

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : No. CR-112-2018
vs. :
ZACHARY WILLIAMS, :
Petitioner : PCRA

OPINION AND ORDER

On May 20, 2019, the court accepted Petitioner’s plea of guilty to Count 1, criminal homicide, third degree murder, Count 7, persons not to possess, Count 8, persons not to possess and Count 9, carrying a firearm without a license.

After considering the relevant sentencing factors, the court accepted the plea agreement negotiated between the parties and sentenced Petitioner accordingly. Specifically, with respect to Count 1, the court imposed a period of state incarceration, the minimum of which was eighteen (18) years and the maximum of which was forty (40) years. With respect to Count 7, the court imposed a consecutive six (6) months to five (5) years sentence. The other sentences ran concurrently. The aggregate period of state incarceration was a minimum of eighteen and a half (18 ½) years and a maximum of forty-five (45) years.

Petitioner did not pursue an appeal but by letter dated February 3, 2020, wrote to the court requesting “a form” to pursue an ineffectiveness of counsel claim. Defendant filed a pro se Motion for Post-Conviction Collateral Relief on March 26, 2020. By Order dated April 2, 2020, the court appointed counsel. By subsequent Order dated July 14, 2020, the court granted PCRA counsel a sixty (60) day extension within which to file either an amended PCRA petition or a *Turner/Finley* no merit letter.

On July 24, 2020, PCRA counsel filed a motion to withdraw as counsel and

attached a *Turner/Finley* no merit letter that he sent to Petitioner on June 9, 2020. In his motion to withdraw, PCRA counsel referenced the no merit letter noting that it set forth a review of the applicable case law and other authority on the issues raised, it explained why the issues raised lacked merit, discussed why other issues counsel considered lacked merit and provided Petitioner with twenty (20) days to respond to provide any additional information Petitioner requested counsel to consider.

A conference was held with PCRA counsel and counsel for the Commonwealth on September 21, 2020. The court indicated that it would conduct an independent review of the record and make an independent determination as to whether the issues raised in the petition lacked merit.

On September 23, 2020, the court received a document from Petitioner entitled “Defendant’s Opposition to Counsel PCRA No Merit Letter and Withdrawal.” It was postmarked September 21, 2020 from the Federal Correctional Complex in Allenwood, White Deer, PA. Petitioner is presently an inmate at the United States Penitentiary in Allenwood.

As is well established, to be entitled to relief on an ineffectiveness claim, a PCRA petitioner must establish that: “(1) the underlying claim has arguable merit; (2) no reasonable basis exists for counsel’s failure to act; and (3) he suffered prejudice as a result of counsel’s error, with prejudice measured by whether there is a reasonable probability the result of the proceeding would have been different.” *Commonwealth v. Epps*, 2020 PA Super 232, 2020 WL 5651759, *2 (Pa. Super. 2020)(filed September 24, 2020), citing *Commonwealth v. Treiber*, 121 A.3d 435, 445 (Pa. 2015).

“[A] petitioner is not entitled to a PCRA hearing as a matter of right; the court can decline to hold a hearing if there is no genuine issue concerning any material fact, the petitioner is not entitled to PCRA relief and no purpose would be served by any further proceedings.” *Epps, id.*, citing *Commonwealth v. Adams-Smith*, 209 A.3d 1011, 1019 (Pa. Super. 2019).

The court finds it necessary at this stage to specify Petitioner’s claims. In his pro se petition, Petitioner claimed that his counsel was ineffective for failing to request a psychiatric evaluation and failing to request a competency hearing on Petitioner’s mental state “at the time of the offense and at the time of the guilty plea and sentence.” He also submitted that counsel was ineffective for failing to investigate his mental background before pleading guilty.

In support of his claims, Petitioner noted, among other things, that prior to his pleading guilty, he had been abused as an adolescent, heard voices, and was in and out of mental health facilities. He noted that while he was awaiting the resolution of the underlying charges, he suffered a seizure, was hospitalized and given “a psychotic drug.” He noted that “some months prior” to the guilty plea, prison officials had stopped giving him his psychiatric medication. Once the medication stopped, “everything came disconnected all at once; the depression started back, the paranoia, the voices.” He noted among other things that he could not understand “the general knowledge of the court procedures, lacking specific knowledge and understanding of the legal circumstances in his case.” He noted that he could “not fully cooperate and participate in his defense because the voices and counsel talking made it hard for him to understand or follow.” He specifically noted that counsel advised him

not to “mention this in court” because the court would apparently not accept the plea.

In PCRA’s counsel’s no merit letter, he indicated that he did not believe the issues raised in Petitioner’s PCRA petition had merit. Further, he indicated he was unable to find any additional issues to raise on Petitioner’s behalf.

Acknowledging that Petitioner pled guilty, PCRA counsel examined Petitioner’s claims to determine whether the guilty plea was knowing, intelligent and voluntary. PCRA counsel referenced Petitioner’s answers on the written guilty plea colloquy verifying that Petitioner was not under treatment for any mental or emotional problems and not suffering from any mental or emotional problems. He noted that during the guilty plea and sentencing hearing, Petitioner advised the court that he was not suffering from any mental, emotional or physical condition that would cause him not to understand what was “going on.” He advised the court that he was satisfied with the representation of his counsel and that his counsel had not done anything wrong nor failed to do anything that was causing him to plead guilty.

During the hearing, the court asked the petitioner if he was ever diagnosed with any mental health issues. The Petitioner stated, “ADHD, Bipolar Disorder, Anxiety and Depression.” He explained that he was initially diagnosed when he was 12 years old and had received subsequent treatment. Petitioner discussed the fact that he stopped taking the medication when he turned 18 and that some of the symptoms returned. When asked about his symptoms, the Petitioner stated that they were “mood swings.” When asked if any other symptoms had returned, Petitioner stated “no.”

PCRA counsel concluded that the record did not support an assertion that

the guilty plea was involuntary, unknowing or unintelligent. PCRA counsel went further to determine whether there was no support for a potential defense of insanity. He concluded that there was no evidence in Petitioner's statements, the statements of others or in examining Petitioner's actions, that would have or should have lead his trial counsel to consider this defense.

Counsel then addressed Petitioner's claims that trial counsel was ineffective for allegedly not investigating and pursuing a claim that Petitioner was incompetent to stand trial. Noting that under such circumstances a defendant must demonstrate that he was actually incompetent at the time of trial and not that there was a substantial question surrounding his competency, counsel concluded that the evidence did not rise to the level required.

In Petitioner's "opposition" filing, he appears to raise some additional issues. Petitioner argues that "the court erred in not ordering a mental evaluation." He argues that "PCRA counsel misconstrued" his claim regarding the alleged failure of trial counsel to investigate Petitioner's mental health and request a competency hearing. He argues that PCRA counsel neglected to address Petitioner's mental health "to mitigate [the] sentence." He argues that [PCRA] counsel did not interview Petitioner's family or Petitioner about his mental health.

Counsel is presumed to be effective and the burden of demonstrating ineffectiveness rests on the petitioner. *Commonwealth v. Johnson*, 179 A.3d 1153, 1158 (Pa. Super. 2108). Moreover, if a claim fails under any required element, the court may dismiss the claim on that basis. *Id.* In other words, a failure to satisfy any prong of the ineffectiveness

test requires rejection of the claim. *Commonwealth v. Daniels*, 104 A.3d 267, 281 (Pa. 2014).

A claim has arguable merit where the factual averments, if accurate, could establish cause for relief. *Commonwealth v. Stewart*, 84 A.3d 701, 706-707 (Pa. Super. 2013) (en banc). Whether the facts rise to the level of arguable merit is a legal determination. *Id.*, citing *Commonwealth v. Saranchak*, 866 A.2d 292, 304 n.14 (Pa. 2005).

While a plea of guilty does not foreclose PCRA relief per se, claims of ineffectiveness in connection with the entry of a guilty plea will serve as a basis for relief only if the ineffectiveness caused the defendant to enter an involuntary or unknowing plea. *Commonwealth v. Wah*, 42 A.3d 335, 338 (Pa. Super. 2012). A review of the record as set forth above clearly supports a conclusion that Petitioner's plea was knowing, intelligent and voluntary. Moreover, Petitioner's claim that mental health evidence could have been used to mitigate the sentence fails as well. In Pennsylvania, unlike in Federal court, when the parties negotiate a specific sentence as part of plea agreement and the court accepts the plea agreement, the parties and the court are bound by the terms of that agreement. *Commonwealth v. Daniels*, 656 A.2d 539, 544 (Pa. Super. 1995)(upon acceptance of the terms of a plea agreement, the court is bound by the terms of that agreement); *Commonwealth v. Dalberto*, 648 A.2d 16, 20 (Pa. Super. 1994)(where the plea agreement contains a negotiated sentence which accepted and imposed by the sentencing court, there is no authority to permit a challenge to the discretionary aspects of that sentence).

With respect to Petitioner's allegation that counsel was ineffective in failing to investigate Petitioner's mental health, counsel has a duty to undertake reasonable investigations or to make reasonable decisions that render particular investigations

unnecessary. *Commonwealth v. Brown*, 196 A.3d 130, 171 (Pa. 2018). The reasonableness of a particular investigation depends upon evidence known to counsel, as well as evidence that would cause a reasonable attorney to conduct a further investigation. *Commonwealth v. Hughes*, 865 A.2d 761, 813-14 (Pa. 2004). Where counsel has made a strategic decision after a thorough investigation of the law and facts, it is virtually unchallengeable; strategic choices made following a less than complete investigation are reasonable precisely to the extent that reasonable professional judgment supports limitation of the investigation. *Commonwealth v. Basemore*, 744 A.2d 717, 735 (Pa. 2000). An evaluation of counsel's performance is highly deferential, and the reasonableness of counsel's decisions cannot be based upon the distorting of facts of hindsight. *Id.* Reasonableness in this context depends upon the information supplied by the defendant. *Id.*

At this juncture, the court cannot conclude that there is no merit to Petitioner's claim with respect to the failure to investigate his mental health. The record is devoid of any information with respect to such.

Accordingly, the court will hold a hearing on whether counsel was ineffective in failing to investigate Petitioner's mental health prior to Petitioner pleading guilty.

ORDER

AND NOW, this ___ day of November 2020 following a review of the record in this matter, a hearing on Petitioner's ineffectiveness claim regarding failure to investigate is scheduled for **December 22, 2020, at 1:30 p.m. in Courtroom #4 of the Lycoming County Courthouse**. Arrangements have been made for Petitioner to participate in the

hearing via telephone, due to the COVID-19 pandemic, Petitioner's incarceration in a federal prison, and a recent outbreak at that prison.

With respect to Petitioner's other claims, the court notifies Petitioner of its intent to dismiss these claims without holding an evidentiary hearing. Petitioner may respond to this proposed dismissal within twenty (20) days. If Petitioner does not respond within that time, the court will enter an order dismissing those claims when it issues its decision following the hearing on the ineffectiveness claim regarding failure to investigate.

By The Court,

Marc F. Lovecchio, Judge

cc: Ryan Gardner, Esquire (DA)
Donald Martino, Esquire
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