

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

MIKAHIL G. JONES,
Petitioner

:
:
:
:
:
:
:

CP-41-CR-713-2022

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

OPINION AND ORDER

On November 16, 2023, Counsel for Mikahil G. Jones (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 May 16, 2023, Petitioner entered a negotiated guilty plea to one count of Simple Assault, 18 Pa. C.S.A. §2701. The negotiated plea agreement was for a sentence of eleven and one half (11 ½) months to twenty-four (24) months less that one day to be served in the Lycoming County Prison with eligibility for work release or work crew and credit for time served. On the same day, he pled guilty to another case, along with currently serving a sentence in the Lycoming County prison. As a result of the sentence in this case, the aggregate sentence would send him to state prison; a result that no one wanted. Based upon the recommendation of the Commonwealth, the Court then modified the Petitioner's sentence in this case to a (10) ten-month minimum with the same maximum sentence length. No subsequent motions for reconsideration or appeals were filed.

Petitioner filed a *pro se* PCRA Petition on September 5, 2023, in which he alleged that his assigned attorney, Howard Gold, Esquire, was ineffective because he did not get the charges dropped or get a better deal. He also alleged that he and his girlfriend, the victim in the case had agreed to go to counseling in exchange for his charges to be dismissed. Petitioner also believed that since his girlfriend who was the victim did not seek medical attention, the Commonwealth would not be able to prove the charges filed against him. This Court appointed Trisha Hoover-Jasper, Esquire as Petitioner's attorney on September 12, 2023. On November 16, 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, 5/16/2023, at 2. Petitioner was asked questions to establish the factual basis for the underlying

charges. *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. 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 5-6.

Petitioner contends that his assigned attorney Howard Gold, Esq. was ineffective because he did not get him a better offer or get the charges dropped but has failed to specifically allege how that prejudiced him. Petitioner also alleges that he and his girlfriend, the victim in the case had agreed to go to counseling in exchange for his charges to be dismissed. Again, Petitioner has failed plead the existence of the agreement to show how counsel was ineffective.

Petitioner was scheduled for jury selection on May 16, 2023. Instead of selecting his jury, Petitioner chose to enter his plea. As part of his plea agreement, Petitioner agreed to an eleven and one-half (11 1/2) to twenty-four (24) month less one day sentence. At the time the offense was committed, Petitioner was on probation with the Lycoming County Adult Probation office. *Id.* at 7. Because Petitioner received a max-out sentence for his violation, any jail time he served prior to September 20, 2022 went to his max-out sentence and not to his new charge. *Id.* As a result, Petitioner was going to be required to do additional time on his minimum sentence. When the Commonwealth discovered this discrepancy, they agreed to modify the plea agreement to a minimum of 10 months instead. *Id.* at 7-8. Therefore, Petitioner was able to obtain a greater benefit or offer on his sentence due to the work of his attorney.

At the time of his guilty plea and sentence Petitioner was given the opportunity to speak to the Court to express his concerns about the what he believed the offer to dismiss the charges in

exchange for attending counseling with his girlfriend, who was the victim in the case. In fact, Petitioner offered nothing at the time he had the chance to speak. *Id* at 7.

Petitioner also alleges that he believed that if he and his girlfriend attended counseling the charges would be dismissed and his attorney failed to enforce the agreement thus providing ineffective assistance of counsel. Petitioner did not plead or attach any proof of the agreement or attended counseling in reliance on that agreement. *See* Pa. R. Crim. P. 902(A)(12), (15)(requiring the attachment of affidavits, documents, witness certifications and other evidence showing such facts to a PCRA petition).

Furthermore, plea agreements are made between counsel for the Commonwealth and counsel for the defendant, not between the victim and the defendant. *See* Pa. R. Crim. P. 590(b)(2) (“When counsel for both sides have arrived at a plea agreement, they shall state on the record in open court, in the presence of the defendant, the terms of the agreement.”). A defendant is not entitled to a plea agreement. *See Commonwealth v. McElroy*, 665 A.2d 813, 816 (Pa. Super. 1995). Although the District Attorney decides whether a plea agreement is in the best interest of the citizens of the Commonwealth, no enforceable plea agreement exists unless or until it is presented to the court. *See id.* at 816-817; *see also Commonwealth v. Jefferson*, 777 A.2d 1104, 1107 (Pa. Super. 2001). Counsel for the parties never presented the Court with an agreement for all of the charges to be dismissed if the defendant and the victim went to counseling.

At the time of the plea, the Court verified with the Commonwealth whether or not the victim had been consulted and had the opportunity to be advised about the plea agreement. *Id.* at 8. The Commonwealth did not mention any discussion of a plea agreement dismissing the charges if Petitioner completed counseling. In fact, the Commonwealth told the Court that the

victim had been consulted and wanted jail time for his offense but appeared not to oppose the dismissal of some of the charges. *Id.* The victim was in agreement with the dismissal of some of the charges but there was nothing to indicate the existence of a plea agreement to dismiss all the charges under any circumstances. Therefore, Defense Counsel was not ineffective for failing to raise an issue that did not exist.

The Court finds that Petitioner's guilty plea was entered knowingly, voluntarily, and intelligently, and that Petitioner has failed to plead and prove any of the prongs for an ineffective assistance of counsel claim.

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 14th day of May, 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 the Clerk of Courts is directed to remove Trisha Hoover-Jasper, Esq.as counsel of record. Petitioner may represent himself or hire private counsel.
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
Mikhail Jones (certified mail)
Lycoming County Prison
277 West Third Street
Williamsport, PA 17701
Clerk of Courts
Gary Weber, Esquire
Jerri Rook

nlb/