

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-973-2018
 :
 CORY STEPHON WILLIAMS, : Opinion and Order Granting an Evidentiary
 Defendant : Hearing on PCRA Petition

OPINION AND ORDER

This case comes before the court on Petitioner’s pro se PCRA Petition filed on August 22, 2019. In that this is Petitioner’s first PCRA Petition, counsel was appointed. On December 9, 2019, counsel filed an Amended Post-Conviction Relief Petition. A conference was held with counsel and the District Attorney on March 16, 2020.

Petitioner claims that his counsel was ineffective in advising the petitioner to plead guilty when trial counsel should have filed a motion to suppress all items seized from Petitioner’s residence. Petitioner asserts that if the motion to suppress had been filed, the court would “had been constrained to suppress it.”

On May 24, 2019, Petitioner pled guilty to Count 2, possession of a controlled substance (heroin), an ungraded misdemeanor. Petitioner admitted that on June 10, 2018, he possessed heroin at his residence of 410 Anthony Street.

On March 24, 2019, the court sentenced Petitioner to one (1) to three (3) years’ incarceration in a state correction institution. The court directed that this sentence and the sentence imposed under 1053-2018 would be served consecutively. The total aggregate sentence on both Information numbers was a period of state incarceration, the minimum of which was five (5) years and the maximum of which was nineteen (19) years. Petitioner filed a motion for reconsideration of sentence, which the court denied on June 6, 2019. Petitioner

did not file an appeal.

A PCRA Petition must be filed within one (1) year of the date that the judgment of sentence becomes final. 42 Pa. C.S. § 9545 (b) (1). This time requirement is mandatory and jurisdictional in nature, and the court may not ignore it in order to reach the merits of the petition. *Commonwealth v. Murray*, 753 A.2d 201, 203 (Pa. 2000). A judgment of sentence “becomes final at the conclusion of direct review, including discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking the review.” 42 Pa. C.S. § 9545 (b) (3). Petitioner’s PCRA Petition has been timely filed and this Court has jurisdiction to address the merits of it.

Petitioner’s claims challenge the effectiveness of counsel. 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).

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 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.*

Petitioner pled guilty. "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 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).

According to the amended petition, Petitioner pled guilty to possession of a controlled substance and received a one (1) to three (3) year sentence. [Amended petition, paragraph 3]. Petitioner alleges that despite there being meritorious grounds for a suppression of the items seized from his apartment, trial counsel failed to file a suppression

motion. [Amended petition, paragraph 10]. Petitioner contends that the entry into the apartment was without probable cause, without exigent circumstances and without a warrant. [Amended petition, paragraph 11]. Finally, Petitioner asserts that if a motion to suppress had been filed, the court would have been constrained to suppress the evidence. [Amended petition, paragraph 11].

While Petitioner's claims as to the facts may not be realized during an evidentiary hearing, this court cannot state, on the face of the record, that the motion would have been totally frivolous. Accordingly, the court will grant a hearing on Petitioner's Petition for Ineffectiveness with respect to Information No. 973-2018 and Petitioner's claim that his trial counsel was ineffective in failing to file a suppression motion.

ORDER

AND NOW, this ____ day of April 2020, upon review of Petitioner's Amended Post-Conviction Relief Petition, a hearing on the issue raised under Information No. 973-2018 is scheduled for the **28th day of May, 2020 at 9:00 a.m. in Courtroom No. 4** of the OpLycoming County Courthouse. Two hours have been allocated for this hearing.

Petitioner is advised that it is his burden to prove ineffective assistance of counsel by establishing: (1) the underlying claim has arguable merit; (2) counsel's actions lacked an objective reasonable basis; and (3) actual prejudice resulted from counsel's act or failure to act. *Commonwealth v. Stewart*, 84 A.3d 701, 706 (Pa. Super. 2013) (en banc).

Petitioner is advised that a claim has arguable merit where the factual averments, if accurate, could establish cause for relief. *Id.*

Petitioner is advised that the test for deciding whether counsel had a

reasonable basis for his actions or inactions is whether no competent counsel would have chosen that action or inaction, or, if the alternative not chosen offered a significantly greater potential chance of success. *Id.* at 707. Counsel's decision will be considered reasonable if it effectuated his client's interest. *Id.* The courts do not employ a hindsight analysis in comparing trial counsel's actions with other efforts he may have taken. *Id.*

Finally, prejudice is established if there is a reasonable probability that but for counsel's errors, the result of the proceeding would have been different. *Id.* A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id.*

Counsel is presumed to be effective and the burden is on Petitioner to prove that counsel was ineffective. A failure to satisfy any of the above prongs of the ineffectiveness test requires rejection of the claim. *Commonwealth v. Crispell*, 193 A.3d 919, 928 (Pa. 2018).

By The Court,

Marc F. Lovecchio, Judge

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