

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

ALFRED FORNEY-BRITTON

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1910 MDA 2012

Appeal from the PCRA Order October 16, 2012
In the Court of Common Pleas of Lebanon County
Criminal Division at No(s): CP-38-CR-0001687-2011

BEFORE: FORD ELLIOTT, P.J.E., PANELLA, J., and FITZGERALD, J.*

MEMORANDUM BY PANELLA, J.:

FILED SEPTEMBER 13, 2013

Appellant, Alfred Forney-Britton, appeals from the order entered on October 16, 2012, by the Honorable Bradford H. Charles, in the Court of Common Pleas of Lebanon County, which denied his petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 PA.CON.S.TAT.ANN. §§ 9541-9546. After careful review, we affirm.

On October 6, 2011, Forney-Britton was arrested for selling and delivering crack cocaine to an undercover officer, Sergeant Brett Hopkins, for \$50 at 50 North 9th Street, Lebanon City, Pennsylvania. Forney-Britton subsequently pled guilty to one count each of Delivery of Cocaine, Criminal Use of a Communication Facility, and to two counts of Criminal Conspiracy.

* Former Justice specially assigned to the Superior Court.

On May 2, 2012, the sentencing court sentenced Britton to an aggregate period of imprisonment of three (3) to seven (7) years. The sentence reflected the imposition of the mandatory minimum in 18 Pa.C.S.A. § 6317(a), **Drug-free school zones** and the sentencing enhancements in 204 Pa. Code 303.9(c) and 303.10(b).

On May 23, 2012, Forney-Britton filed a timely *pro se* PCRA petition asserting, among other things, that he received a sentence greater than the lawful maximum, a cognizable claim under the PCRA. Specifically, Forney-Britton alleged that the sentencing court improperly determined that § 6317 applied as he “was no[t] in the bounds of any school zone but [he] was sentenced as such.” PCRA Petition, 5/23/12, at 3. The PCRA court appointed Forney-Britton counsel. The Commonwealth then filed a Motion to Dismiss Forney-Britton’s petition, asserting that his claims were without merit. The PCRA court denied the Commonwealth’s motion and ordered that an evidentiary hearing take place.

After the evidentiary hearing, the PCRA court concluded that the location where Forney-Britton was involved in a drug transaction was within a school zone as the term is defined under Pennsylvania law. Forney-Britton’s PCRA petition was denied and this timely appeal followed.

Our standard of review of a PCRA court’s denial of a petition for post-conviction relief is well settled. We must examine whether the record supports the PCRA court’s determination, and whether the PCRA court’s

determination is free of legal error. **See *Commonwealth v. Hall***, 867 A.2d 619, 628 (Pa. Super. 2005). The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record. **See *Commonwealth v. Carr***, 768 A.2d 1164, 1166 (Pa. Super. 2001). Our scope of review is limited by the parameters of the PCRA. **See *Commonwealth v. Heilman***, 867 A.2d 542, 544 (Pa. Super. 2005).

As noted, Forney-Britton's sentence contemplated the school zone mandatory minimum and guideline sentencing enhancements pursuant. The school zone statute proves that:

A person 18 years of age or older who is convicted in any court of this Commonwealth of a violation of section 13(a)(14) or (30) of the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act, shall, if the delivery or possession with intent to deliver of the controlled substance occurred within 1,000 feet of the real property on which is located a public, private or parochial school or a college or university or within 250 feet of the real property on which is located a recreation center or playground or on a school bus, be sentenced to a minimum sentence of at least two years of total confinement, notwithstanding any other provision of this title, The Controlled Substance, Drug, Device and Cosmetic Act or other statute to the contrary.

18 Pa. C.S.A. § 6317(a). In addition, "[w]hen the court determines that the offender manufactured, delivered or possessed with intent to deliver a controlled substance within 250 feet of the real property on which is located a public or private elementary or secondary school, the court shall" add 12 months to the lower limit of the standard range and 24 months to the upper

limit of the standard range. 204 Pa. Code. 303.9(c); 204 Pa. Code 303.10(b).

At the PCRA hearing, Sergeant Richard Radwanski testified regarding the measurements applicable to the school zone mandatory minimum and guideline sentence enhancements. Sergeant Radwanski explained that he conducted measurements from the offense location, 50 North 9th Street in Lebanon City. **See** N.T., PCRA Hearing, 10/15/12, at 5. He stated that “there were two schools” he “located that were well within one thousand feet of 50 North 9th Street.” **Id.** The schools are Harrisburg Area Community College and Willow Street Academy. **See id.** To get these distances, Sergeant Radwanski utilized “a linear distance measurement” by using the Google Earth mapping system and explained that he used a “certified surveyor measurement” as well as “the Lebanon City VASCAR lines” to verify that the Google Earth mapping system is accurate to within one foot. **Id.**, at 6-7. Sergeant Radwanski then testified as to the measurements of the distance between the location of the drug delivery and the two nearby schools, Harrisburg Area Community College and Willow Street Academy, using Google Earth Mapping System. **See id.**, at 7. The distances were 802.56 feet and 744.87 feet, respectively. **See id.**, at 7-8.

During cross-examination, Sergeant Radwanski testified that he was the officer who actually pulled the Google Earth exhibits. **See id.**, at 9. He further testified that he “used the measurement distance for [the] schools

using Google Earth and then [he] corroborated the accuracy of it using the certified or surveyed 1,320 feet distance on the two VASCAR locations.” ***Id.***, at 9-10.

On appeal, Forney-Britton maintains that the PCRA court erred in dismissing his petition. He first argues that the evidence presented by the Commonwealth did not comply with the Federal Rules of Evidence. ***See*** Appellant’s Brief, at 7-8. (Of course, the *federal* rules do not apply in this *state* court proceeding.) He also maintains that the Commonwealth failed to call the surveyor and, as such, the evidence offered by Sergeant Radwanski was unreliable and that he was further deprived his right to question the surveyor. ***See id.***, at 9. Lastly, Forney-Britton maintains that Google Earth cannot guarantee that its measurements are accurate. ***See id.***, at 10. Based on these arguments he concludes that “[a]s such, it cannot be officially determined whether the alleged offense occurred within the school zone[.]” ***Id.***

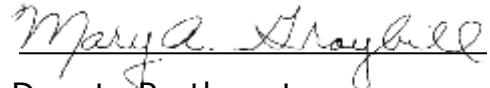
Forney-Britton, however, did not raise *any* of these arguments in the PCRA court—either in his PCRA petition or at the evidentiary hearing. He voiced no objection whatsoever to the evidence presented by the Commonwealth, nor are these areas covered in his brief cross-examination of Sergeant Radwanski. ***See*** N.T., PCRA Hearing, 10/15/12, at 9-11. Based on the evidentiary record before the PCRA court, we cannot find that it

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committed an abuse of discretion in denying the PCRA petition. The evidence of record supports the sentencing enhancement.

Order affirmed.

Judgment Entered.


Deputy Prothonotary

Date: 9/13/2013