

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : No. CR-1625-2018
vs. :
: CRIMINAL DIVISION
: Notice of Intent to Dismiss PCRA
JEROME WILLIAMS : Without Holding an Evidentiary and
: Granting Counsel’s Motion to
Defendant : Withdraw

OPINION AND ORDER

On April 30, 2019, Defendant Jerome Williams (hereinafter “Williams”) pled guilty to Count 1, delivery of a controlled substance and Count 5, delivery of a controlled substance, both ungraded felonies. Williams admitted to selling approximately \$100.00 of cocaine on two separate occasions to a confidential informant. With respect to Count 1, Williams was sentenced to a term of state incarceration, the minimum of which was one year and the maximum of which was two years which was followed by an additional 2 ½ years of probation. With respect to Count 5, Williams was sentenced to the same terms to run consecutive to the sentence that was imposed with respect to Count 1.

Williams filed a pro se petition under Pennsylvania’s Post-Conviction Collateral Relief Act on August 5, 2019. By Court Order dated August 13, 2019, counsel was appointed to represent Williams.

On September 30, 2019, Williams’ counsel filed a motion to withdraw and attached a *Turner/Finley* letter.¹ A conference on the motion to withdraw and *Turner/Finley* letter was held before this Court on October 29, 2019. This matter is now ripe for a decision.

Williams’ PCRA petition requested that Williams be permitted to withdraw

¹ *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988); *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super.

his guilty plea because the police officer who arrested him and the task force officer did not operate in compliance with the law in accordance with the Pennsylvania Supreme Court decision in *Commonwealth v. Hlubin*, 208 A.3d 1032 (Pa. 2019).

In *Hlubin*, the defendant was stopped, questioned and ultimately arrested for suspicion of driving under the influence. Prior to being arrested, the defendant was initially stopped at a DUI checkpoint. The checkpoint was conducted by a multi-jurisdictional taskforce. Police officers from many different municipalities participated in the checkpoint. The actual officer who stopped the defendant was an officer from outside the jurisdiction where the stop occurred.

Before the trial court, Hlubin sought suppression of the evidence gathered during his detention and following his arrest. Hlubin argued that the officer who performed the stop was acting outside of his primary jurisdiction and did not comply with the Intergovernmental Cooperation Act (ICA) or the Municipal Police Jurisdiction Act (MPJA). The lower court denied the suppression.

On appeal, the Supreme Court held, among other things, that when two or more municipalities decide to cooperate with each other in the provision of services to their respective citizens, an ICA agreement, adopted by ordinance by each of the member municipalities, is required. *Hlubin*, 208 A.3d at 1043. Nonetheless, even if sharing of services is not authorized by the ICA, it could still be valid under the MPJA. The court concluded that the MPJA does not authorize police officers to cross jurisdictional lines to participate in prearranged sobriety checkpoints. As the court explained, “if police departments may agree, without legislative approval by their local governing bodies, to

commit their police officers to cooperative efforts with other police departments, then police departments, rather than local governing bodies, effectively exercise control over the municipality's expenditures, allocation of personnel, as well as exposing the municipality to a potential liability that may arise from the extra-jurisdictional activity." *Hlubin*, 208 A.3d at 1046.

Williams' reliance upon *Hlubin* is misplaced both from a factual and legal standpoint. Williams' arresting officer was not acting outside of his jurisdiction. The officer, a member of Lycoming County's Drug Taskforce, had countywide jurisdiction. Williams committed his offenses in Lycoming County.

Moreover, the Supreme Court's decision in *Hlubin* was deemed moot once the legislature amended the MPJA on July 2, 2019. The changes contained in the Act were explicitly intended to reverse the Supreme Court's interpretation of the MPJA in *Hlubin*. *Commonwealth v. Forsythe*, 217 A.3d 273, 279 (Pa. Super. 2019). The amendment to the MPJA (July 2, 2019, P.L. 375, No. 58, § 1.1) applies retroactively to law enforcement conduct on or after June 15, 1982. *Id.*

Given the retroactivity, even if Officer Caschera was outside of his jurisdiction, he would be in compliance with the MPJA given its retroactivity to law enforcement conduct on or after June 15, 1982. Detective Caschera's "conduct" occurred in August of 2018.

To be eligible for PCRA relief, Williams must prove by a preponderance of the evidence that his conviction or sentence resulted from one or more of the circumstances enumerated in the Act. *Commonwealth v. Montalvo*, 205 A.3d 274, 285 (Pa. 2019). Counsel is presumed to have rendered effective assistance. *Commonwealth v. Sepulveda*, 55 A.3d

1108, 1117 (Pa. 2012). To obtain relief on a claim challenging counsel's performance, a PCRA petitioner must establish that, among other things, the underlying claim has arguable merit. *Commonwealth v. Pierce*, 527 A.2d 973, 975 (Pa. 1987). A petitioner's failure to satisfy this prong is fatal to the claim. *Commonwealth v. Wholaver*, 177 A.3d 136, 144 (Pa. 2018).

Counsel cannot be deemed ineffective for failing to raise a meritless claim. *Montalvo, id.* at 286. Williams' trial counsel cannot be deemed ineffective for failing to raise the *Hlubin* decision. The *Hlubin* decision does not apply either factually or legally.

ORDER

AND NOW, this ___ day of December 2019, upon review of the record and pursuant to Rule 907 (1) of the Pennsylvania Rules of Criminal Procedure, the parties are hereby notified of this court's intention to dismiss Williams' petition without holding an evidentiary hearing. Williams may respond to this proposed dismissal within twenty (20) days from the date of this Order. 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. Williams may represent himself or hire private counsel, but the court will not appoint counsel to represent him on this matter.

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
Don Martino, Esquire
Gary Weber, Esquire (Lycoming Reporter)

Work file
Jerome Williams, LF4307
SCI Coal Township
1 Kelley Drive
Coal Township, PA 17866-1020