NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. MANDI NICOLE LAZOR, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1772 EDA 2012

Appeal from the PCRA Order May 24, 2012
In the Court of Common Pleas of Chester County
Criminal Division at No.: CP-15-CR-0004426-2010

BEFORE: GANTMAN, J., DONOHUE, J., and PLATT, J.*

MEMORANDUM BY PLATT, J. Filed: January 14, 2013

Appellant, Mandi Nicole Lazor, appeals *pro se*[1] from the order dismissing her petition pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541–9546. Specifically, Appellant asserts that her guilty plea was not knowing, intelligent and voluntary; she claims there was an unreliable witness (herself), and mitigating factors. We affirm.

On July 14, 2011, the trial court accepted Appellant's negotiated, counseled plea of guilty to ten counts of burglary, after finding it to be knowingly, voluntarily, and intentionally entered. (***See*** N.T., 7/14/11, at 6). As part of the plea bargain, the Commonwealth agreed to forego prosecution

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* Retired Senior Judge assigned to the Superior Court.

[1] The PCRA court granted counsel permission to withdraw. ***See infra*** at 2-3.

on sixteen other charges of burglary, which Appellant had admitted, except for fines and restitution of $66,333.82, for which she was to be jointly liable with her co-defendant, and other charges.[2] (***See id.*** at 2, 12).

The court accepted the Commonwealth's recommendation and sentenced Appellant to an aggregate term of not less than eight nor more than sixteen years' incarceration in a state correctional institution, with credit for time served, concurrent to a sentence of four to eight years' incarceration for a lesser number of burglaries in neighboring Lancaster County, plus twenty years' probation, consecutive. (***See id.*** at 9-12). Appellant also received a concurrent sentence of five years' probation for firearms not to be carried without a license. (***See id.*** at 12). She was not RRRI eligible. (***See id.***). Appellant did not file a direct appeal. On November 9, 2011, the court denied appellant's untimely *pro se* motion for reconsideration of sentence *nunc pro tunc*. (***See*** Order, filed 11/14/11).

Appellant filed the instant PCRA petition *pro se* on March 5, 2012. The court appointed counsel, who filed a ***Turner/Finley*** "no merit" letter.[3] On May 24, 2012, after notice pursuant to Pa.R.Crim.P. 907, the PCRA court

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[2] Appellant originally was charged with 103 offenses.

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

dismissed the petition without a hearing and granted counsel permission to withdraw. Appellant timely appealed, *pro se*.[4]

Appellant raises three questions on appeal: first, that her plea was unknowingly, unintelligently, and involuntarily made; secondly, she asserts that she was an unreliable witness; and thirdly, she claims that there were mitigating factors. (***See*** Appellant's Brief, at 3). In particular, Appellant contends that her plea was unknowing, unintelligent and involuntary because she was heavily medicated, and the court should have ordered an evaluation to determine her competency. (***See id.*** at 6, 12). We disagree.

> As a prefatory matter, although this Court is willing to construe liberally materials filed by a *pro se* litigant, *pro se* status generally confers no special benefit upon an appellant. Accordingly, a *pro se* litigant must comply with the procedural rules set forth in the Pennsylvania Rules of the Court. This Court may quash or dismiss an appeal if an appellant fails to conform with the requirements set forth in the Pennsylvania Rules of Appellate Procedure.

Commonwealth v. Lyons, 833 A.2d 245, 252 (Pa. Super. 2003), *appeal denied*, 879 A.2d 782 (Pa. 2005) (citations omitted).

Our review of Appellant's claims is also informed by the following legal principles.

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[4] Appellant also filed a timely statement of errors pursuant to Pennsylvania Rule of Appellate Procedure 1925. ***See*** Pa.R.A.P. 1925(b). On appeal, Appellant has abandoned the first five issues raised in her Rule 1925(b) statement, raising only the remaining three issues addressed here. (***See*** Concise Statement, filed 7/11/12; Appellant's Brief, at 3).

"On appeal from the denial of PCRA relief, our standard and scope of review is limited to determining whether the PCRA court's findings are supported by the record and without legal error." ***Commonwealth v. Abu-Jamal***, 941 A.2d 1263, 1267 (Pa. 2008), *cert. denied*, 555 U.S. 916 (2008) (citation omitted).

"Initially, we note that when a defendant enters a guilty plea, he or she waives all defects and defenses except those concerning the validity of the plea, the jurisdiction of the trial court, and the legality of the sentence imposed." ***Commonwealth v. Stradley***, 50 A.3d 769, 771 (Pa. Super. 2012) (citation omitted).

> [A] defendant who attempts to withdraw a guilty plea after sentencing must demonstrate prejudice on the order of manifest injustice before withdrawal is justified. A showing of manifest injustice may be established if the plea was entered into involuntarily, unknowingly, or unintelligently.
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> As this Court has summarized:
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> > Pennsylvania has constructed its guilty plea procedures in a way designed to guarantee assurance that guilty pleas are voluntarily and understandingly tendered. The entry of a guilty plea is a protracted and comprehensive proceeding wherein the court is obliged to make a specific determination after extensive colloquy on the record that a plea is voluntarily and understandingly tendered.
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> This Court has further summarized:
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> > In order for a guilty plea to be constitutionally valid, the guilty plea colloquy must affirmatively show that the defendant 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 defendant had a full understanding of the nature and consequences of his plea and that he knowingly and voluntarily decided to enter the plea.

Finally, we apply the following when addressing an appellate challenge to the validity of a guilty plea:

> Our law presumes that a defendant who enters a guilty plea was aware of what he was doing. He bears the burden of proving otherwise.
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> The longstanding rule of Pennsylvania law is that a defendant may not challenge his guilty plea by asserting that he lied while under oath, even if he avers that counsel induced the lies. A person who elects to plead guilty is bound by the statements he makes in open court while under oath and may not later assert grounds for withdrawing the plea which contradict the statements he made at his plea colloquy.
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> [A] defendant who elects to plead guilty has a duty to answer questions truthfully.

Commonwealth v. Yeomans, 24 A.3d 1044, 1045-47 (Pa. Super. 2011) (citations and footnote omitted).

> The desire of an accused to benefit from a plea bargain is a strong indicator of the voluntariness of his plea. Our law does not require that a defendant be totally pleased with the outcome of his decision to plead guilty, only that his decision be voluntary, knowing and intelligent.

Commonwealth v. Pollard, 832 A.2d 517, 524 (Pa. Super. 2003) (citations omitted).

Here, the essence of Appellant's claim is that she was "on medication" at the time she entered her guilty plea. (Appellant's Brief, at 7). We note at the outset that neither this issue nor any of the other issues raised by Appellant presents a cognizable claim for relief under the PCRA. ***See*** 42 Pa.C.S.A. § 9543.[5] In particular, Appellant fails to plead and prove, "[a] plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is

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[5] In relevant part, section 9543 provides that to be eligible for PCRA relief a petitioner must plead and prove:

> (2) That the conviction or sentence resulted from one or more of the following:
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> (i) A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
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> (ii) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
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> (iii) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.
>
> (iv) The improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.

42 Pa.C.S.A. § 9543

innocent." 42 Pa.C.S.A. § 9543(2)(iii). We could dismiss Appellant's appeal on this basis alone.

However, in view of this court's stated willingness to construe liberally materials filed by a *pro se* litigant, and in the interest of judicial economy, we will review the merits of Appellant's claims. ***See Lyons***, ***supra***.

Here, Appellant admitted to being medicated at the plea hearing, on questioning by the trial court. (***See*** N.T. [Hearing], 7/14/11, at 5). Therefore, this fact was already known by the court and considered in the totality of circumstances to reach its determination that Appellant's guilty plea was nevertheless knowing, voluntary and intelligent.

In support of her claim, Appellant cites to a non-existent statute, 18 Pa.C.S.A. § 3552(b). (***See*** Appellant's Brief, at 6, 8). Appellant also cites to 42 Pa.C.S.A. § 9736, which was suspended by Pa.R.Crim.P. 1101(6). In her written Guilty Plea Colloquy, as in the plea hearing, Appellant disclosed she was "currently medicated for bipolar disorder/extreme anxiety/schizophrenia [and] manic depressive disorder." (Guilty Plea Colloquy, 7/14/11, ¶ 14; ***see also*** N.T. [Hearing], 7/14/11, at 5).

However, Appellant expressly acknowledged that she understood the charges against her, and was able to work with her lawyer in responding to those charges. (***See*** Guilty Plea Colloquy, 7/14/11, at ¶¶ 15, 16). Similarly, at the hearing, Appellant denied that the medication she was taking had any impact on her ability to know what she was doing, or that there was any

other condition which would interfere with her ability to know what she was doing, or to confer with plea counsel. (***See*** N.T. [Hearing], 7/14/11, at 5-6). "A person who elects to plead guilty is bound by the statements he makes in open court while under oath and may not later assert grounds for withdrawing the plea which contradict the statements he made at his plea colloquy." ***Yeomans***, ***supra*** at 1047.

Moreover, on our review, there is no indication in the record that Appellant was incoherent, unaware of her circumstances, or under any misapprehension of what she was doing. To the contrary, at the guilty plea hearing Appellant volunteered the following statement:

> I'd like to say that I own up to my actions. There are no excuses for what I did. I'd like to be drug free and have another chance at life. I'm ready to accept what I've done for my future. That's it. I'm sorry.

(N.T. [Hearing], 7/14/11, at 7).

On this appeal, Appellant's mere bald assertion, contrary to the written guilty plea colloquy and her express representations at the guilty plea hearing, that her mental health issues and medication rendered her guilty plea involuntary, unintelligent and unknowing, fails to meet her burden of proof or to demonstrate manifest injustice. ***See Yeomans***, ***supra***; ***see also Commonwealth v. Kasecky***, 658 A.2d 822, 824 (Pa. Super. 1995), *appeal denied*, 670 A.2d 140 (Pa. 1995) (finding appellant's failure, *inter alia*, to proffer expert testimony to substantiate allegation that medication

rendered him incapable of entering knowing and intelligent plea failed to demonstrate entitlement to relief).

Appellant also argues that the trial court should have requested a hearing to determine her "mental capacity and competency." (Appellant's Brief, at 8). Appellant's argument does not merit relief. ***See Commonwealth v. Porter***, 35 A.3d 4, 25 (Pa. 2012) (court not obliged to hold hearing unless adequate proffer has been made concerning mental retardation and issue of material fact is determined to be present). The PCRA court's finding is supported by the record, and without legal error. Appellant's first claim would not merit relief.

In her second issue, Appellant maintains, in effect, that because of her medication, she was an "unreliable witness." (Appellant's Brief, at 9). Appellant argues that during her interview by Chester County detectives "[t]he medication made it hard for me to understand and act on my legal rights." (***Id.***). To the extent that Appellant is arguing her alleged impairment somehow had an impact on the validity of her guilty plea, this claim is merely a variation of her first issue which does not merit relief. Beyond that claim, her issue is waived. ***See Stradley***, ***supra*** (guilty plea waives all defects and defenses except those concerning validity of plea, jurisdiction of trial court, and legality of sentence imposed).

Appellant cites, without developing a supporting argument, an unreported federal case from the northern district of Illinois, ***U.S. ex rel.***

Flowers v. Gaetz, 2010 WL 529443 (N.D. Ill. 2010). (***See*** Appellant's Brief, at 9). Leaving aside the problem that the case is unreported and non-precedential, as well as the well-settled legal principle that this Court is not bound by the holdings of federal courts, other than the United States Supreme Court, Appellant's reliance is misplaced. ***Flowers*** in fact rejected a claim similar to that Appellant raises here. ***See Flowers***, ***supra*** at *9 (dismissing petitioner's untimely request for *habeas* relief, finding petitioner made no showing that his mental health or treatment prevented him from timely filing *habeas* petition). Appellant's second claim would be without merit.

Finally, Appellant argues that there were mitigating factors. (***See*** Appellant's Brief, at 10-11). Appellant concedes that she was a heroin addict for nine years before her arrest, and maintains that she participated in the burglaries because she was compensated in heroin. (***See id.*** at 11). Her argument would not merit relief, for a number of reasons. First, even liberally construed, an assertion of mitigation by claim of heroin addiction does not show that the Appellant misunderstood what the plea connoted or its consequences. ***See Yeomans***, ***supra***. Mitigation is irrelevant to a determination of whether a plea was knowing, voluntary, and intelligent. Second, Appellant cites to a non-existent constitutional provision. (***See*** Appellant's Brief, at 11). Third, as already noted, a guilty plea waives all defects and defenses except validity of the plea, jurisdiction, and legality of

sentence. ***See Stradley***, ***supra***. Fourth, whatever her intent, which is not readily apparent, Appellant's citation of 42 Pa.C.S.A. § 6339(a) is irrelevant. The provision applies to juvenile proceedings.

Appellant has failed to demonstrate manifest injustice, or to meet her burden of proving that the guilty plea was not knowing, voluntary and intelligent. Appellant has also failed to plead and prove any claim for PCRA relief. The PCRA court's decision dismissing Appellant's PCRA petition is supported by the record and free of legal error. Although our reasoning differs somewhat from that of the PCRA court, we may affirm on any basis so long as the PCRA court's decision is legally correct. ***See Commonwealth v. Doty***, 48 A.3d 451, 456 (Pa. Super. 2012).

Order affirmed.

Gantman, J., concurs in the result.