

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-0001074-2020
:
vs. : CRIMINAL DIVISION
:
:
:
JEREMY BLAKE BANEY, : Notice of Intent to Dismiss PCRA
Defendant : Without Holding An Evidentiary Hearing
: and Order Allowing Counsel to Withdraw

OPINION AND ORDER

By way of background, on July 24, 2020, a criminal complaint was filed against Petitioner Jeremy Baney. The complaint charged Petitioner with simple assault, a misdemeanor of the second degree; terroristic threats, a misdemeanor of the first degree, and harassment, a summary offense. On September 24, 2020, Petitioner pleaded guilty to simple assault in exchange for a sentence of 26 days' time-served to twelve (12) months. Petitioner did not file a post sentence motion or an appeal.

On or about January 20, 2021, Petitioner filed a Post Conviction Relief Act (PCRA) petition in which he alleged that his guilty plea was unlawfully induced. More specifically, Petitioner asserted that he pleaded guilty because he was incarcerated, he was afraid of the victim and of being in jail, and because he could not produce evidence on his cellular device. He also contended that he found new evidence to support his innocence. The "new" evidence allegedly consisted of an email and phone number change dated July 8, 2020 and two photographs dated July 24, 2020.

The court appointed counsel to represent Petitioner and directed PCRA counsel to file either an amended PCRA petition or a no-merit letter. PCRA counsel filed a

motion to withdraw and no-merit letter. A conference was held on May 11, 2021, following which the court gave PCRA counsel 30 days to file a supplement to her motion to withdraw. PCRA counsel complied.

After an independent review of the record, the court finds that Petitioner's claims lack merit and he is not entitled to relief as a matter of law.

The law presumes that a defendant who pleads guilty was aware of what he was doing. *Commonwealth v. Pollard*, 832 A.2d 517, 523 (Pa. Super. 2003). A defendant may not challenge his guilty plea by asserting that he lied under oath. *Id.* "A person who elects to plead guilty is bound by the statements he makes in open court while under oath and he may not later assert grounds for withdrawing the plea which contradict the statements he made at his plea colloquy." *Id.*

In order to determine the voluntariness of the plea and whether the defendant acted knowingly and intelligently, the trial court must, at a minimum, inquire into the following six areas:

(1) Does the defendant understand the nature of the charges to which he is pleading guilty?

(2) Is there a factual basis for the plea?

(3) Does the defendant understand that he has a right to trial by jury?

(4) Does the defendant understand that he is presumed innocent until he is found guilty?

(5) Is the defendant aware of the permissible ranges of sentences and/or fines for the offenses charged?

(6) Is the defendant aware that the judge is not bound by the terms of any plea agreement tendered unless the judge accepts such agreement?

Pa. R. Crim. P. 590, cmt; *Commonwealth v. McCauley*, 797 A.2d 920, 922 (Pa. Super. 2001).

The record reflects that Petitioner's guilty plea was knowingly, intelligently and voluntarily entered. Petitioner understood the nature of the charge and the permissible range of sentences. Transcript, 9/24/2020, at 3. He understood that he had a right to a trial by jury and that he was presumed innocent until proven guilty. Transcript, at 5; Written Plea Colloquy, Questions 7 through 13. He was aware that the judge was not bound by the terms of the plea agreement unless the judge accepted such agreement. Transcript, at 4; Written Plea Colloquy, Question 2. Petitioner also gave a factual basis for his plea. Transcript, at 6-7. He also apologized for his actions and indicated that he should have simply walked away. Transcript, at 9.

In addition, Petitioner stated that he was not being forced or pressured into pleading guilty nor was he given any promises or inducements other than the plea agreement. He discussed all aspects of his case with his attorney, who had not done anything wrong or failed to do anything to cause him to plead guilty. Transcript, at 5-6.

In his written guilty plea colloquy, Petitioner also indicated that he was under no force or pressure to plead guilty. Written Colloquy, Questions 35 and 36. He indicated that he understood that he was giving up his right to present any defenses. Written Colloquy, Question 14. He also indicated that it was his decision to plead guilty and he wished to plead to "take responsibility and move on." Written Colloquy, Questions 21 and 22.

Based on the record, the court finds Petitioner's guilty plea was knowingly,

intelligently, and voluntarily entered.

It is also apparent that the email and phone number changes and the photographs were in existence prior to Petitioner's guilty plea and that he was aware of such. Therefore, this information does not constitute newly discovered evidence. Additionally, since he was aware of this information, Petitioner waived any claim or defense based on this information when he entered his guilty plea. *See Commonwealth v. Jabbie*, 200 A.3d 500, 505 (Pa. Super. 2018)(generally, upon entry of a guilty plea, a defendant waives all claims and defenses other than the jurisdiction of the court, the validity of the plea and the legality of the sentence imposed).

Accordingly, based on an independent review of the record, the court finds that Petitioner's claims lack merit and he is not entitled to relief as a matter of law.

ORDER

AND NOW, this 27th day of October 2021, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the court notifies the parties of its intent to dismiss Petitioner's PCRA petition without holding an evidentiary hearing. Petitioner may respond to this proposed dismissal within twenty (20) days. If no response is received within that time, the court will enter an order dismissing the petition.

The court also grants PCRA counsel's motion to withdraw. Petitioner may hire private counsel or represent himself.

By The Court,

Marc F. Lovecchio, Judge

cc: District Attorney
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Judge Marc F. Lovecchio
Gary Weber, Esquire