

COMMONWEALTH OF PENNSYLVANIA v.
JOSEPH BOOKWALTER, Defendant, C.P. Franklin County Branch,
Criminal Action Nos. 1224 and 1225 of 1998

NOTICE

The deadline for the May 18 issue
of the Franklin County Legal Journal
has been moved up to 9 a.m. Friday, May 11.

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Post Conviction Relief Act — Ineffective Assistance of Counsel — Guilty Plea

1. Petitions for post-conviction collateral relief under the Post Conviction Relief Act must essentially contain four basic elements to demonstrate eligibility.
2. Claim of ineffective assistance of counsel must plead and prove that the ineffectiveness so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
3. To prevail on claim of ineffectiveness, a petitioner must plead and prove that the claim is of arguable merit, that counsel had no reasonable basis for an act or omission and that the outcome of the proceedings would have differed absent counsel's ineffectiveness.
4. Claims of ineffectiveness in connection with a guilty plea will only prevail if the ineffectiveness caused an involuntary or unknowing plea.
5. Truth-determining process is not implicated when petitioner pleads guilty, thus ineffectiveness claims must arise under 42 Pa.C.S.A. §9543(a)(2)(iii).
6. Petitioner who entered guilty plea after both a written and oral colloquy did not prove that his medication made him incoherent at the time, as no medical testimony was presented at the PCRA evidentiary hearing.

Appearances:

John F. Nelson, District Attorney

Christopher E. Sheffield, Esq., Counsel for Defendant

OPINION

Walker, P.J., December 19, 2000

Procedural History

Petitioner Joseph P. Bookwalter was charged with robbery, theft, receiving stolen property and simple assault for events which transpired on May 7, 1998. He thereafter filed an omnibus pre-trial motion to suppress evidence on March 18, 1999, which he later withdrew on May 17, 1999. Later, on May 26, 1999, he appeared before this court and entered a plea of guilty to the robbery charge pursuant to a plea agreement with the Commonwealth. Petitioner was subsequently sentenced at that time to a term of forty-five (45) months to one hundred twenty (120) months.

Petitioner did not file post-trial motions or a direct appeal to the Superior Court, but instead filed a motion for post-conviction collateral relief pursuant to the Post Conviction Relief Act (hereinafter "PCRA") on

November 15, 1999. On November 19, 1999, this court appointed counsel and issued a rule upon the Commonwealth as to why an evidentiary hearing should not be granted. Consequently, an amended petition was filed on June 30, 2000, and an evidentiary hearing was then held before this court on August 31, 2000. The matter is now ripe for disposition pursuant to Rule 1508(d) of the Pennsylvania Rules of Criminal Procedure.

Discussion

To demonstrate eligibility for relief under the Post Conviction Relief Act, petitioner must essentially prove four elements to the court, all by a preponderance of the evidence. First, he has the relatively simple burden of establishing that he has been either (1) convicted of a crime in this Commonwealth and is currently serving time (imprisonment, probation, parole) for that crime, (2) is awaiting execution for that crime or, alternatively, (3) is serving a sentence to which the disputed conviction/sentence will run consecutively.¹ Second, petitioner must prove that his conviction or sentence was in error because of one of the following:²

- (1) an unconstitutional proceeding;
- (2) ineffective assistance of counsel;
- (3) an unlawfully induced guilty plea;
- (4) an appeal was obstructed by government officials;
- (5) newfound exculpatory evidence exists;
- (6) an unlawful sentence was rendered; or
- (7) the convicting/sentencing court had no jurisdiction to act as it did.

A petitioner must plead and prove only one of the above seven (7) grounds because there is absolutely no relief for others. Next, a petitioner must prove he has not previously litigated³ or waived⁴ the issue now raised in his petition.⁵ Last, if the issue could have been, but was not, pursued before, during or after the trial, a petitioner must prove that it was not a tactical decision to do so.⁶ However, even if a petitioner should prove all of

¹ 42 Pa.C.S.A. §9543(a)(1)(i)-(iii).

² 42 Pa.C.S.A. §9543(a)(2)(i)-(viii).

³ An issue was "previously litigated" if the highest appellate court the petitioner could have taken it to has ruled on the merits or it was raised or decided in a previous collateral attack. 42 Pa.C.S.A. §9544(a)(1)-(3).

⁴ An issue is waived if it was not raised before, during or after trial, on appeal or in a prior PCRA proceeding. 42 Pa.C.S.A. §9544(b).

⁵ 42 Pa.C.S.A. §9543(a)(3).

⁶ 42 Pa.C.S.A. §9543(a)(4).

the above, he may not prevail if there was delay in filing the petition on his part that has prejudiced the Commonwealth.⁷ Thus, the above are the fundamental requirements of the Act, notwithstanding the less substantive requirements imposed throughout the remainder of the Act and also in Chapter 1500 of the Pennsylvania Rules of Criminal Procedure.

Instantly, petitioner has satisfied the court that he is currently incarcerated at the state correctional facility in Waymart, Pennsylvania. Next, petitioner presents the following eight (8) averments in his amended petition pursuant to 42 Pa.C.S.A. §9543(a)(2)(I)-(viii):

1. Counsel was ineffective because he did not verify evidence obtained by the Pennsylvania State Police.
2. Counsel was ineffective because he did not employ an investigator.
3. Counsel was ineffective inasmuch as he allowed petitioner to withdraw the motion to suppress incriminating statements that he now claims were fraudulently induced and furnished without the aid of counsel.
4. Counsel was ineffective because he did not interview potential alibi witnesses.
5. Counsel was ineffective for allowing the defendant to be sentenced on the same day he entered his guilty plea, which afforded him no time to "reflect."
6. Counsel was ineffective because he allowed petitioner to enter a guilty plea under the influence of medication.
7. Counsel was ineffective because he permitted petitioner to sign a plea agreement despite inducement by the Commonwealth which effectively pressured petitioner into the agreement.
8. Counsel was ineffective because he allowed petitioner to plead guilty, notwithstanding petitioner's notification that he changed his mind about the plea bargain.

To be eligible for PCRA relief on an ineffective assistance of counsel claim, a petitioner must plead and prove that the conviction resulted from ineffective assistance of counsel which so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken

⁷ 42 Pa.C.S.A. §9543(b).

place. *Commonwealth v. Legg*, 447 Pa.Super. 362, 669 A.2d 389 (1995). An ineffectiveness claim will prevail in a PCRA proceeding only if a petitioner successfully proves (1) that the claim is of arguable merit, (2) that counsel had no reasonable basis for the act or omission and (3) that the outcome of the proceedings would have been different absent counsel's actions. *Commonwealth v. Pierce*, 515 Pa. 153, 527 A.2d 973 (1987).

Petitioner's first four (4) claims of ineffectiveness must be denied forthwith because he entered a guilty plea. Given the fact that petitioner's counsel assisted him in acquiring a satisfactory plea agreement with the Commonwealth, counsel need not have done those very things that petitioner complains of instantly, i.e., counsel had a reasonable basis for his actions, meeting the second prong of the ineffectiveness standard. Indeed, this court cannot possibly fathom how it could be that these acts or omissions caused petitioner prejudice and, consequently, satisfy the third prong of the ineffectiveness standard as well. All manner of investigations and witness interviews appear to be moot in cases such as this, where, by entering a plea of guilty, petitioner admits that he committed the crime.

Counsel could have unearthed every stone in the Commonwealth while defending petitioner, but at the end of the day, petitioner is guilty of the crime. We know this to be true because he told us during the plea colloquy. Thus, assuming arguendo that all four (4) of petitioner's initial averments are correct, they do not constitute ineffectiveness of counsel. The real heart of this petition, as this court sees it, is the ineffectiveness surrounding the entry of the guilty plea. If petitioner convinces the court that his plea was defective, he will be allowed to withdraw his plea and proceed to a trial on the merits. If he does not convince the court the plea was defective, however, then the instant petition must be denied.

"To be eligible for PCRA relief appellant must plead and prove by a preponderance of the evidence that his guilty plea was unlawfully induced where the circumstances made it likely the inducement caused [him] to plead guilty. Or, [appellant] must prove ineffective assistance of counsel which caused an involuntary or unknowing plea." *Commonwealth v. Young*, 695 A.2d 414, 416 (Pa.Super. 1997) (citations omitted). "Claims of ineffectiveness in connection with a guilty plea will provide a basis for relief only if the ineffectiveness caused an involuntary or unknowing plea." *Commonwealth v. Yager*, 454 Pa.Super. 428, 685 A.2d 1000, 1003 (1996).

Truly, "the law does not require that appellant be pleased with the outcome of his decision to enter a plea of guilty; All that is required is that appellant's decision to plead guilty be knowingly, voluntarily, and

intelligently made." *Id.* When a petitioner pleads guilty and then brings a motion for post-conviction collateral relief, the truth-determining process is not implicated under 42 Pa.C.S.A. §9543(a)(2)(ii). Instead, an ineffectiveness claim in the context of an attack on the effectiveness of a plea falls under 42 Pa.C.S.A. §9543(a)(2)(iii). *Young*, 695 A.2d at 416, n. 3.

To support his allegation that his plea was invalid, petitioner maintains that he could not have entered a valid plea because he was under the influence of psychiatric medication. Because he was under the influence, it is asserted, he entered a plea of guilty despite the fact that he had professed that he had "changed [his] mind about the plea bargain" earlier, he was sentenced the same day he entered the plea and the Commonwealth's negotiated plea agreement "pressured" him. Because petitioner entered a guilty plea and participated in both a written and verbal colloquy pursuant to Pa.R.Crim.P. 319 and *Commonwealth v. Willis*⁸, the only assertion with merit concerns the influence of petitioner's medication. If the medication had the capability of altering petitioner's mind and also had an effect which caused him to enter what was not a knowing, willing and voluntary plea, then he has the right to withdraw that plea and proceed to a trial in this matter.

At the PCRA hearing, petitioner testified that at the time of the plea on May 26, 1999, he was "lost" as a result of his medication. However, the court notes that petitioner answered all of the questions on the written plea colloquy and in the oral colloquy as well when he entered his plea on May 26, 1999. During the oral colloquy, petitioner explained that he was aware the offense carried a maximum sentence of twenty (20) years of incarceration, that he was aware that the plea agreement was for a period of incarceration of forty-five (45) months to one hundred twenty (120) months, that he went over the written colloquy with counsel and that he had no questions concerning the agreement. (Transcript of Proceedings of Guilty Plea, p. 5-6.) He went on to detail how and why he committed the crime and once again assured the court that he had no questions concerning the plea agreement. (Transcript of Proceedings of Guilty Plea, p. 7-9.)

No live medical testimony was presented at the PCRA hearing, although petitioner did introduce progress notes from Cinda Liggon, M.D., of Cumberland Valley Mental Health Center. While the court indeed takes

⁸ As a safeguard to ascertain whether a defendant's plea is voluntary and knowing, there must be an inquiry as to whether the defendant understands the charges, understands his right to a jury trial, understands the presumption of innocence, is aware of the permissible range of sentences, is aware that the judge is not bound to any agreements and whether there is a factual basis for the plea. Comment to Pa.R.Crim.P. 319; *Commonwealth v. Willis*, 471 Pa. 50, 369 A.2d 1189 (1977).

notice that petitioner was prescribed at least six (6) different medications after his appointment on May 25, 1999, much of the data contained within the notes simply reflects petitioner's own recounts to Dr. Liggon. Her sole independent analysis of petitioner's behavior actually described his thoughts as "coherent." Finally, the medication was ostensibly prescribed to petitioner to cure or repair his psychological problems, not create additional new ones. Though petitioner asserts that the drugs negatively influenced his cognitive abilities, he misses the point that the drugs were prescribed to make him better, not worse.

Petitioner does not claim that the plea was ineffective because he had psychological disorders, but rather because of the drugs prescribed to treat those disorders. However, no expert medical evidence was presented at the hearing to convince this court that either the disorder or the drugs affected his ability to enter a valid plea. The court cannot simply conclude that the plea was involuntary because petitioner has said as much. Obviously, he is not a medical expert and the reports he has admitted into evidence do not explain to this court whether the medication prescribed would have caused him to enter an invalid plea. In sum, petitioner has not convinced this court that he did not enter a valid plea because he was confused, but rather that he clearly evaluated the deal he was offered by the Commonwealth and then took it after he determined it would be in his best interests. As he stated at the PCRA hearing:

"I'm going to tell you from me what led me to sign that guilty plea was the forty years that was slammed down in front of my face with \$25,000 fine and price of all the fines and maximum time limits, that's what got me to sign the guilty plea." (Transcript of Proceedings of Evidentiary Hearing, p. 22.)

Because the court has found that petitioner entered a knowing, intelligent and voluntary plea, the Commonwealth's motion to dismiss because of waiver need not be addressed.

ORDER OF COURT

December 19, 2000, the court having considered petitioner's amended petition for post-conviction relief, the Commonwealth's answer thereto, the evidence presented at the PCRA hearing and the applicable legal standards, it is hereby ordered and adjudged that the petition is dismissed.

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