

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
JILIL THOMPCKINS,	:	
	:	
Appellant	:	No. 1209 EDA 2013

Appeal from the PCRA Order entered on October 13, 2011
in the Court of Common Pleas of Philadelphia County,
Criminal Division, No(s): CP-51-CR-0005209-2009,
CP-51-CR-0008466-2007, CP-51-CR-0008488-2007,
CP-51-CR-0014440-2008

BEFORE: GANTMAN, SHOGAN and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.: **FILED JANUARY 14, 2014**

Jilil Thompkins (“Thompkins”) appeals *nunc pro tunc* from the Order dismissing his first Petition for relief pursuant to the Post Conviction Relief Act (“PCRA”). **See** 42 Pa.C.S.A. §§ 9541-9546. We affirm.

On April 29, 2007, Thompkins shot at two individuals whom he passed on the street, hitting Quinzale Stanfield (“Stanfield”) in the foot. Stanfield identified Thompkins as the assailant to the police. The police executed a search warrant on Thompkins’s residence and found ammunition and a firearm with an obliterated serial number. Thompkins remained a fugitive until October 14, 2008, when in separate incidents, he held up two individuals at gunpoint and demanded their money and valuables. Later, on that same date, Thompkins fled from police and resisted arrest. At the time

of his arrest, Thompkins had in his possession a stolen firearm and the items that he had stolen from one of the individuals earlier in the day. Thompkins was charged with a total of forty-seven counts in six separate criminal cases, including attempted murder in the first and third degrees, robberies, aggravated assaults, assaults, thefts, violations of the Uniform Firearms Act, possessing instruments of crime, receipt of stolen property and resisting arrest.

On November 30, 2009, pursuant to a consolidated negotiated plea agreement, Thompkins pled guilty to twelve of the charges against him, including two counts each of aggravated assault, robbery and violation of the Uniform Firearms Act, three counts of possessing instruments of crime, and one count each of receiving stolen property, resisting arrest and simple assault, in exchange for an aggregate sentence of eight to twenty years in prison. The trial judge accepted the pleas, and sentenced Thompkins in accordance with the negotiated plea agreement. Thompkins did not file a direct appeal.

On May 29, 2010, Thompkins filed, *pro se*, a PCRA Petition. Thompkins was appointed counsel, who filed a **Turner/Finley**¹ "no-merit" letter and a Petition to withdraw. On October 13, 2011, the PCRA court granted counsel's Motion to withdraw and dismissed the Petition. Thompkins

¹ **See Commonwealth v. Turner**, 544 A.2d 927 (Pa. 1988), and **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988) (*en banc*).

filed a Notice of Appeal.²

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

1. Were [Thompkins's] guilty pleas knowing, intelligent and voluntary?

Brief for Appellant at 2.

We review an order dismissing a petition under the PCRA in the light most favorable to the prevailing party at the PCRA level. This review is limited to the findings of the PCRA court and the evidence of record. We will not disturb a PCRA court's ruling if it is supported by evidence of record and is free of legal error.

Commonwealth v. Ford, 44 A.3d 1190, 1194 (Pa. Super. 2012) (citations omitted).

Thompkins argues that the PCRA court erred in dismissing his PCRA Petition to invalidate his guilty pleas because his pleas were not knowing, intelligent and voluntary. Brief for Appellant at 7. Specifically, Thompkins argues that, at the time of his guilty pleas, he was mentally retarded and functioning at the level of a third to fifth grader. ***Id.*** Based on his alleged mental defects, Thompkins contends that he did not understand the nature of the charges, his right to a jury trial and his right to a presumption of innocence. ***Id.*** Thompkins further contends that he did not have the ability

² Thompkins claims that he did not receive notice of the denial of his PCRA Petition. Nevertheless, Thompkins apparently filed a timely notice of appeal which, for reasons not indicated in the record, was never docketed. Thompkins filed a second PCRA Petition seeking leave to file a *nunc pro tunc* appeal of the denial of his first PCRA Petition, which was not opposed by the Commonwealth. The PCRA court reinstated Thompkins' right to appeal the denial of his first PCRA Petition and appointed him new counsel.

at the time of his guilty pleas to consult with his lawyer with a reasonable degree of rational understanding, and have a rational, as well as factual, understanding of the proceedings against him. ***Id.***

A defendant has 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. ***Commonwealth v. Muhammad***, 794 A.2d 378, 382 (Pa. Super. 2002). A post-sentence motion to withdraw a guilty plea should be denied absent a showing of a manifest injustice. ***Commonwealth v. Starr***, 301 A.2d 592, 595 (Pa. 1973). A plea rises to a level of manifest injustice when it was entered into involuntarily, unknowingly, or unintelligently. ***Commonwealth v. Pantalion***, 957 A.2d 1267, 1271 (Pa. Super. 2008).

Whether a defendant entered into a plea knowingly, voluntarily, and intelligently requires a totality of the circumstances analysis, and the court must find that the defendant understands (1) the nature of charges to which he is pleading guilty; (2) the factual basis for the plea; (3) his right to a trial by jury; (4) the presumption of innocence; (5) the permissible ranges of sentences and fines possible; and (6) that the judge is not bound by the terms of the agreement unless he accepts it. ***Commonwealth v. Watson***, 835 A.2d 786, 797 (Pa. Super. 2003).

Pennsylvania law presumes a defendant who enters a plea of guilty is aware of what he is doing and imposes on the defendant the burden of

proving otherwise. **Commonwealth v. Pollard**, 832 A.2d 517, 523 (Pa. Super. 2003). The burden is on the appellant to prove by a preponderance of the evidence that he was mentally retarded. **Commonwealth v. Williams**, 61 A.3d 979, 981-82 (Pa. 2013).³

However, even if a defendant establishes mental deficiency, there is no per se rule that invalidates a guilty plea made by a defendant who is in some way mentally deficient. **Commonwealth v. Melton**, 351 A.2d 221, 224 (Pa. 1976). Consequently, low intelligence, alone, is insufficient to establish the involuntariness of a guilty plea. **Commonwealth v. Shaffer**, 449 A.2d 677, 681 (Pa. Super. 1982). Moreover, even if mentally deficient, a defendant is competent to enter a guilty plea if he has the ability to comprehend his position as one accused of the crimes charged, and to cooperate with his counsel in making a rational defense. **Commonwealth v. Frey**, 904 A.2d 866, 872 (Pa. 2006).

³ To obtain relief, the defendant must show, by a preponderance of the evidence, that he is mentally retarded, as defined by the American Psychiatric Association or the American Association of Mental Retardation. **Commonwealth v. Crawley**, 924 A.2d 612, 616 (Pa. 2007). Both definitions of mental retardation incorporate three concepts: (1) limited intellectual functioning; (2) significant adaptive limitations; and (3) age of onset before age 18. **Commonwealth v. Miller**, 888 A.2d 624, 630 (Pa. 2005). A PCRA petitioner may provide evidence of his mental retardation under either standard through the testimony of a properly qualified expert. **Id.** at 631.

Here, although there is evidence in the record that Thompkins displayed cognitive, emotional and educational deficits,⁴ a review of the extensive colloquy conducted at the time of the plea demonstrates that Thompkins voluntarily and knowingly pled guilty. **See** PCRA Court Opinion, 7/15/13, at 5-7, 10; N.T., 11/30/09, at 9-12; Written Guilty Plea Colloquy, 11/30/09. Thompkins stated that he had completed the eleventh grade and was capable of reading, writing and understanding the English language. N.T., 11/30/09, at 9. Thompkins further stated that he did not have mental health problems, that he understood the plea proceedings, and that he was not under the influence of drugs or alcohol. **See** Written Guilty Plea Colloquy, 11/30/09. Thompkins specifically indicated that he understood and accepted the nature of the charges, the factual basis of the plea, the permissible range of his sentence, his right to a trial by jury and the presumption of innocence, and that the trial judge was not bound by the terms of the plea agreement unless the judge accepted it. N.T., 11/30/09, at 9-12, 16-21; Written Guilty Plea Colloquy, 11/30/09. Finally, Thompkins stated that he understood everything that the judge and his counsel had told him, and that he was entering his pleas knowingly, intelligently and


⁴ Here, Thompkins attached to his PCRA Petition portions of an Individualized Education Program report ("IEP"), dated June 15, 2006, which was prepared by the Philadelphia School District. The IEP indicates that, at age 16, Thompkins's word recognition was at a sixth grade level, and his reading comprehension and mathematics were at a third to fourth grade level. The IEP further indicates that Thompkins' overall level of adaptive behavior was extremely low. Thompkins did not provide any further evidence that he is mentally retarded.

J-S75032-13

voluntarily. N.T., 11/30/09, at 10, 16-21. Thompkins is bound by the statements he made during the colloquy, and he has not demonstrated any grounds for withdrawing the pleas. ***See Commonwealth v. McCauley***, 797 A.2d 920, 922 (Pa. Super. 2001) (stating that a defendant is bound by the statements he makes during the plea colloquy).

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 1/14/2014