

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CR-1820-2017
	:
vs.	: CRIMINAL DIVISION
	:
FLOYD STEADLEY, IV,	: Notice of Intent to Dismiss PCRA Petition
Defendant	: Without Holding an Evidentiary Hearing
	: and Order Granting PCRA Counsel's
	: Motion to Withdraw

OPINION AND ORDER

This matter came before the court on the Post Conviction Relief Act (PCRA) petitioner filed by Floyd Steadley, IV (hereinafter "Petitioner").

By way of background, on April 18, 2017, Detective James Capello of the Lycoming County Narcotics Enforcement Unit filed a criminal complaint against Petitioner, charging him with three counts of delivery of a controlled substance and related offenses. The complaint alleged that Petitioner delivered heroin to a confidential informant (CI) on October 19, 2016, March 31, 2017, and April 17, 2017 in the 600 block of Campbell Street, Williamsport, Lycoming County, Pennsylvania. Petitioner, however, was not arrested until October 25, 2017.

On June 7, 2019,¹ Petitioner pled guilty to one count of delivery of a controlled substance. The court sentenced Petitioner in accordance with the plea agreement to a split sentence of 250 to 521 days incarceration at the Lycoming County Prison, followed by three (3) years of Intermediate Punishment with the first seven (7) months to be served at the Pre-Release Center (PRC) on work release. The court gave Petitioner credit for time served of 521 days between October 25, 2017 and March 29, 2019. Petitioner began serving

¹The guilty plea order incorrectly lists the date as May 7, 2019. The correct date is June 7, 2019.

the work release portion of his sentence on June 21, 2019. This was a mitigated range sentence.

On September 19, 2019, Petitioner filed his pro se PCRA petition, in which Petitioner asserts claims of ineffective assistance of counsel. Specifically, Petitioner asserted the following: (1) on or about October 20, 2016, the CI identified another person, either by photograph or police line-up, as the person from whom the CI purchased drugs; (2) counsel failed to advise the court that the 71 days from March 29, 2019 to June 7, 2019 was also part of the plea agreement and should have been credited to his sentence; and (3) counsel failed to advise Petitioner of the specifics regarding his appeal rights, particularly his Rule 600 claim.

As this is Petitioner's first PCRA petition and Petitioner appeared to be indigent, the court appointed counsel to represent Petitioner and directed PCRA counsel to file either an amended PCRA petition or a *Turner/Finley*² no merit letter.

Counsel filed a motion to withdraw which included a no merit letter.

After review of the record, the court finds that Petitioner is not entitled to relief as a matter of law.

To obtain relief on a claim challenging counsel's performance, a PCRA petitioner must plead and prove that (1) the underlying claim has arguable merit;(2) counsel lacked a reasonable basis for his actions or failure to act; and (3) the petitioner was prejudiced by counsel's deficient performance such that there was a reasonable probability that the result of the proceeding would have been different absent counsel's error or omission. *Commonwealth v. Montalvo*, 205 A.3d 274, 286 (Pa. 2019).

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

A petitioner's failure to satisfy any prong of the ineffectiveness test is fatal to the claim. *Commonwealth v. Wholaver*, 177 A.3d 136, 144 (Pa. 2018).

The right to an evidentiary hearing in connection with a petition brought under the Post-Conviction Relief Act, however, is not absolute. A hearing may be denied if a petitioner's claim is patently frivolous and without trace of support either in the record or from other evidence. *Commonwealth v. White*, 674 A.2d 253, 256 (Pa. Super. 1996). The controlling factor in determining whether a post-conviction relief petition may be dismissed without a hearing is the status of the substantive assertions in the petition. *Commonwealth v. Payne*, 794 A.2d 902, 906 (Pa. Super. 2002), *appeal denied*, 808 A.2d 571 (Pa. 2003).

The court does not need to conduct a hearing on all issues relating to counsel's ineffectiveness. *Commonwealth v. Santiago*, 855 A.2d 682, 691 (Pa. 2004). The court may properly dismiss a petition without an evidentiary hearing where there is no genuine issue of material fact concerning the issues raised in a petitioner's petition. *Payne*, *id.* A petitioner must present the facts supporting each issue asserted in his PCRA petition, and if they do not appear in the record, a petitioner must identify affidavits, documents or other evidence proving the alleged facts. *Commonwealth v. Collins*, 687 A.2d 1112, 1112 (Pa. 1996).

"Upon the entry of a plea of guilty, a defendant generally waives all defects and defenses except those concerning the validity of the plea, the jurisdiction of the trial court, and the legality of the sentence imposed." *Commonwealth v. Boyd*, 835 A.2d 812, 816 (Pa. Super. 2003); *see also Commonwealth v. Chumley*, 394 A.2d 497, 640 (Pa. 1978).

Allegations of ineffective assistance of counsel in connection with the entry of a guilty plea

will serve as a basis for relief only if the ineffectiveness caused the petitioner to enter an involuntary or unknowing plea. *Chumley, id.* at 641 (citations omitted). A petitioner cannot challenge his guilty plea by asserting that he lied under oath, even if he avers that counsel induced the lies. *Commonwealth v. Pollard*, 832 A.2d 517, 523 (Pa. Super. 2003); *see also Commonwealth v. Pier*, 182 A.3d 476, 480 (Pa. Super. 2018).

“A claim has arguable merit where the factual averments, if accurate, could establish cause for relief. Whether the facts rise to the level of arguable merit is a legal determination.” *Commonwealth v. Stewart*, 84 A.3d 701, 707 (Pa. Super. 2013)(citations and internal quotation marks omitted).

When Petitioner pleaded guilty, he waived his right to challenge the CI’s identification and his right to appeal the denial of his motion to dismiss pursuant to Rule 600.

In his written guilty plea colloquy, Petitioner acknowledged that by pleading guilty he was waiving or giving up his right to present any defenses or to appeal any adverse decisions on his pre-trial motions (which would include his Rule 600 motion). Specifically, the questions and Petitioner’s responses were as follows:

14. Do you understand that if you plead guilty you are waiving, or giving up, your right to present any defenses that either you or your attorney may think that you have to the crime or crimes charged? Y

15. a. Do you understand that by pleading guilty you are waiving, or giving up, your right to file any pre-trial motions and waiving any such motions already filed? Y

b. Do you understand that you are giving up your right to appeal any adverse decisions on any motions already heard by the court? Y

Petitioner also indicated in the written guilty plea colloquy that it was his decision to plead guilty and his reason for doing so was to “take responsibility.”

During the guilty plea hearing, Petitioner stated under oath that he wrote the letter Y in his answers on the written colloquy and that “Y” meant yes. Transcript, June 7, 2019, at 4. Petitioner also admitted that he sold heroin to another person on October 19, 2016. *Id.* at 7.

The record also establishes that Petitioner entered a knowing, intelligent and voluntary guilty plea. The record reflects that the court advised Petitioner of the nature of the offense to which he was pleading guilty and the maximum penalty for that offense. Transcript, June 7, 2019, at 5. Petitioner indicated that he understood the rights he was giving up, and he was satisfied with counsel’s representation. Transcript, June 7, 2019, at 5-6. He stated a factual basis for his plea. Transcript, June 7, 2019, at 7. He also acknowledged that he entered a knowing, intelligent and voluntary plea of guilty. Transcript, June 7, 2019, at 6-7.

The record also clearly establishes that Petitioner is not entitled to credit from March 29, 2019 to June 7, 2019. On the coversheet of the written guilty plea colloquy, the terms of the plea agreement are listed as: “250d – 521d county *split* 3y IP with 1st 7m PRC. Credit: 10/24/17 – 3/29/19.” The court stated the terms of the plea agreement on the record and explained that the 521 days credit were from October 25, 2017 to March 29, 2019.³ Furthermore, Petitioner is not entitled to credit after March 29, 2019, because he posted bail in this case on March 29, 2019. Although Petitioner may have remained incarcerated, he was not incarcerated on this case.

With respect to Petitioner’s claim that counsel failed to advise him of his

³ There is a typographical error in the transcript, which states the credit was from October 25, 2017 to March 29, 2017. Instead, the transcript should state the ending date as March 29, 2019.

appeal rights, Petitioner cannot establish prejudice in that the court advised him on the record of his right to file a post-sentence motion and an appeal and the time limits within he must file such. Transcript, June 7, 2019, at 10.

ORDER

AND NOW, this ___ day of April 2020, 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 Petitioner's PCRA petition without holding an evidentiary hearing. Petitioner may respond to this proposed dismissal within twenty (20) days. If the court does not receive a timely response from Petitioner, the court will enter an order dismissing the petition.

The court also grants the motion to withdraw filed by PCRA counsel, Donald Martino. The court advises Petitioner that he has the right to represent himself or hire private counsel, but the court will not appoint counsel to represent Petitioner with respect to his PCRA petition unless he files a timely response and the response states facts that would warrant an evidentiary hearing.

By The Court,

Marc F. Lovecchio, Judge

cc: Ryan Gardner, Esquire (DA)
Donald Martino, Esquire
Floyd Steadley, IV #QB4560
SCI Camp Hill, PO Box 8837, 2500 Lisburn Road, Camp Hill PA 17001
Work file