

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

TOMMY HOFFMAN,
Petitioner

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:

CR-267-2020

:

:

: Notice of Intent to Dismiss PCRA
: and Order Granting PCRA Counsel's
: Motion to Withdraw

OPINION AND ORDER

On February 17, 2022, Counsel for Tommy Hoffman (Petitioner) filed a Motion to Withdraw as Counsel pursuant to *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988) and *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super.1988). After an independent review of the entire record, this Court agrees with Post Conviction Relief Act (PCRA) counsel and finds that Petitioner has failed to raise any meritorious issues in his PCRA Petition. Therefore, the Petition shall be dismissed.

Background

On February 4, 2020, Petitioner was charged with among other offenses, Rape of a Child¹, Involuntary Deviate Sexual Intercourse², and Unlawful Contact with a Minor³. He was alleged to have had oral sex with a seven-year-old child.

Shortly after Petitioner's preliminary hearing, trial counsel filed a request for a competency evaluation pursuant to 50 P.S. Section 7402 to determine if Petitioner was competent to stand trial. Petitioner asserted that he was suffering from generalized anxiety disorder, attention deficit, hyperactivity disorder, and oppositional defiant disorder. He had been

¹ 18 Pa. C.S. Section 3121(c)

² 18 Pa. C.S. Section 3123B

³ 18 Pa. C.S. Section 6318(a)1

actively under the care of a local community mental health treatment facility on an outpatient basis prior to his arrest.

Petitioner was evaluated by a psychiatrist from Torrance State Hospital. On August 10, 2020 an evaluation or Forensic summary was issued regarding Petitioner's competency. The psychiatrist found that Petitioner did understand the nature of the proceedings against him, and was able to assist in his own defense.

About a year later, on September 24, 2021 Petitioner came before this Court and pled no contest to the charge of Involuntary Deviate Sexual Intercourse. The Commonwealth noted at the time of the no contest plea that there was an applicable 10-year mandatory, and that Petitioner, at minimum, would be required to register under the Sexual Offender Notification and Registration Act (SORNA) as a Tier 3 offender. The plea agreement entered between the parties was for a 10 to 20-year state prison sentence, although the statutory maximum was 40 years. Petitioner would also be entitled to credit for a total of 598 days time served. Since Petitioner was required to be evaluated by the sexual offender assessment board, sentence was deferred until January 7, 2022.

At sentencing, this Court imposed the agreed-upon sentence of 10 to 20 years along with the consecutive three-year probationary sentence pursuant to 42 Pa. C.S. section 9718.5, as Petitioner had been convicted of an offense under 42 Pa. C.S. Section 9799.14(d). N.T. 1/7/2022, p. 10-11. The Court again reviewed with Petitioner his obligation to register pursuant to SORNA at 42 Pa. C.S. Section 9799.23 along with his post sentence rights. *Id.* at 11. Petitioner did not take an appeal from his sentence. Therefore, Petitioner's sentence became final on February 7, 2022.⁴

⁴ The thirtieth day, February 6, 2022, was a Sunday, which must be omitted from the calculation. See 1 Pa. C.S. §1908. Therefore, Petitioner's sentence became final on the next business day, i.e, February 7, 2022.

On December 14, 2022. Defendant filed a *pro se* petition for Post-Conviction Relief. Since this was the Petitioner's first PCRA petition, the court appointed counsel and directed PCRA counsel to file either an amended PCRA petition or a *Turner/Finley* no merit letter. On February 17, 2023 counsel filed a Turner/Finley no merit letter with a request to be granted leave of court to withdraw from the case. A conference on the petition was held on April 3, 2023. After consideration, the Court agrees with Attorney Jasper that Petitioner has failed to raise any meritorious issues in his PCRA petition.

Whether the guilty plea was voluntary, knowing, and intelligent

Petitioner wishes for the opportunity to withdraw his plea because he was forced to plead due to "scare tactics." *Pro Se* PCRA Petition, 12/14/22 at p. 4. He also alleges that he was "mentally unstable and no allowances were made for me." *Id.*

In a PCRA claim where a guilty plea was entered and honored by the sentencing judge, the Court is directed to look to whether the plea was knowingly, intelligently, and voluntarily entered. *See Commonwealth v. Moury*, 992 A.2d 162, 175 (Pa. Super. 2010). Petitioner alleges that counsel did not properly advise him and/or he felt forced to enter his plea; therefore, his guilty plea amounted to ineffective assistance of counsel.

Manifest injustice is required to withdraw guilty pleas which are requested after a sentence has been imposed. *Commonwealth v. Flick*, 802 A.2d 620, 623 (Pa. Super. 2002). Such a manifest injustice occurs when a plea is not tendered knowingly, intelligently, voluntarily, and understandingly. *Commonwealth v. Persinger*, 615 A.2d 1305 (Pa. 1992). It does not matter if Petitioner is pleased with the outcome of his decision to plead guilty as long as he did so knowingly, voluntarily, and intelligently. *Commonwealth v. Yager*, 685 A.2d 1000, 1004 (Pa. Super. 1996). Petitioner must demonstrate a "miscarriage of justice . . . which no civilized

society could tolerate, in order to be entitled to relief.” *Commonwealth v. Allen*, 732 A.2d 582, 588 (Pa. 1999). A trial court must, at a minimum, evaluate the following six areas:

(1) Does the Petitioner understand the nature of the charges to which he is pleading guilty? (2) Is there a factual basis for the plea? (3) Does the Petitioner understand that he has a right to trial by jury? (4) Does the Petitioner understand that he is presumed innocent until he is found guilty? (5) Is the Petitioner aware of the permissible ranges of sentences and/or fines for the offenses charged? (6) Is the Petitioner aware that the judge is not bound by the terms of any plea agreement tendered unless the judge accepts such agreement?

Commonwealth v. Young, 695 A.2d 414, 417 (Pa. Super. 1997). In *Yeomans*, the Superior Court further summarized:

In order for a guilty plea to be constitutionally valid, the guilty plea colloquy must affirmatively show that the Petitioner understood what the plea connoted and its consequences. This determination is to be made by examining the totality of the circumstances surrounding the entry of the plea. Thus, even though there is an omission or defect in the guilty plea colloquy, a plea of guilty will not be deemed invalid if the circumstances surrounding the entry of the plea disclose that the Petitioner had a full understanding of the nature and consequences of his plea and that he knowingly and voluntarily decided to enter the plea.

Commonwealth v. Yoemans, 24 A.3d 1044 (Pa. Super. 2011) (citing *Commonwealth v. Fluharty*, 632 A.2d 312, 314 (Pa. Super. 1993)).

A review of the transcripts of the guilty plea and sentencing hearings in this case confirms that Petitioner did in fact enter into his plea knowingly, voluntarily, and intelligently. This Court informed Petitioner of the right to a jury trial, the elements of the charges to which he was pleading, and the maximum sentences and fines that may accompany those charges. N.T., 9/24/2021, p. 2, 4. The mandatory sentence of 10 years⁵ was discussed at the plea hearing, and the factual basis for the underlying charges of the plea was placed on the record. *Id.* at p. 4-10. The first page of the plea colloquy shows that Petitioner was aware of the terms of his plea agreement, which was for 10-20 years. Guilty Plea Colloquy 9/24/21, at p. 1.

⁵ 42 Pa. C.S. §9718(a)(1).

The Court also notes that the Petitioner presented as an individual with limitations on comprehension and a history of mental health treatment. He had difficulty with reading and writing. N.T., 9/24/2021 at p. 2. In reviewing not only the charge to which he was pleading but the other circumstances affecting his sentence, the Court took its time during both the plea and sentencing hearing to explain what was happening in different ways to make certain that Petitioner understood what he was accepting responsibility for. *Id.* at p. 15-16. The Court repeatedly asked the Petitioner if he had any questions, and/or whether he understood what was being discussed. The Court gave Petitioner the opportunity at any time to stop the proceedings to speak with his lawyer. Therefore, according to Pennsylvania law, Petitioner's plea was entered knowingly, voluntarily, and intelligently.

Conclusion

Based upon the foregoing, this Court finds no basis upon which to grant Petitioner's PCRA petition or to examine the substantive merits of his claim. Additionally, the Court finds that no purpose would be served by conducting any further hearing. As such, no further hearing will be scheduled. Pursuant to Pennsylvania Rule of Criminal Procedure 907(1), the parties are hereby notified of this Court's intention to deny Petitioner's PCRA Petition. Petitioner may respond to this proposed dismissal within twenty (20) days. If no response is received within that time period, the Court will enter an Order dismissing the Petition.

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ORDER

AND NOW, this 24th day of August, 2023, it is hereby **ORDERED** and **DIRECTED** as follows:

1. Petitioner is hereby notified pursuant to Pennsylvania Rule of Criminal Procedure 907(1), that it is the intention of the Court to dismiss his PCRA petition unless he files an objection to that dismissal within twenty (20) days of today's date.
2. The application for leave to withdraw appearance filed February 17, 2023, is hereby **GRANTED** and Trisha Jasper, Esq. may withdraw her appearance in the above captioned matter.
3. **Petitioner will be notified at the address below through means of certified mail.**

By the Court,

Nancy L. Butts, President Judge