

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	CP-41-CR-1513-2021
	:	
CHICANE BARKHOLZ,	:	PCRA/ WITHDRAWAL
Petitioner	:	GRANTED
	:	

OPINION AND ORDER

On December 7, 2023, Counsel for Chicane Barkholz (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 August 8, 2023, Petitioner entered a negotiated guilty plea to one count of Delivery of a Controlled Substances, 35 Pa. C.S. § 780-113(a)(30), and Criminal Use of a Communication Facility, 18 Pa. C.S. §7512.¹ The negotiated plea agreement was for a sentence of two to five years' incarceration for both cases to run concurrent to the three-to-ten-year state sentence that Petitioner was serving from another county. That same day, Petitioner was sentenced pursuant to the plea agreement to an aggregate sentence for a minimum of two years and a maximum of five years to be served in a state prison. No subsequent Motions for Reconsideration or appeals were filed.

¹ Petitioner entered a plea of guilty under case number 1405-2021 to the charge Possession of Drug Paraphernalia, 35 P.S. §780-113(a)32 during the same hearing and was sentenced to a finding of guilt without further penalty. This case is not included as part of the instant PCRA petition.

Petitioner filed a *pro se* PCRA Petition on September 14, 2023, in which he alleged that because his assigned attorney, Tyler Calkins, Esquire was not at his pretrial/sentencing hearing and the Court was not made aware of his cooperation with law enforcement which should have been considered by the court for sentencing, trial counsel was ineffective. This Court appointed Trisha Hoover-Jasper, Esquire as Petitioner's attorney on September 18, 2023. On December 7, 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 December 21, 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.

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).

Whether the guilty plea was voluntary, knowing, and intelligent

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. *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).

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. Yeomans, 24 A.3d 1044, 1047 (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 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., Guilty Plea, 8/8/2023, at 4-6. 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 6-

7. The Court informed Petitioner of his right to a jury trial and the maximum sentences and fines that accompanied his charges. *Id.* at 4-6. 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 11.

Petitioner contends that his assigned attorney Tyler Calkins, Esq. was ineffective because he was not in court with Petitioner but has failed to allege how that prejudiced him. Petitioner also alleges that counsel was ineffective because this Court was not told of the Petitioner's cooperation with the Narcotics Enforcement Unit (NEU). Again, Petitioner has failed to assert how counsel was ineffective.

As part of his plea agreement, Petitioner agreed to a two-year to five-year sentence. Even if his attorney had stated at sentencing that Petitioner cooperated with the NEU, the Court still would have imposed the two- to five-year sentence, as that was the terms of the negotiated plea agreement. The Court could not impose a lesser sentence. If Court did so, it would be reversed on appeal. *See Commonwealth v. Parsons*, 969 A.2d 1259 (Pa. Super. 2009)(*en banc*). Since the Court could not impose a lesser sentence, Petitioner was not prejudiced by the counsel's alleged failure to bring to the attention of the Court that Petitioner had cooperated with the NEU.

Furthermore, Petitioner had the opportunity to express any concern about Attorney Calkins not being present and to notify the Court of his cooperation with the NEU. After a review of the transcript of the guilty plea, Petitioner had the opportunity on several occasions to mention the fact himself that he would have cooperated with the NEU. N.T., Guilty Plea, 8/8/2023 at 6, 11-15. He also was asked whether he had sufficient time to speak with his lawyer, either the one in court or with the Public Defender's Office. *Id.* at 11. It would appear that

Petitioner would have been able to and had the opportunity to express his concern about Attorney Calkins not being present in court but he did not. Had the Petitioner not been able to advocate for himself, there was a possibility that since Attorney Calkins was not there, important information for the Court to consider would not have been shared. Based upon the information provided by Petitioner throughout his hearing, he had ample opportunity to share it himself. While this issue may have had arguable merit, the Petitioner was providing information to the Court during the plea and sentence hearing, the Court can find no prejudice.

When discussing the sentence in the plea agreement, the Commonwealth indicated that it was an aggravated range sentence due to the Petitioner being out on bail at the time these offenses were committed. N.T., Guilty Plea, 8/8/2023, at 15. Petitioner advocated for himself with the Court for participation in the State Drug Treatment Program as he explained how he was asking Union County for reconsideration from them to waive his ineligibility for the program on the sentence it imposed for an aggravated assault charge. *Id.* at 13-15.

If this had been an open plea, there could be arguable merit in the Defense Counsel failing to mention this fact. However, had that information been provided to the Court, Petitioner cannot show in any way that he was prejudiced. He received a sentence of the negotiated plea agreement in which the Commonwealth had the opportunity to consider his work before extending the agreement. He also received a guilt without further penalty disposition on the other case that was pled and sentenced that same day without alleging either the fact that his attorney was not there and/or the Court not being told of his cooperation. It seems as though that in hindsight Petitioner is unhappy with the bargained for sentence that he received. The Court cannot understand Petitioner's dissatisfaction. The terms of the plea agreement made this sentence concurrent to Petitioner's three- to ten-year sentence for aggravated assault by vehicle

while DUI from Union County, which meant that he received no additional time for his Lycoming County cases.

The Court can find no prejudice to the Petitioner in either his assigned attorney was not in present in court with him or the fact that his cooperation information was not provided at the sentencing hearing.

The Court finds that Petitioner's guilty plea was entered knowingly, voluntarily, and intelligently and these issues raised by Petitioner, while on their face have some arguable merit, Petitioner fails to show prejudice as a consequence meriting relief.

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 4th day of April, 2024, 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 December 7, 2023, 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

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