

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
JUAN DANIEL ORTIZ-MEDINA,	:	
	:	
Appellant	:	No. 2036 MDA 2013

Appeal from the PCRA Order entered on October 15, 2013
in the Court of Common Pleas of Lancaster County,
Criminal Division, No(s): CP-36-CR-0000042-2012,
CP-36-CR-0000280-2011, CP-36-CR-0000284-2011,
CP-36-CR-0000286-2011, CP-36-CR-0000289-2011,
CP-36-CR-0000291-2011, CP-36-CR-0000292-2011,
CP-36-CR-0000293-2011, CP-36-CR-0000295-2011

BEFORE: PANELLA, OLSON and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED MAY 12, 2014

Juan Daniel Ortiz-Medina (“Ortiz-Medina”) appeals, *pro se*, from the Order dismissing his first Petition for relief filed pursuant to the Post Conviction Relief Act (“PCRA”). **See** 42 Pa.C.S.A. §§ 9541-9546. We affirm.

In January 2010, the police arrested Ortiz-Medina, after having observed him make numerous sales of cocaine to a confidential police informant. The Commonwealth charged Ortiz-Medina with nine counts of possession with intent to deliver cocaine (“PWID”). Subsequently, Ortiz-Medina entered into a negotiated guilty plea, in which he agreed to plead guilty to the nine counts of PWID in exchange for the Commonwealth’s agreement to request that the sentencing court impose the statutory

mandatory minimum sentence of five to ten years in prison. During the guilty plea proceedings, Ortiz-Medina was represented by Douglas Conrad, Esquire (hereinafter "plea counsel"). In accordance with the terms of the plea agreement, on June 20, 2012, the trial court sentenced Ortiz-Medina to serve an aggregate prison term of five to ten years. Ortiz-Medina did not file timely post-sentence motions, nor did he file a direct appeal.

On April 12, 2013, Ortiz-Medina timely filed a *pro se* PCRA Petition. The PCRA court appointed Vincent Quinn, Esquire ("Attorney Quinn"), to represent Ortiz-Medina. After review, Attorney Quinn filed a ***Turner/Finley***¹ "no-merit" letter, stating his determination that all of the issues presented in Ortiz-Medina's *pro se* PCRA Petition lacked merit and that there were no meritorious issues to raise on appeal. Attorney Quinn also filed a Petition to Withdraw as Ortiz-Medina's counsel.² The PCRA court subsequently granted Attorney Quinn permission to withdraw as counsel.

On July 17, 2013, the PCRA court gave Ortiz-Medina Notice of its intent to dismiss his PCRA Petition without a hearing, pursuant to Pennsylvania Rule of Criminal Procedure 907 (hereinafter referred to as the "Rule 907 Notice"). Ortiz-Medina did not respond to the Rule 907 Notice.

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

² Ortiz-Medina did not respond to Attorney Quinn's no-merit letter or Petition to Withdraw, nor did he retain alternate counsel for this appeal.

By an Order entered on October 15, 2013, the PCRA court dismissed Ortiz-Medina's PCRA Petition. Ortiz-Medina timely filed a *pro se* Notice of Appeal.

On appeal, Ortiz-Medina presents the following issues for our review:

1. Did the trial court err when it [] denied a copy of the pre-sentence report to [Ortiz-Medina?]
2. Was [plea] counsel ineffective due to his failure to advise [Ortiz-Medina] with adequate representation in explaining the consequences of pleading guilty[] versus taking this case to trial[?]

Brief for Appellant at 2 (issues numbered; capitalization omitted).

In his first issue, Ortiz-Medina appears to argue that his plea counsel was ineffective for failing to request the preparation of a pre-sentence investigative report ("PSI") prior to sentencing. *Id.* at 4. We disagree.

The applicable standards of review regarding ineffectiveness claims and the dismissal of a PCRA petition are as follows:

Our standard of review of a PCRA court's [dismissal] 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. The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record.

* * *

It is well-established that counsel is presumed to have provided effective representation unless the PCRA petitioner pleads and proves all of the following: (1) the underlying legal claim is of arguable merit; (2) counsel's action or inaction lacked any objectively reasonable basis designed to effectuate his client's interest; and (3) prejudice, to the effect that there was a reasonable probability of a different outcome if not for counsel's error. The PCRA court may deny an ineffectiveness claim if the

petitioner's evidence fails to meet a single one of these prongs. Moreover, a PCRA petitioner bears the burden of demonstrating counsel's ineffectiveness.

Commonwealth v. Franklin, 990 A.2d 795, 797 (Pa. Super. 2010) (citations omitted).

In its Rule 907 Notice, the PCRA court addressed Ortiz-Medina's ineffectiveness claim as follows:

[Ortiz-Medina] entered a negotiated [guilty] plea in which he agreed to the sentence of 5 to 10 years [in prison]. He agreed to the terms of the plea on the record, and given the maximum sentence he could have received,^[3] it was likely [that] those very terms [] induced him to plead guilty. He cannot possibly claim that he was prejudiced by [plea] counsel's failure to request a PSI report because [Ortiz-Medina] received the exact sentence [that] he negotiated for.

Moreover, the result of the proceeding would not have been different had a PSI been ordered because [the trial c]ourt may not unilaterally alter the agreed-upon terms of a valid plea agreement between a defendant and the Commonwealth. Although [a trial court] may refuse to accept [a] plea altogether, "when the parties enter the plea agreement on the record, and the court accepts and approves the plea, then the parties and the court must abide by the terms of the agreement." **Commonwealth v. Parsons**, 969 A.2d 1259, 1268 (Pa. Super. 2009) [(en banc)]. If [the trial c]ourt had refused [to accept Ortiz-Medina's] plea, [Ortiz-Medina] would be facing a possible sentence that dwarfs the sentence that he actually received. For this reason, Attorney Quinn understandably questioned the

³ If the trial court imposed sentence on each of Ortiz-Medina's nine separate convictions, and ordered the sentences to run consecutively, Ortiz-Medina could have received a maximum sentence of 90 to 180 years in prison.

wisdom of bringing this [PCRA P]etition in the first instance.^[4]

Rule 907 Notice, 7/17/13, at 3 (footnotes added). The PCRA court's sound analysis is supported by the record and the law, and we therefore affirm on this basis in rejecting Ortiz-Medina's first ineffectiveness claim. ***Id.***

Next, Ortiz-Medina asserts that his plea counsel was ineffective for "fail[ing] to advise [Ortiz-Medina] of the consequences [of] entering a guilty plea." Brief for Appellant at 4. This claim is belied by the record.

Initially, we observe that

[t]he law does not require that an appellant be pleased with the results of the decision to enter a guilty plea; rather all that is required is that appellant's decision to plead guilty be knowingly, voluntarily and intelligently made.

A defendant is bound by the statements made during the plea colloquy, and a defendant may not later offer reasons for withdrawing the plea that contradict statements made when he pled. Claims of counsel's ineffectiveness in connection with a guilty plea will provide a basis for relief only if the ineffectiveness actually caused an involuntary or unknowing plea.

Commonwealth v. Brown, 48 A.3d 1275, 1277-78 (Pa. Super. 2012) (citations, brackets and quotation marks omitted).

Our review of the record reveals that Ortiz-Medina completed a written guilty plea colloquy, stating that (1) he was advised and aware of his rights; (2) he understood the possible penalties for each charge; (3) he understood

⁴ In Attorney Quinn's no-merit letter, he argued that "if a Defendant obtains appellate or post-conviction relief[, a trial c]ourt can impose a sentence [that is] substantially in excess of the sentence which was previously imposed. ***See Commonwealth v. Tapp***, 997 A.2d 1201[, 1205] (Pa. Super[.] 2010)." No-Merit Letter, 5/20/13, at 5 (unnumbered).

the terms of the plea agreement; and (4) he was entering his guilty plea knowingly, intelligently and voluntarily. **See** Written Guilty Plea Colloquy, 6/20/12, at 2-7.

Additionally, the trial court conducted a thorough oral guilty plea colloquy prior to accepting Ortiz-Medina's guilty plea. **See** N.T., 6/20/12, at 4-12. Ortiz-Medina stated that he was guilty of the charges and, thus, he wished to plead guilty. **Id.** at 6, 9-10. Furthermore, Ortiz-Medina confirmed his understanding that, if the trial court sentenced him in accordance with the plea agreement, he would receive a sentence of five to ten years in prison. **Id.** at 11. When the trial court asked Ortiz-Medina whose choice it was to plead guilty, he responded, "Mine." **Id.** Finally, Ortiz-Medina stated that he did not have any questions about his rights. **Id.**

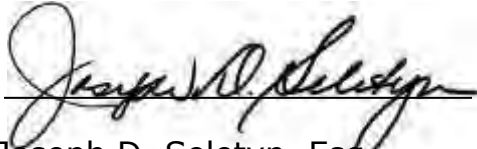
Because the record clearly shows that Ortiz-Medina understood his rights and the consequences of entering a guilty plea, his claim of plea counsel's ineffectiveness fails. **See Franklin, supra** (stating that in order to prevail on an ineffectiveness claim, a PCRA petitioner must plead and prove that there is arguable merit to the underlying legal claim).

We conclude that there are no meritorious issues that Ortiz-Medina could present on appeal, and the PCRA court neither abused its discretion nor committed an error of law by dismissing his PCRA Petition. Therefore, we affirm the Order dismissing Ortiz-Medina's PCRA Petition.

Order affirmed.

J-S19040-14

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: 5/12/2014