

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	CP-41-CR-613-2020
	:	CP-41-CR-594-2020
	:	CP-41-CR-848-2020
DERON SHADD	:	
Petitioner	:	PCRA/ WITHDRAWAL
	:	GRANTED

OPINION AND ORDER

On September 22, 2022, Counsel for Deron Shadd (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 March 7, 2022, Petitioner appeared before Senior Judge John B. Leete¹ and entered a negotiated guilty plea at docket number 848-2020 to one count of Delivery of a Controlled Substance (cocaine, 5 kg) and count of Criminal Use of a Communication Facility, 18 Pa C.S.A. Section 7512. He also pled guilty under information 613-2020 to one count of Fleeing or Attempting to Elude a Police officer, 75 Pa. C.S. Section 3733, and under information 594-2020 one count of Possession with the Intent to Deliver (heroin, 49 g). That same day, Petitioner was sentenced pursuant to the plea agreement to an aggregate sentence encompassing all three cases of four (4) to fifteen (15) years to be served in a state correctional facility. Defendant was given credit for 644 days served to date and made eligible for a Recidivism Risk Reduction Incentive

¹ Judge Leete was specially assigned to preside over criminal cases. At the time there existed two vacancies on the Lycoming County Court of Common Pleas.

(RRRI) sentence calculation to be made by the Department of Corrections. No subsequent Motions for Reconsideration or appeals were filed. Therefore, his sentence became final on April 7, 2022. On July 19, 2022 Petitioner filed a timely *pro se* Petition for Post Conviction Relief (PCRA) at case numbers 613-2020 and 594-2020 alleging that his original attorney, Andrea Pulizzi, Esquire was ineffective for failing to file a suppression motion for the unconstitutional activity of the police and that she unduly delayed his arraignment. No such allegation of ineffective assistance has been made regarding 894-2020. This Court appointed Trisha Hoover-Jasper, Esquire as Petitioner's attorney on July 26, 2022. On September 22, 2022, 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 October 10, 2022. 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.

Whether the Petitioner entered his guilty plea involuntarily

Petitioner claims that but for his original attorney's ineffectiveness, he would have not entered a plea of guilty. 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 guilty plea which is requested 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?

Commonwealth v. Young, 695 A.2d 414, 417 (Pa. Super. 1997).

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. 3/07/2022, at 4-5. 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 8-10. The Court informed Petitioner of his right to a jury trial and the maximum sentences and fines that accompanied his charges. *Id.* at 4-5, 7. Petitioner indicated that he went through the guilty plea colloquy with the assistance of an attorney, he understood the contents of the colloquy (called a plea statement here), 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 4-8. The Court notes that Petitioner did not have the benefit of one but two different attorneys who represented him at his guilty plea and sentencing hearing. Both counsel indicated to the judge that they believed that they reviewed the plea statement as well as all of the rights and responsibilities and that Petitioner understood them all. *Id.* at 7.

Petitioner told Senior Judge Leete that he was advised of all of the important constitutional and procedural rights that you give up when you enter a plea in a criminal case and that he understood them. *Id.* at 4. In addition, question 19 of the guilty plea colloquy states:

19. Do you understand that if you enter a plea of guilty you are waiving your right to object to anything that you think was improper or illegal in your apprehension and arrest or in the investigation, and the prosecution of the charges against you?

Guilty Plea Colloquy 3/7/2022, at 5. Petitioner answered yes to this question.

“Where the defendant enters his plea on the advice of counsel, the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases.” *Commonwealth v. Hickman*, 799 A.2d 136, 141 (Pa.Super. 2002) (citation and quotation marks omitted). In other words, a defendant need not be apprised of every possible suppression motion as a predicate to a finding that the plea was voluntary, because the decision to seek suppression is left to counsel as a matter of strategy in the event a plea bargain is not reached. *Commonwealth v. Johnson*, 179 A.3d 1153, 1160 (Pa. Super. 2018). “A defendant who accepts a plea bargain on counsel's advice does not necessarily suffer prejudice when his counsel fails to seek suppression of evidence, **even if it would be reversible error for the court to admit that evidence.**” *Premo v. Moore*, 562 U.S. 115, 129, 131 S.Ct. 733, 178 L.Ed.2d 649 (2011) (emphasis added). *Johnson*, 179 A.3d at 1161.

Petitioner received a negotiated plea agreement or bargain for the disposition of all three cases. Under information 594-2020 with the Petitioner’s prior record score of repeat felony offender (RFEL) he was potentially facing a standard guideline range of 40-52 months, information number 613-2020 a standard range of 24-36 months and information 894-2020 a standard range of 35-45 months. These charges were not from the same criminal episode and could have been sentenced consecutive to one another. His overall maximum punishment was a

total of 44 years. Despite his prior record excluding him from RRRI eligibility, the Commonwealth waived Petitioner's ineligibility for that program at the time of sentencing. Petitioner has failed to show the court how he has been prejudiced by Attorney Pulizzi for delaying his arraignment and/or failing to file a suppression motion.

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.

ORDER

AND NOW, this 12th day of June, 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 September 22, 2022, is hereby **GRANTED** and Trisha Hoover-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

xc: DA
Trisha Hoover-Jasper, Esquire
Deron Shadd NC 8753 (certified mail)
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NLB/