

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	
v.	:	<b>CP-41-CR-1630-2021</b>
	:	<b>CP-41-CR-0490-2023</b>
	:	
<b>TYREE HAKIM HOLLY,</b>	:	<b>PCRA/ WITHDRAWAL</b>
<b>Petitioner</b>	:	<b>GRANTED</b>
	:	

**OPINION AND ORDER**

On June 3, 2024, Counsel for Tyree Holly (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 a conference on the Petition to Withdraw and review of another document filed by the Petitioner pro se regarding his request for credit which had not been given to him at sentencing, PCRA counsel was granted leave to investigate whether Petitioner was entitled to approximately two years of credit from roughly October 13, 2021 through October 16, 2023.

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 regarding his guilty plea. However, the Court finds that is entitled to credit for time served. He should have been given credit for the 733 days served from October 13, 2021 until October 16, 2023 when he was sentenced on October 17, 2023.

***Background***

On July 7, 2023, Petitioner entered a negotiated guilty plea. In case 1630-2021, Petitioner entered guilty pleas to counts 1 through 83, which involved multiple counts each of photographing, filming or depicting on a computer a child under the age of 18 engaging in sexual

acts or simulated sexual acts; sexual abuse of children-sell, display or transfer materials containing child pornography; statutory sexual assault; corruption of minors; indecent assault; aggravated indecent assault; involuntary deviate sexual intercourse with a complainant less than 16 years of age; criminal use of a communication facility; and sexual abuse of children-possession of child pornography. In case 490-2023, Petitioner entered guilty pleas to counts 1 through 188, which involved multiple counts each of sexual abuse of children; photographing, filming or depicting on a computer a child under the age of 18 engaging in sexual acts or simulated sexual acts; and criminal use of a communication facility. On October 17, 2023, Petitioner was sentenced in accordance with the terms of the plea agreement to an aggregate term of 10 to 20 years' incarceration in a State Correctional Institution (SCI), consisting of consecutive sentences of 2 to 4 years on Count 7, photographing sexual acts on a computer, a felony of the second degree, in 490-2023; 3 to 6 years on Count 92, photographing sexual acts on a computer, a felony of the first degree, in 490-2023; and 5 to 10 years on Count 15, involuntary deviate sexual intercourse with a complainant less than 16 years of age, a felony of the first degree, in 1630-2021. On the remaining counts, Petitioner received concurrent sentences.

Petitioner filed a *pro se* Petition for Post Conviction Relief on April 2, 2024 alleging that his assigned attorney, Howard Gold compelled him to enter a plea to the charges, such that his guilty plea was not knowingly voluntarily and intentionally entered. More specifically, he asserted that counsel erroneously advised him to accept an open guilty plea following criminal conduct counsel knew he did not commit because the alleged victim testified at the preliminary hearing that: (1) she was 15 years old when they met but she lied to him about her age; (2) she pursued him and consented to their sexual encounters; (3) she asserted that it was her idea to take digital photographs and film their sexual acts. He also asserted that he was unaware of the

alleged victim's true age and he was under the impression that he would receive a 3 year minimum and 10 year maximum sentence. He also asserted that he requested that Gold challenge the court's sentence but he failed to do so.

The court appointed Donald A. Martino, Esquire as Petitioner's attorney on April 8, 2024. On June 3, 2024, Attorney Martino 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 June 18, 2024 at which time, the court shared with counsel the *pro se* Motion for Modification of Sentence, which Petitioner had filed prior to filing his PCRA petition. After review of the *pro se* motion, PCRA counsel filed an Amended Petition for Post-Conviction relief on the issue that the Petitioner's sentence was illegal as he did not receive the credit to which he was entitled from the sentencing judge.<sup>1</sup>

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 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.

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<sup>1</sup> The judge who took Petitioner's plea and imposed sentence was Senior Judge Kenneth D. Brown

*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 *Commonwealth v. 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.

24 A.3d 1044, 1047 (Pa. Super. 2011) (citing *Commonwealth v. Fluharty*, 632 A.2d 312, 314 (Pa. Super. 1993)).

The record reflects that the court evaluated these areas during the guilty plea hearing and the hearing was supplemented with a written colloquy. The court explained the nature of the charges to Petitioner, and Petitioner indicated that he understood the

elements that the Commonwealth would have to prove if he proceeded to trial. *See* Guilty Plea Hearing, 07/07/23, at 8-17. Petitioner admitted a factual basis for the plea. *See id.* at 20-25; 28-30. The court explained the right to a jury trial and the presumption of innocence to Petitioner, and he indicated that he understood these rights. *See id.* at 6-7. The court also explained and Petitioner understood the maximum sentences and fines for the offenses. *See id.* at 17-19. Petitioner indicated that he was not pressured to enter a guilty plea; that he was entering the plea of his own free will; and that it was his decision. *See id.* at 15-16. The court explained that the plea agreement was for 10 to 20 years' incarceration and ensured that the plea agreement was acceptable to Petitioner. *See id.* at 31-31. Petitioner was aware that the court was not bound by the plea agreement unless the court accepted it, but the court accepted the plea agreement and sentenced Petitioner in accordance with it. Written Guilty Plea Colloquy, Question 3; Sentencing Transcript, 10/17/23, at 37, 44-46.

A possibility mistake of age defense to some of the charges was discussed during the plea hearing and specifically waived by Petitioner. *See* Guilty Plea Transcript, at 26-27.

To the extent Petitioner asserts that he was only told that his sentence would be for a 3- to 10-year sentence, this claim is belied by the record. The written guilty plea colloquy and all of the discussions regarding the agreement in the plea hearing and the sentencing hearing indicated that the agreement was for a 10- to 20-year sentence.

To the extent Petitioner asserted that he had a consent defense, he is simply not correct. Any consent by a minor to offenses designed to protect minors is ineffective. *See* 18 Pa. C.S.A. §311(2), (3); *see also* *Commonwealth v. Castelhun*, 889 A.3d 1228,

1234 (Pa. Super. 2005)(consent is not a defense to statutory sexual assault); *Commonwealth v. Kitchen*, 814 A.2d 209, 213 (Pa. Super. 2002)(consent is not a defense to offenses under 18 Pa. C.S.A. §6312); *Commonwealth v. Hughlett*, 378 A.2d 326, 329 (Pa. Super. 1977)(females under the age of 16 may not legally assent to sexual acts of any kind); *Commonwealth v. Collin*, 335 A.2d 383, 386 (Pa. Super. 1975)(consent is not a defense to corruption of minors).

Petitioner also contends that a ten-year minimum sentence is for repeat offenders. The court cannot agree. The ten-year minimum was an aggregate of consecutive sentences for three separate offenses: one count of involuntary deviate sexual intercourse; and two counts of photographing or filming a minor engaged in sexual acts- one graded as a felony of the first degree and another graded as a felony of the second degree.

Furthermore, the court did not have the discretion or authority to impose any sentence other than the one agreed to by the parties when the parties negotiated both the minimum term and the maximum term. *See Commonwealth v. Parsons*, 969 A.2d 1259, 1268 (Pa. Super. 2009)(“when the parties enter the plea agreement on the record, and the court accepts and approves the plea, then the parties and the court must abide by the terms of the agreement.”). The only thing the court could have done, but it did not choose to so, was to reject the plea agreement in its entirety. *See id.* (if the court is not satisfied with any term of the plea bargain, it should not accept the plea). Petitioner agreed to the 10 to 20-year sentence, and he and the court are bound by that agreement.

***Whether Petitioner is entitled to credit for time served***

After review of the record and with the agreement of the Commonwealth, the court finds that Petitioner is entitled to credit for time served from October 13, 2021

through October 16, 2023. Although Petitioner was incarcerated in the Lycoming County Prison from January 14, 2021, Petitioner was given credit for the time from January 14, 2021 through October 12, 2021 on his parole revocation in case 223-2018. *See* Sentencing Transcript, at 50. The remainder of the credit was to be applied to Petitioner's sentences in these cases, but it was inadvertently not included in the sentencing order.

***Conclusion***

The court finds that the claims asserted in Petitioner's *pro se* PCRA petition lack merit and he is not entitled to relief as a matter of law, because the record reflects that his guilty plea was knowingly, intelligently and voluntarily entered and that Petitioner was well aware that the plea agreement in this case was for an aggregate sentence of 10 to 20 years incarceration in a state correctional institution. Therefore, the court will give the parties notice of its intent to dismiss Petitioner's *pro se* petition without hold an evidentiary hearing.

The court finds that the counseled PCRA petition seeking credit for time-served has merit. The Commonwealth agreed. Therefore, the court will give Petitioner credit for time-served from October 13, 2021 through and including October 16, 2023.

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<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	<b>CP-41-CR-1630-2021</b>
	:	<b>CP-41-CR-0490-2023</b>
<b>v.</b>	:	
	:	<b>ORDER AWARDING CREDIT</b>
	:	<b>FOR TIME SERVED;</b>
	:	<b>NOTICE OF INTENT TO</b>
<b>TYREE HAKIM HOLLY,</b>	:	<b>DISMISS REMAINDER OF</b>
<b>Petitioner</b>	:	<b>PCRA CLAIMS; and ORDER</b>
	:	<b>GRANTING COUNSEL'S</b>
	:	<b>MOTION TO WITHDRAW</b>
	:	
	:	

**ORDER**

**AND NOW**, this 12<sup>th</sup> day of February, 2025, it is hereby **ORDERED** and **DIRECTED** as follows:

1. Upon motion of Petitioner and with the agreement of the Commonwealth, the court awards Petitioner credit for time served from **October 13, 2021 through October 16, 2023**. The court directs the Clerk of Courts to complete the appropriate form(s) (which the court believes is a Form 300B) to notify the Department of Corrections (DOC) of this award of credit.
2. The court notifies the parties of its intent to dismiss the remainder of his claims without holding an evidentiary hearing. Petitioner may respond to the notice of intent to dismiss within twenty (20) days. If Petitioner fails to file a response to this notice within twenty (20) days, the court will dismiss the remainder of his petition.



3. The court grants PCRA counsel's motion to withdraw. Petitioner may represent himself or hire private counsel, but the court will not appoint counsel to represent him any further in this matter.

By the Court,

Nancy L. Butts, President Judge

xc: Martin Wade, Esq. DA's Office  
Donald A. Martino, Esquire  
Tyree Hakim Holly, #QQ0185  
SCI-Dallas  
1000 Follies Road,  
Dallas, PA 18612  
Clerk of Courts  
SCI Dallas, attn. Record Department  
PA DOC/CSCU – 1920 Technology Parkway, Mechanicsburg PA 17050  
Jerri Rook  
Gary Weber, Esquire

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