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**Compulsive gambling is...
a progressive behavior disorder
in which an individual has a
psychologically uncontrollable
preoccupation and urge to
gamble.**

**This results in excessive
gambling, the outcome of
which is the loss of time and
money.**

**The gambling reaches the point
at which it compromises,
disrupts or destroys the
gambler's personal life, family
relationships or vocational
pursuits.**

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Commonwealth of Pennsylvania, vs. Robert Washington, Jr.,
Defendant, Franklin County Branch, Criminal Action No. 627 of
1995, Charge: Robbery Post Conviction Collateral Relief

Commonwealth v. Robert Washington, Jr.

*Post-conviction relief petition alleging ineffective assistance of counsel and involuntary
inducement of guilty plea; petition denied.*

1. A petitioner alleging ineffectiveness of counsel must show the underlying claim has arguable merit, counsel's course of action had no reasonable basis designed to effectuate the petitioner's interest and counsel's ineffectiveness caused him prejudice.
2. Counsel is presumed effective and the petitioner has the burden of overcoming that presumption.
3. Where the petitioner alleges ineffectiveness of counsel in connection with the entry of a guilty plea, he must show counsel's ineffectiveness caused the petitioner, who was innocent, to plead guilty. 42 Pa.C.S.A. section 9543(a)(2)(iii).
4. The burden is on the petitioner to prove his plea was unknowingly and involuntarily entered; he is bound by his statements at the plea colloquy and cannot later disown them.
5. The petitioner failed to prove ineffectiveness of counsel or involuntary inducement of his plea where he confessed in his own writing to participating in an armed robbery, faced numerous related charges, agreed to plead after discussions with counsel, indicated a clear understanding of the consequences of his plea and never notified the court he was dissatisfied with counsel's representation.

*Tyrone G. Johnson, Esquire, Counsel for Defendant
John F. Nelson, Esquire, District Attorney*

OPINION and ORDER OF COURT

Herman, J., April 7, 1998:

INTRODUCTION

The petitioner was charged with two counts of robbery, three counts of criminal conspiracy and one count of theft. He pled nolo contendere to one count of armed robbery of a Pizza Hut restaurant. Pursuant to the plea agreement, the other charges were nol-prossed and the Commonwealth recommended the mandatory minimum sentence of five years and made no other recommendation. The petitioner was sentenced to 72-240 months in state prison. He appealed the sentence. His counsel filed an *Anders* brief and was granted leave to withdraw as counsel. The sentence was affirmed on June 14, 1996.

The petitioner filed a petition for post-conviction collateral relief. Counsel was appointed to represent him and a hearing was held on March 5, 1998. The petitioner alleges ineffective assistance of counsel in three respects, specifically, that counsel induced him to plead, did not honor his presentencing request to withdraw his plea and did not file a motion for reconsideration of sentence as requested.

DISCUSSION

The first of the robberies was committed on November 27, 1994 at a Burger King restaurant where the petitioner was an employee. The other robbery occurred on November 29, 1994 at a Pizza Hut in Chambersburg. The petitioner and co-defendant Jerrell Smith wore ski masks during the robberies. Smith later told police he displayed a handgun during the Burger King robbery and held it to the head of the restaurant manager. Smith also told police that during the Pizza Hut robbery both he and the petitioner had handguns and that the petitioner used his gun to force employees to lie face down on the floor. A third party later reported to police that the petitioner had told her he was involved in the robberies. He made a handwritten confession to police on May 26, 1995 in which he described his role in the crimes. His confession did not include the fact that handguns were used to force the restaurant employees' compliance. (Commonwealth's exhibit #2).

The petitioner pled guilty at his arraignment. The Court appointed Attorney Shawn Meyers, Esquire to represent him. Attorney Meyers reviewed the charges and the confession. He spoke at length with the petitioner at the prison. The petitioner initially was strongly opposed to discussion of any plea offers. However, when the Commonwealth did make its offer, Attorney Meyers advised him accept it. The basis for his advice was the confession, Smith's implication of the petitioner in the crimes and the numerous charges which were likely to result in a lengthy prison sentence. After giving the matter thought, the petitioner agreed to accept the Commonwealth's offer to plead nolo contendere to one count of robbery.

The petitioner engaged in a full plea colloquy with this Court. Although he disagreed with the Commonwealth's evidence, he indicated he was not going to contest it. He stated a clear desire to plead nolo contendere and to accept the consequences of that plea.

He expressed no dissatisfaction with his counsel. (N.T. Proceedings of Nolo Contendere Plea, November 3, 1995). The probation department then prepared a presentence investigation report. Counsel reviewed the report with the petitioner at the prison. Attorney Meyers testified that between the entry of the plea and the sentencing, the petitioner never expressed a desire to withdraw the plea.

Several of the robbery victims testified at the sentencing proceeding. The petitioner denied responsibility and stated he pled nolo contendere only because he believed he could not prevail at trial. The relevant portion of that proceeding is as follows:

THE COURT: Mr. Washington, what would you tell us about this matter? THE DEFENDANT: Well, with all due respect I just want to say that I don't think it is fair for people to come up here and state what they thought or what they heard. As you see, I did not plead guilty to this matter. I did not plead guilty to this matter. This isn't me. This isn't my lifestyle. And I just hope you show leniency. That is all I can really say because this isn't me. THE COURT: What do you mean by that, Mr. Washington? I'm not understanding. THE DEFENDANT: This robbery and violent crimes and all this. This isn't the way--this isn't--I never do this. You know what I'm saying. THE COURT: Why were you involved in it on this particular occasion? THE DEFENDANT: Well, to be truthful, I was placed in it. I had no role in it. I was placed in it, but I felt that I might as well take a plea of no contest because I don't see no way of me winning it in trial as to getting found guilty regardless of not being guilty and the Court takes 15 years of my life anyway. THE COURT: Well, Mr. Washington, you realize, of course, that the Court accepted this plea based on the evidence that the Commonwealth intended to show at trial, and that's the only information we have to go by at this point unless you're going to tell us otherwise, but that information indicates that you were, in fact, an employee and also that Mr. Smith implicated you in that robbery directly and that's the information that is before the Court at this time. And you entered the plea under those circumstances so that's the factual basis and that conforms with what the witnesses said here today.

(Notes of Testimony, Sentencing Proceeding, January 3, 1996, pp. 16-17). The petitioner made no mention during the sentencing of his

handwritten confession which would have played a key role in the Commonwealth's evidence at trial.

The petitioner maintains he asked Attorney Meyers immediately after sentencing to file a motion for modification of sentence but that counsel failed to do so. Attorney Meyers denied the petitioner made that request either in person or in writing. He told the petitioner he would file an appeal on his behalf and did so in timely fashion.

Claims of ineffective assistance of counsel are evaluated according to well-established standards of review. The first consideration is whether the claim has arguable merit. *Commonwealth v. Johnson*, 588 A.2d 1303 (Pa. 1991). If it does, the petitioner must show counsel's course of action had no reasonable basis designed to effectuate the petitioner's interests. *Commonwealth v. Pierce*, 527 A.2d 973 (Pa. 1987). If the petitioner establishes those two prongs, he must then show counsel's ineffectiveness caused him prejudice. *Id.* Counsel is presumed effective and the petitioner has the burden of overcoming that presumption by a preponderance of the evidence. *Commonwealth v. Sneringer*, 668 A.2d 1167 (Pa.Super. 1995).

Where a petitioner alleges ineffectiveness of counsel in connection with the entry of a guilty plea, he must show counsel's ineffectiveness caused the petitioner, who was innocent, to plead guilty. *Commonwealth v. Edrington*, 464 A.2d 456 (Pa.Super. 1983); 42 Pa.C.S.A. section 9543(a)(2)(iii). The burden is on the petitioner to prove that his plea was unknowingly and involuntarily entered. *Commonwealth v. Lewis*, 1998 WL 84407 (Pa.Super); *Commonwealth v. Nelson*, 666 A.2d 714 (Pa.Super. 1995). The petitioner is bound by his statements at the plea colloquy and cannot later disown those representations. *Lewis*, supra; *Commonwealth v. Barnes*, 687 A.2d 1163 (Pa.Super. 1997).

The petitioner's claims are not supported by the record. He confessed in his own writing to participating in the robbery to which he pled nolo contendere. Counsel advised him the plea was preferable to going to trial because of the strength of the Commonwealth's evidence and the large number of charges. After several discussions with counsel he agreed to accept the Commonwealth's plea offer. He indicated to the Court during the plea colloquy his clear understanding of the consequences of his plea and a desire to plead to

the armed robbery of the Pizza Hut. During that colloquy he did not notify the Court he was in any way dissatisfied with counsel's representation. There is also no persuasive evidence he ever asked Attorney Meyers to move to withdraw the plea between its entry and sentencing and he displayed no dissatisfaction with counsel at that latter proceeding.

The petitioner now claims he was young and inexperienced with the legal process. Again, this claim is not borne out by the record. At the time of the Pizza Hut robbery (and the other nol-prossed charges as well), he was on probation for the felony charge of stealing a motor vehicle in Missouri. That crime occurred in June of 1994 and the petitioner was sentenced on August 10, 1994 to two years probation. The Pizza Hut robbery occurred less than four months later. His claim of inexperience with the criminal justice system rings hollow.

The petitioner has not met his burden of proving ineffective assistance of counsel or that he pled unknowingly or involuntarily. His petition for post-conviction collateral relief will be denied. An appropriate Order of Court will be entered as part of this Opinion.

ORDER OF COURT

NOW this 7th day of April, 1998, the Petition for Post-Conviction Collateral Relief filed by the petitioner is hereby **DENIED**.

Pursuant to Rule 1410B(4) of the Pennsylvania Rules of Criminal Procedure you are hereby advised that:

- (1) You have a right to appeal the decision of this Court within 30 days of the date of the decision on this motion under Rule 1410(A)(2);
- (2) You have the right to the assistance of counsel in preparation of the appeal;
- (3) If you cannot afford to pay an attorney to represent you in this appeal, you have a right to a court-appointed attorney and to be excused from the cost of filing and perfecting the appeal;

(4) Under Rule 4009(B) if the sentence imposed in your case includes imprisonment of less than two years, you shall have the same right to bail as before conviction; if the sentence imposed includes imprisonment of two years or more, bail may be allowed at the discretion of the Court.

Pursuant to Pa.R.Crim.P. Rule 1508(e), the Clerk of Courts is directed to mail a copy of this Opinion and Order of Court containing the defendant's right to appeal by certified mail, return receipt requested upon the defendant.

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