty to PWID, Fleeing or Attempting to Elude Law Enforcement, and Criminal Mischief for an aggregate sentence of 2 ½ years to 8 years’ incarceration in a state correctional institution.

On June 26, 2018, Barasky received his “green sheet” for a two year parole “hit” that would be served between May 2018 and May 2020.

On April 22, 2019, Barasky filed his PCRA petition. Barasky asserted that plea counsel was ineffective for failing to advise him that his new sentence would not be effective immediately but rather would not be effective until May 2020 upon completion of

his parole hit, which rendered his guilty plea not knowing, intelligent and voluntary.

The court appointed counsel to represent Barasky and directed counsel to file either an amended PCRA petition or a Turner/Finley¹ no merit letter. Counsel obtained the transcripts of Barasky's guilty plea and sentencing hearing and then filed a motion to withdraw which contained a no merit letter.

After an independent review of the record, the court finds that Barasky is not entitled to relief. The record reflects that Barasky's guilty plea was knowingly, voluntarily, and intelligently entered. Pa.R.Cr.P. 590 and the comment thereto require the court to ask questions to elicit the following information:

(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 the right to a trial by jury?

(4) Does the defendant understand that he is the presumed innocent until found guilty?

(5) Is the defendant aware of the permissible range 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?

The record reflects that the court addressed each of these areas. The court

¹ *Commonwealth v. Turner*, 518 Pa. 491, 544 A.2d 927 (1988); *Commonwealth v. Finley*, 379 Pa. Super. 390, 550 A.2d 213 (1988)(en banc).

reviewed the nature of charges to which Barasky was pleading guilty, the penalties associated with those offenses and the factual basis for his guilty plea. Transcript, 03/29/18, at 2-5, 10-12. The rights the defendant was waiving by pleading guilty, including the right to a trial by jury, the presumption of innocence and proof beyond a reasonable doubt were discussed both on the record and in the written guilty plea colloquy. Transcript, 03/29/18, at 7; Written Guilty Plea Colloquy, Questions 7-13, 16. The court also informed the defendant that it was not bound by the terms of the plea agreement. Transcript, 03/29/18 at 5-6; see also Written Guilty Plea Colloquy, Question 3. In addition to these six areas, the defendant was advised in the written guilty plea colloquy that if he was on probation or parole that his guilty plea would mean a violation of that probation or parole and that he could be sentenced to prison as a result of the violation caused by his guilty plea. Written Guilty Plea Colloquy, Question 37.

There is no requirement that counsel advise the defendant of the effective dates of his sentences for his plea and his parole violation. It would be impossible for counsel to do so. At the time Barasky pled guilty and was sentenced, he had not seen the parole board yet. Furthermore, contrary to Barasky's assertion, there was no provision in the plea agreement for a specific start date. The terms of the plea agreement were for an aggregate sentence of 2 ½ years to 8 years. Nowhere in the written plea agreement or in the discussion of the terms of the plea agreement on the record is there any mention of a specific start date. Written Guilty Plea Colloquy Coversheet; Transcript, 03/29/18, at 4-5.

Accordingly, the following Order is entered.

ORDER

AND NOW, this ___ day of December 2019, the parties are hereby notified of

this court's intention to dismiss the Barasky's PCRA petition without holding an evidentiary hearing. Barasky 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 counsel's motion to withdraw. Barasky may represent himself or hire private counsel, but the court will not appoint counsel to represent Barasky in this matter.

By The Court,

Marc F. Lovecchio, Judge

cc: District Attorney
Donald Martino, Esquire
Anthony Barasky,
1534 Louisa Street, Williamsport PA 17701
Gary Weber, Esquire (Lycoming Reporter)
Work file