

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-0001314-2019
vs. : CP-41-CR-0000120-2020
 : CP-41-CR-0000133-2020
 :
 : Notice of Intent to Dismiss PCRA
JALIL DONTE HARRIS, : Without Holding An Evidentiary Hearing
Defendant : and Granting PCRA Counsel's Motion to
 : Withdraw

OPINION AND ORDER

By Information 1314-2019, the Commonwealth charged Petitioner with sexual assault, sexual abuse of children-photograph/film, corruption of minors, sexual abuse of children-possession of child pornography, statutory sexual assault: 4-8 years older, corruption of minors, and indecent assault-person less than 16 years of age.¹ Counts 1 through 4 related to T.B., a 17-year old female, and Counts 5 through 7 related to E.K, a 15-year old female.

By Information 120-2020, the Commonwealth charged Petitioner with retaliation against victim or witness and simple assault² arising out of an incident between Petitioner and his co-defendant at the Lycoming County Prison.

By Information 133-2020, the Commonwealth charged Petitioner with sexual assault and indecent assault³ against M.H.

On March 17, 2020, Petitioner pled guilty to amended Count 3, corruption of minors, a misdemeanor of the first degree; Count 5, statutory sexual assault, a felony of the second degree; and Count 7, indecent assault under Information 1314-2019 and Count 2,

¹18 Pa. C.S.A. §§3124.1; 6312(b)(2); 6301(a)(1)(ii); 6312(d); 3122.1(a)(1); 6301(a)(1)(i); 3126(a)(8).

²18 Pa. C.S.A. §§4953, 2701.

simple assault, a misdemeanor of the second degree under Information 120-2020. Petitioner waived the preparation of a Pre-Sentence Investigation (PSI) report and requested immediate sentencing. The court sentenced Petitioner to an aggregate term across both dockets of 4 years to 8 years' incarceration in a State Correctional Institution (SCI).⁴ The Commonwealth nol prossed all the charges in Information 133-2020 and the remaining charges in Informations 1314-2019 and 120-2020. Petitioner did not file a post sentence motion or an appeal.

On January 21, 2021, Petitioner filed a pro se Post Conviction Relief Act (PCRA) petition in which he asserted ineffective assistance of counsel and a plea of guilty unlawfully induced where circumstances make it likely that the inducement caused Petitioner to plead guilty and Petitioner was innocent. Specifically, Petitioner claimed that the victim stated in the preliminary hearing transcripts that Petitioner had sexual intercourse with her but there was no DNA evidence, audio or video evidence, calls or text messages to prove this; only the words of the alleged victim. Petitioner asserted that he cannot be accused and convicted of a crime he did not commit based only on the words of the alleged victim.

The court appointed counsel to represent Petitioner and directed PCRA counsel to file either an amended PCA petition or a *Turner/Finley*⁵ no-merit letter. After speaking and corresponding with Petitioner, speaking with plea counsel, obtaining and reviewing the discovery materials from plea counsel, and reviewing the transcripts of

³ 18 Pa.C.S.A. §§3121.1; 3126(a)(1).

⁴ The sentence consisted of 1 to 2 years for corruption of minors, a consecutive 2 to 4 years for statutory sexual assault, a concurrent 6 months to 1 year for indecent assault, and a consecutive 1 to 2 years for simple assault. The court also awarded Petitioner credit for time served from August 19, 2019 to March 16, 2020.

⁵ *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988); *Commonwealth v. Finley*, 550 A.3d 213 (Pa. Super. 1988)(en banc).

Petitioner's preliminary hearing and guilty plea and sentencing hearing, PCRA counsel filed a motion to withdraw as counsel and a no-merit brief on August 23, 2021. Following a conference held on September 15, 2021, the matter is now ripe for review by the court.

The court conducted an independent review of the record and agrees with PCRA counsel that Petitioner is not entitled to relief as a matter of law. The entire premise of Petitioner's PCRA petition is that he cannot be accused and convicted based solely on the words of the alleged victim. This premise is simply incorrect. The alleged victim is also known in the law as the complainant. Section 3106 of the Pennsylvania Crimes Code states, in relevant part: "The testimony of the complainant need not be corroborated in prosecutions under this chapter." 18 Pa. C.S.A. §3106. What this means is that, contrary to Petitioner's claims, he can be convicted of based solely on the testimony (or words) of the complainant without any other evidence such as DNA, recordings, calls or texts, to corroborate or confirm the complainant's testimony. In fact, if Petitioner had gone to trial, the court would have instructed the jury, in accordance with the Pennsylvania Suggested Standard Jury Instructions, as follows:

The testimony of E.K. standing alone, if believed by you, is sufficient proof upon which to find the defendant guilty in this case. The testimony of the victim in a case such as this need not be supported by other evidence to sustain a conviction. Thus you may find the defendant guilty if the testimony of E.K. convinces you beyond a reasonable doubt that the defendant is guilty.

See Pa.SSJI (Crim) §4.13B.

The record also establishes that Petitioner's guilty plea was entered knowingly, intelligently and voluntarily. Rule 590 requires the court after an inquiry of the defendant on the record to determine whether the defendant is tendering his plea voluntarily

and understandingly. Pa. R. Cr. P. 590. At a minimum, in cases not involving murder, the court should ask questions to elicit the following information:

- (1) Does the defendant understand the nature of the charges to which he or she is pleading guilty or nolo contendere?
- (2) Is there a factual basis for the plea?
- (3) Does the defendant understand that he or she has the right to trial by jury?
- (4) Does the defendant understand that he or she is presumed innocent until found guilty?
- (5) Is the defendant aware of the permissible range 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. Cr. P. 590, cmt.

The court made the required inquiries and additional ones as well. The court explained to Petitioner the elements of the offenses and the maximum penalties and standard guidelines ranges for each offense; Petitioner indicated that he understood. Transcript, 3/17/2020, at 7-9. The court stated the terms of the plea agreement on the record. **Id.** at 12. The court also explained to Petitioner that the court was not required to accept the plea agreement but if it did not, Petitioner could withdraw his guilty plea. **Id.** at 13-14. Again, Petitioner indicated he understood. Petitioner also stated he understood that by pleading guilty he was giving up his right to a trial by jury, his right to file pretrial motions, his presumption of innocence and his right to have the Commonwealth prove his guilt beyond a reasonable doubt. **Id.** at 14.

Petitioner also provided a factual basis for his guilty plea. For statutory sexual assault, Petitioner admitted that in August of 2019 when he was 21 years old, he had sexual intercourse with somebody who was 15 years old. **Id.** at 18. With respect to indecent assault, Petitioner admitted that he had sexual contact with the complainant other than sexual

intercourse. **Id.** at 22. With respect to corruption of minors involving a separate victim, Petitioner agreed that he was having sex with someone else who was under the age of 18 and he and his co-defendant were videotaping it. With respect to simple assault, Petitioner admitted that on September 4, 2019 he got into a fight with his co-defendant and caused injury to him by punching, kicking, kneeling and slamming him. **Id.** at 23-24.

In addition, the court confirmed that: (1) Petitioner could read, write and understand English; (2) he was not taking any substance and did not suffer from any mental emotional or physical condition that would cause him to not understand the proceedings; (3) it was his decision to plead guilty; (4) he was not pleading guilty as a result of any force, pressure, promises or inducements; (5) he had enough time to discuss his case with his attorney and representatives of her office; (6) his attorney explained to him the consequences of pleading guilty and answered any questions or concerns involving his case; and (7) his attorney did not do anything wrong or fail to do anything that caused him to plead guilty. **Id.** at 5, 15-18.

At one point in the hearing, Petitioner indicated he did not know that the victim of the statutory sexual assault and indecent assault was under the age of 16. **Id.** at 18-19. The court explained the mistake of age defense to Petitioner and gave him an opportunity to discuss such with his attorney. **Id.** at 20-21. After speaking with his attorney, Petitioner decided to proceed with his guilty plea and he stated he understood that he was giving up his right to present a mistake of age defense. **Id.** at 21-22.

Therefore, contrary to Petitioner's allegations that plea counsel was ineffective and his guilty was unlawfully induced, the court finds that Petitioner entered his guilty plea knowingly, voluntarily and intelligently.

Based on an independent review of the record, the court finds that Petitioner's claims do not have a basis in law or fact. Accordingly, the following order is entered:

ORDER

AND NOW, this ___ day of September 2021, after an independent review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the court finds that Petitioner's claims lack merit and he is not entitled to relief as a matter of law.

As no purpose would be served by conducting an evidentiary hearing, none will be scheduled. The court notifies the parties of the court's intention to dismiss the PCRA petition. Petitioner may respond to this proposed dismissal within twenty (20) days. If Petitioner does not submit a response within that time, the court will enter an order dismissing his PCRA petition.

The court also grants PCRA counsel's motion to withdraw. Petitioner may represent himself or hire private counsel, but unless Petitioner submits a response that changes the court's mind regarding the merits of his PCRA petition, the court will not appoint counsel to represent Petitioner.

By The Court,

Marc F. Lovecchio, Judge

cc: Joseph Ruby, Esquire (ADA)
Helen Stolinis, Esquire
Jalil Donte Harris, #QC6938
SCI Somerset, 1590 Walters Mill Road, Somerset PA 15510-0001
Judge Marc F. Lovecchio

MFL/laf