

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**JEREMY WILLIAM NEWMAN,
Petitioner**

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CR-883-2021

**NOTICE OF INTENT TO
DISMISS PCRA**

OPINION

On April 27, 2023, Counsel for Jeremy Newman (Petitioner) filed a Petition to Withdraw from Representation of Post-Conviction Collateral Relief 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. The Petition, therefore, should be dismissed.

Background

On April 8, 2022, Petitioner was scheduled to select a jury at docket number 880-2021 and instead entered a negotiated guilty plea to one count of Delivery of a Controlled Substance, an ungraded felony, (methamphetamine less than 2.5 grams) and to another count of Delivery of a Controlled Substance, an ungraded felony, (methamphetamine between 10-50 grams) under docket number 883-2021. Petitioner was sentenced pursuant to the plea agreement to an aggregate sentence of 30-84 months. Defendant was given credit for three hundred nineteen days and made eligible for a Risk Recidivism Reduction Incentive (RRRI). No subsequent Motions

for Reconsideration or appeals were filed. Therefore, Petitioners judgment of sentence was final on May 9, 2022.¹

On February 13, 2023 and February 16, 2023, Petitioner filed two very similar *pro se* Petitions for Habeas Corpus. In his petitions, Petitioner asserted claims of lack of subject matter jurisdiction and ineffective assistance of counsel. These claims are cognizable under the PCRA. 42 Pa. C.S.A. §9543(a)(2)(ii), (viii). Therefore, the Court was required to treat the petitions as Post Conviction Relief Act (PCRA) petitions. *See* 42 Pa. C.S.A. §9542 (The PCRA “shall be the sole means of obtaining collateral relief and encompasses all other common law and statutory remedies for the same purpose that exist when this subchapter takes effect, including habeas corpus and coram nobis.”); *Commonwealth v. Fantauzzi*, 275 A.3d 986, 996 (Pa. Super. 2022)(if claim and relief are contemplated under the PCRA, the PCRA is the sole means of obtaining relief); *Commonwealth v. Taylor*, 65 A.3d 462, 465-466 (Pa. Super. 2013)(habeas corpus petition that raises issues cognizable under the PCRA must be treated as a PCRA petition). Since the petitions were filed within one year of when the charges became final, his petitions are timely. *See* 42 Pa. C.S. Section 9545(b)(1).

This Court appointed Trisha Hoover Jasper, Esquire as Petitioner’s attorney on February 21, 2023. On April 27, 2023, Attorney Hoover Jasper filed a Petition to Withdraw from Representation of Post-Conviction Collateral Relief following a *Turner/Finley* “No Merit Letter.” A PCRA conference was held on May 1, 2023. After consideration of the entire record, this Court agrees with Attorney Hoover Jasper that Petitioner has failed to raise any meritorious issues in his PCRA Petition.

¹ May 8, 2022 was a Sunday; therefore, Petitioner’s judgment became final on Monday, May 9, 2022. *See* 1 Pa. C.S.A. §1908.

Discussion

To prevail in a claim of ineffective assistance of counsel, a petitioner must overcome the presumption that counsel is effective by establishing all of the following three elements, as set forth in *Commonwealth v. Pierce*, 515 Pa. 153, 527 A.2d 973, 975–76 (1987): (1) the underlying legal claim has arguable merit; (2) counsel had no reasonable basis for his or her action or inaction; and (3) the petitioner suffered prejudice because of counsel's ineffectiveness.

Commonwealth v. Dennis, 597 Pa. 159, 950 A.2d 945, 954 (2008).

Petitioner contends that this Court did not have subject matter jurisdiction which caused due process violations which caused an unconstitutional guilty plea by government officials and officers. *Pro Se Habeas Petition*, 2/13/2023, p 2. All courts of common pleas have statewide subject matter jurisdiction in cases arising under the Crimes Code. *Commonwealth v. Bethea*, 828 A.2d 1066, 1074 (Pa. 2003). Therefore, this issue has no arguable merit.

Petitioner also alleges that his guilty plea was “unconstitutionally entered.” *Pro Se Petition* 2/13/2023, p 2. Petitioner claims that as a result of the court not having jurisdiction his guilty plea was unconstitutional. *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 into. *Commonwealth v. Moury*, 992 A.2d 162, 175 (Pa. Super. 2010). Manifest injustice is required to withdraw a guilty plea after a sentence has been imposed. *Commonwealth v. Flick*, 802 A.2d 620, 623 (Pa. Super. 2002). Such a manifest injustice occurs only when a plea is not tendered knowingly, intelligently, voluntarily, and understandingly. *Commonwealth v. Persinger*, 615 A.2d 1305, 1308 (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?

Pa. R. Crim. P. 590, cmt; *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, 1047 (Pa. Super. 2011) (citing *Commonwealth v. Fluharty*, 632 A.2d 312, 314 (Pa. Super. 1993)).

A review of the transcript of the guilty plea and sentencing hearing in this case confirms that Petitioner did in fact enter into his plea knowingly, voluntarily, and intelligently. This Court informed Petitioner of the nature of the charges to which he was pleading. N.T. 4/8/2022, at 3-4. Petitioner was asked questions to establish the factual basis for the underlying charges and he admitted to the elements of the charges to which he was pleading guilty. *Id.* at 3. The Court

informed Petitioner of his right to a jury trial and the maximum sentences and fines that accompanied his charges. *Id.* at 2-4, 9. Petitioner indicated that he went through the guilty plea colloquy with the assistance of an attorney, he stated that he answered truthfully, he had adequate time to consult with his attorney, it was his decision to plead guilty, and that he was not threatened, coerced, or forced into making his decision. *Id.* at 8-10. This issue has no arguable merit.

Finally, Petitioner alleges that his trial counsel did not represent him to the fullest. He further believes that his attorney failed to properly represent him at his suppression hearing. Petitioner has not alleged any specific reason for trial counsel's ineffectiveness other than he may have failed to call a "neutral witness" which may have contradicted the testimony of law enforcement presented at the suppression hearing. Petitioner has not named the alleged "neutral witness" nor has he provided a witness certification from the witness. *See* Pa. R. Crim. P. 902(A)(15). Petitioner has also not pleaded that the witness was available to testify at the suppression hearing or that the witness was willing or able to provide testimony for the defense. *See Commonwealth v. Brown*, 196 A.3d 130, 167 (Pa. 2018)(regarding requirements for an ineffective assistance of counsel claim for failing to call a witness). Therefore, Petitioner has failed to show that this claim has arguable merit.

Moreover, Petitioner was advised at the time of his plea that by pleading guilty he was giving up his right to appeal any adverse decisions on any motions filed by the court. *See* Guilty Plea Colloquy, 4/8/2022 at p.3. While he may not have been happy with trial counsel's representation, he did have the opportunity to litigate this court's ruling on the suppression by taking his case to trial and then appealing the suppression decision. He chose not to. Generally, a plea of guilty amounts to a waiver of all defects and defenses except those concerning the

jurisdiction of the court, the legality of the sentence, and the validity of the guilty plea.

Commonwealth v. Moyer, 497 Pa. 643, 444 A.2d 101 (1982); *Commonwealth v. Reichle*, 589 A.2d 1140, 1141 (Pa. Super. 1991). Therefore, he has waived his challenge on this issue.

Conclusion

Based on the foregoing, this Court finds no basis upon which to grant Petitioner's PCRA petition. 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.

COMMONWEALTH OF PENNSYLVANIA	:	CR-883-2021
	:	
v.	:	
	:	
JEREMY WILLIAM NEWMAN,	:	WITHDRAWAL OF
Petitioner	:	COUNSEL GRANTED
	:	

ORDER

AND NOW, this 28th day of September 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 this 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 on April 27, 2023 by Trisha Hoover Jasper is hereby **GRANTED**. Ms. Hoover Jasper no longer represents Petitioner. Petitioner may represent himself or he may hire counsel to represent him.
3. **Petitioner will be notified at the address below through means of certified mail.**

By the Court,

Nancy L. Butts, President Judge