

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : CR-681-2018
: :
v. : :
: CRIMINAL DIVISION
JEROMEY DRUMMOND, : :
Petitioner : PCRA

OPINION AND ORDER

On April 23, 2019, Jeromey Drummond (Petitioner) pled guilty to Possession of a Controlled Substance with the Intent to Deliver (PWID)¹ and Criminal Use of a Communication Facility.² Petitioner was sentenced the same day to two to four years for PWID and one to two years on Criminal Use of a Communication Facility, for an aggregate sentence of three to six years. At the time of his sentence, Petitioner was made aware that he was ineligible for RRRI, but was made eligible for Boot Camp. No subsequent post-sentence motions or appeals were filed. Therefore, Petitioner’s sentence became final on May 23, 2019. On January 24, 2020, Petitioner filed a timely *pro se* Motion for Post-Conviction Collateral Relief. The Public Defender’s office was appointed to represent Petitioner on February 4, 2020. Petitioner, through counsel Nicole Spring, Esq., filed an Amended PCRA Petition on March 9, 2020. A conference was held on April 14, 2020.

Petitioner advances only one issue in his petition. He seeks to have his guilty plea withdrawn claiming he relied on his plea counsel’s ineffective representation that he would be eligible for Boot Camp and therefore his plea was not intelligently, voluntarily, and knowingly entered. After review of the entire record in the above captioned case this Court disagrees with

¹ 35 P.S. § 780-113(a)(30).

² 18 Pa. C.S. § 7512(a).

Petitioner, finds no reason to hold an evidentiary hearing, and denies Petitioner's Amended PCRA Petition.

Discussion

An individual seeking relief under the PCRA “must plead and prove by a preponderance of the evidence” all requirements under the statute. 42 Pa. C.S. § 9543(a). Therefore a petitioner must plead and prove:

(2) That the conviction or sentence resulted from one or more of the following:

(i) A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

(ii) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

(iii) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.

(iv) The improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.

42 Pa. C.S. § 9543 (a)(2).

To establish a claim for ineffective assistance of counsel, a petitioner must show 1) an underlying claim of arguable merit; 2) no reasonable basis for counsel's act or omission; and 3) prejudice as a result, that is, a reasonable probability that but for counsel's act or omission, the outcome of the proceeding would have been different. *Commonwealth v. Cooper*, 941 A.2d 655, 664 (Pa. 2007); *see Commonwealth v. Carpenter*, 725 A.2d 154, 161 (Pa. 1999). A failure to satisfy any prong of this test is fatal to the ineffectiveness claim. *Cooper*, 941 A.2d at 664; *see Commonwealth v. Sneed*, 899 A.2d 1067, 1076 (Pa. 2006). Finally, “counsel is presumed to

be effective and a [petitioner] has the burden of proving otherwise.” *Commonwealth v. Williams*, 570 A.2d 75, 81 (Pa. 1990).

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 plea which is requested after a sentence has been imposed. *Commonwealth v. Flick*, 802 A.2d 620, 623 (Pa. Super. 2002). Such a manifest injustice occurs only when a plea is not tendered knowingly, intelligently, voluntarily, and understandingly. *Commonwealth v. Persinger*, 615 A.2d 1305, 1308 (Pa. 1992). It does not matter if Petitioner is pleased with the outcome of his decision to plead guilty as long as he did so knowingly, voluntarily, and intelligently. *Commonwealth v. Yager*, 685 A.2d 1000, 1004 (Pa. Super. 1996). Petitioner must demonstrate a “miscarriage of justice . . . which no civilized society could tolerate, in order to be entitled to relief.” *Commonwealth v. Allen*, 732 A.2d 582, 588 (Pa. 1999). A trial court must, at a minimum, evaluate 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, 1047 (Pa. Super. 2011) (citing *Commonwealth v. Fluharty*, 632 A.2d 312, 314 (Pa. Super. 1993)).

Precedential case law exists to withdraw a guilty plea when a petitioner relies on counsel's unsound advice regarding Boot Camp and he is made eligible for Boot Camp by a court, despite his ineligibility. *See Commonwealth v. Hickman*, 799 A.2d 136, 143-44 (Pa. Super. 2002). Petitioner's factual situation is drastically different. Petitioner's guilty plea colloquy was silent on Boot Camp, and at the time of the hearing defense counsel informed the Court, in the presence of Petitioner, that the parties agreed to leave the eligibility determination up to the Court. N.T. 4/23/19, at 3-4. At that point, Petitioner entered the plea voluntarily and intelligently knowing that the Court could deny his eligibility. *Id.* at 2-8. Additionally, a glaring difference from *Hickman* is that Petitioner was made eligible by the Court and his sentence is an eligible sentence for Boot Camp. In *Hickman*, the petitioner was sentenced to a minimum of four years, which made him facially ineligible for Boot Camp. *Id.* at 142. In the present case, Petitioner had no disqualifying convictions and was sentenced to three to six years, making him eligible for Boot Camp. *See* 61 Pa. C.S. § 3903 (an eligible inmate is defined as an individual whose sentence "the minimum of which is not more than three years where that inmate is within two years of completing his minimum term"). The Court fulfilled its obligations in making Petitioner eligible by "employ[ing] the sentencing guidelines to identify those defendants who are eligible for participation in a motivational boot camp." 61 Pa. C.S. § 3904(b). Once Petitioner is made eligible for Boot Camp, he is at the mercy of the selection committee. Although Petitioner wanted to receive Boot Camp, his acceptance and more importantly eligibility were not conditions of his plea.

ORDER

AND NOW, this 13th day of May 2020, upon review of the record, Petitioner's Amended PCRA Petition is hereby **DENIED**. Petitioner is hereby notified that he has the right to appeal from this order to the Pennsylvania Superior Court. The appeal is initiated by the filing of a Notice of Appeal with the Clerk of Courts at the county courthouse, with notice to the trial judge, the court reporter and the prosecutor. The Notice of Appeal shall be in the form and contents as set forth in Rule 904 of the Rules of Appellate Procedure. The Notice of Appeal shall be filed within thirty (30) days after the entry of the order from which the appeal is taken. Pa. R.A.P. 903. If the Notice of Appeal is not filed in the Clerk of Courts' office within the thirty (30) day time period, Petitioner may lose forever his right to raise these issues.

By The Court,

Nancy L. Butts, President Judge

CC: DA (LF)
Nicole Spring, Esq.

NLB/kp