

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
BRIAN MATTHEW DEITER,	:	
	:	
Appellant	:	No. 1017 MDA 2012

Appeal from the Order entered on May 16, 2012
in the Court of Common Pleas of Dauphin County,
Criminal Division, No. CP-22-CR-0005860-2009

BEFORE: MUSMANNO, BENDER and COLVILLE*, JJ.

MEMORANDUM BY MUSMANNO, J.:

Filed: March 11, 2013

Brian Matthew Deiter (“Deiter”) appeals from the dismissal of his first Petition for relief pursuant to the Post Conviction Relief Act (“PCRA”). **See** 42 Pa.C.S.A. §§ 9541-9546. We affirm.

On November 28, 2009, Pennsylvania State Troopers arrived at Deiter’s home to interview Deiter’s fourteen-year-old daughter (“the victim”). The victim was the biological daughter of Deiter’s wife, who Deiter had legally adopted. During the interview, the victim stated that Deiter had sexually abused her. Trooper Robert Ligon then asked Deiter to come to the police station for an interview. Deiter, who suffered from a seizure disorder that rendered him unable to drive, asked Trooper Ligon to give him a ride. Trooper Ligon told Deiter that he was not under arrest and that he did not have to speak with the police. The police transported Deiter to the police

*Retired Senior Judge assigned to the Superior Court.

station; Diether was not placed in handcuffs. Prior to the interview, Trooper Ligon again stated that Deiter was not under arrest, that Deiter was free to leave at any time, and that he was asking Deiter to voluntarily speak with the police. Deiter stated that he understood. During the interview, Deiter admitted that the victim had performed oral sex on him and that he had tried to have sex with her. Thereafter, the police arrested Deiter and charged him with various crimes. On November 30, 2009, Trooper Ligon read Deiter his *Miranda v. Arizona*, 384 U.S. 436 (1966), warnings prior to interviewing him. Deiter waived his *Miranda* warnings and made additional incriminating statements.

On October 12, 2010, Deiter entered a negotiated guilty plea agreement.¹ Under the agreement, Deiter would plead guilty to fourteen counts relating to the abuse of the victim and receive an aggregate prison sentence of nine to twenty years. The trial court accepted the guilty plea. Thereafter, on February 8, 2011, the trial court imposed a prison sentence of nine to twenty years, to be followed by five years of probation.

On February 7, 2012, Deiter filed a counseled PCRA Petition. The Commonwealth filed a response. On April 23, 2012, the PCRA court issued a Notice of intent to dismiss the Petition. The PCRA court then dismissed the Petition on May 16, 2012. Deiter filed a timely Notice of appeal.

¹ We note that Deiter also pled guilty to charges arising out of his contact with the victim's friends at 2345 CR 2010 and 2347 CR 2010. These cases are not the subject of this appeal.

On appeal, Deiter raises the following question for our review:

Did the PCRA court err in dismissing [Deiter's] Petition for relief under the PCRA where:

- (a) [Deiter] alleges that his guilty plea was unlawfully induced as a result of the ineffective assistance of plea counsel due to the facts that:
 - (i) plea counsel failed to advise [Deiter] of grounds to suppress the inculpatory statement made by [Deiter] to state police;
 - (ii) plea counsel failed to seek suppression of that inculpatory statement;
 - (iii) there was a constitutional basis to challenge that inculpatory evidence due to the failure to give [Deiter] **Miranda** warnings;
 - (iv) the presence of that inculpatory statement caused the plea to be entered;
 - (v) plea counsel did not have a reasonable basis for advising [Deiter] to plead guilty rather than moving to suppress that inculpatory statement; and,
 - (vi) if the incriminating statement was suppressed, the lack of other evidence would have prevented the Commonwealth from meeting the burden of proof at trial[?]

Brief for Appellant at 4.

This Court's standard of review regarding a PCRA court's order is whether the determination of the PCRA court is supported by the evidence of record and is free of legal error. Great deference is granted to the findings of the PCRA court, and these findings will not be disturbed unless they have no support in the certified record.

Commonwealth v. Carter, 21 A.3d 680, 682 (Pa. Super. 2011) (citations and quotation marks omitted).

Deiter contends that his plea counsel's ineffectiveness caused him to enter an involuntary and unknowing guilty plea. Brief for Appellant at 12. Deiter argues that his statements to the police were central to the Commonwealth's case against him. *Id.* Deiter asserts that he made his first statements during a custodial interrogation at which the police did not provide him with *Miranda* warnings. *Id.* at 12, 16-18. Deiter claims that he could not have reasonably believed that he was free to leave after the police informed him that his daughter had accused him of sexual abuse. *Id.* at 12, 19-21. Deiter further claims that he was not free to leave because he was "stressed out" and that the trooper "hollered" at him during the questioning. *Id.* at 19, 20-21.

Deiter acknowledges that he was arrested at the conclusion of the questioning and was provided *Miranda* warnings prior to the second round of questioning. *Id.* at 12. Deiter argues that his statements during the second round of questioning should have been suppressed as the prior unconstitutional questioning tainted them. *Id.* Deiter asserts that because he was facing the use of the admissions at trial and counsel had failed to advise him that the statements were obtained in violation of his constitutional rights, he unknowingly entered into the negotiated plea deal. *Id.* at 12-13, 21. Deiter claims that his counsel had no reasonable basis for failing to seek the suppression of his statements. *Id.* at 22-23. Deiter also

claims that the ineffective assistance of counsel caused him prejudice as he pled guilty to the crimes. *Id.* at 23.

To succeed on an ineffectiveness claim, Deiter must demonstrate by the preponderance of the evidence that

(1) [the] underlying claim is of arguable merit; (2) the particular course of conduct pursued by counsel did not have some reasonable basis designed to effectuate his interests; and (3) but for counsel's ineffectiveness, there is a reasonable probability that the outcome of the proceedings would have been different.

Commonwealth v. Ali, 10 A.3d 282, 291 (Pa. 2010). A failure to satisfy any prong of the test for ineffectiveness will require rejection of the claim.

Commonwealth v. Martin, 5 A.3d 177, 183 (Pa. 2010). Counsel is presumed to be effective and the burden is on the appellant to prove otherwise. *Commonwealth v. Hanible*, 30 A.3d 426, 439 (Pa. 2011).

A criminal defendant has the right to effective counsel during a plea process as well as during trial. The law does not require that appellant be pleased with the outcome of his decision to enter a plea of guilty. Instead, the defendant must show that counsel's deficient stewardship resulted in a manifest injustice, for example, by facilitating entry of an unknowing, involuntary, or unintelligent plea. The voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases. Therefore, allegations of ineffectiveness in connection with the entry of a guilty plea will serve as a basis for relief only if the ineffectiveness caused appellant to enter an involuntary or unknowing plea.

Our law is clear that, to be valid, a guilty plea must be knowingly, voluntarily and intelligently entered. There is no absolute right to withdraw a guilty plea, and the decision as to whether to allow a defendant to do so is a matter within the sound discretion of the trial court. To withdraw a plea after sentencing, a defendant must make a showing of prejudice

amounting to “manifest injustice.” A plea rises to the level of manifest injustice when it was entered into involuntarily, unknowingly, or unintelligently. A defendant’s disappointment in the sentence imposed does not constitute “manifest injustice.”

Commonwealth v. Bedell, 954 A.2d 1209, 1212 (Pa. Super. 2008)

(citations, brackets, and quotation marks omitted).

In order to ensure a voluntary, knowing, and intelligent plea, trial courts are required to ask the following questions in the guilty plea colloquy:

- 1) Does the defendant understand the nature of the charges to which he or she is pleading guilty or *nolo contendere*?
- 2) Is there a factual basis for the plea?
- 3) Does the defendant understand that he or she has the right to a trial by jury?
- 4) Does the defendant understand that he or she is presumed innocent until found guilty?
- 5) Is the defendant aware of the permissible ranges of sentences and/or fines for the offenses charged?
- 6) Is the defendant aware that the judge is not bound by the terms of any plea agreement tendered unless the judge accepts such agreement?

Id.; ***see also*** Pa.R.Crim.P. 590, cmt. “The guilty plea colloquy must affirmatively demonstrate that the defendant understood what the plea connoted and its consequences.” ***Commonwealth v. Lewis***, 708 A.2d 497, 501 (Pa. Super. 1998). “Once a defendant has entered a plea of guilty, it is presumed that he was aware of what he was doing, and the burden of proving involuntariness is upon him.” ***Commonwealth v. Stork***, 737 A.2d 789, 790 (Pa. Super. 1999) (citation and internal brackets omitted). “In

determining whether a guilty plea was entered knowingly and voluntarily, ... a court is free to consider the totality of the circumstances surrounding the plea.” ***Commonwealth v. Flanagan***, 854 A.2d 489, 513 (Pa. 2004) (citation and internal quotation marks omitted). Furthermore, the oral colloquy may be supplemented by a written colloquy that is read, completed, and signed by the defendant and made a part of the plea proceedings. ***Commonwealth v. Morrison***, 878 A.2d 102, 108 (Pa. Super. 2005).

Based upon the totality of the circumstances, we conclude that Deiter’s ineffectiveness claim is without arguable merit as Deiter knowingly entered the guilty plea. Here, Deiter stated that he understood the English language, that he was not under the influence of alcohol or drugs, and that he did not suffer from any mental illnesses. N.T., 10/12/10, at 6; Written Plea Colloquy, 10/12/10, at 2. Deiter affirmed that he understood all of the charges against him, the maximum penalties for all of the charges against him, and that he reviewed all of the charges and penalties with his attorney. N.T., 10/12/10, at 3-4; Written Plea Colloquy, 10/12/10, at 1-4. Deiter stated that by pleading guilty, he understood that he was foregoing certain rights, including, *inter alia*, the presumption of innocence, the right to file pre-trial motions and right to a jury trial. N.T., 10/12/10, at 4; Written Plea Colloquy, 10/12/10, at 2-3. Deiter further stated that he was waiving any possible defense that may have been applicable to the case. Written Plea Colloquy, 10/12/10, at 3. Deiter confirmed that he understood the factual

basis for the plea and admitted that he committed the crimes in question. N.T., 10/12/10, at 6-8; Written Plea Colloquy, 10/12/10, at 3, 5. Deiter also understood that he would be “assessed by the Sexual Assessment Board through the Pennsylvania Board of Probation and Parole” due to the nature of the charges. N.T., 10/12/10, at 5. Finally, Deiter stated that he was satisfied with his counsel’s representation, that no one had threatened him to enter the plea, and that he was satisfied that the plea was in his best interest. Written Plea Colloquy, 10/12/10, at 4, 5.

Based upon the foregoing, we conclude that counsel did not cause Deiter to involuntarily tender his guilty plea by failing to file a motion to suppress Deiter’s statements to the police. Indeed, at the plea colloquy, Deiter accepted the factual basis of the charges and admitted that he committed the crimes in question. ***See Commonwealth v. Yeomans***, 24 A.3d 1044, 1047 (Pa. Super. 2011) (stating that a person who elects to plead guilty is bound by the statements he made during the plea colloquy and may not later assert grounds for withdrawing the plea which contradict

those statements). Accordingly, Deiter's ineffectiveness claim fails.²

Order affirmed.

Colville, J., concurs in the result.

² We note that the PCRA court addressed Deiter's ineffectiveness claim regarding the failure to file a motion to suppress and determined that it is without merit. **See** PCRA Court Opinion, 4/24/12, at 5-9; **see also Commonwealth v. Levanduski**, 907 A.2d 3, 24-28 (Pa. Super. 2006) (concluding that the defendant was not in "custody" and her statements to police should not be suppressed because the defendant, who was a suspect in a shooting, voluntarily went to the police station, the police told the defendant that she was free to leave at any time, the defendant never sought to leave during questioning, and the defendant did not point to any specific police conduct that violated her constitutional rights).