

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

KENNETH FILMORE DEWEES

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 880 MDA 2014

Appeal from the PCRA Order April 23, 2014
In the Court of Common Pleas of Lebanon County
Criminal Division at No(s): CP-38-CR-0001479-2012

BEFORE: GANTMAN, P.J., JENKINS, J., and MUSMANNO, J.

MEMORANDUM BY GANTMAN, P.J.:

FILED DECEMBER 23, 2014

Appellant, Kenneth Filmore Dewees, appeals from the order entered in the Lebanon County Court of Common Pleas, dismissing his first petition filed under the Post Conviction Relief Act ("PCRA").¹ We affirm.

The PCRA court opinion sets forth the relevant facts and procedural history of this case. Therefore, we have no need to restate them.

Appellant raises three issues for review:

DID THE [PCRA] COURT ERR IN DETERMINING THAT [PLEA COUNSEL] WAS NOT INEFFECTIVE FOR FAILING TO ADVISE APPELLANT THAT A GUILTY PLEA WOULD REQUIRE HIM TO REGISTER WITH THE PENNSYLVANIA STATE POLICE FOR 15 YEARS UNDER MEGAN'S LAW, 42 PA.C.S.A. § 9799 *ET SEQ.*, AND IN DETERMINING THAT [SENTENCING COUNSEL] WAS NOT INEFFECTIVE FOR

¹ 42 Pa.C.S.A. §§ 9541-9546.

AFFIRMATIVELY MISADVISING APPELLANT AS TO THE REGISTRATION REQUIREMENT?

DID THE [PCRA] COURT ERR IN DETERMINING THAT APPELLANT'S GUILTY PLEA WAS KNOWING, INTELLIGENT, AND VOLUNTARY DESPITE THE FAILURES OF [PLEA COUNSEL AND SENTENCING COUNSEL] TO PROPERLY INFORM APPELLANT THAT HE WOULD BE REQUIRED AS A SEX OFFENDER UNDER MEGAN'S LAW?

DID THE [PCRA] COURT ERR IN DETERMINING THAT THE MEGAN'S LAW REQUIREMENT TO REGISTER WITH THE PENNSYLVANIA STATE POLICE IS NOT A SENTENCE BUT IS RATHER A COLLATERAL CONSEQUENCE OF A SENTENCE?

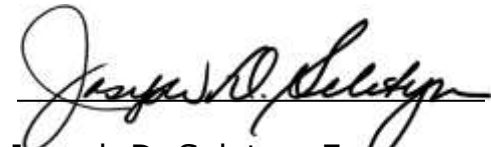
(Appellant's Brief at 4).

After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable Charles T. Jones, Jr, we conclude Appellant's issues merit no relief. The PCRA court opinion comprehensively discusses and properly disposes of the question presented. (**See** PCRA Court Opinion, filed April 24, 2014, at 4-7) (finding: **(1-2)** on December 19, 2012, court colloquied Appellant with mandatory questions to establish Appellant's plea was knowing, intelligent, and voluntary; court informed Appellant and his attorneys of Appellant's requirement to register under Megan's Law; notice of sentencing document, dated December 19, 2012, stated Appellant's requirement to register under Megan's Law; Appellant completed, initialed, and signed registration [SORNA] notification paperwork, filed on February 20, 2013, acknowledging his requirement to register with Pennsylvania state police for 15 years; prior

to imposition of sentence, record reflects district attorney stated Appellant's requirement to register under Megan's Law as tier 1 offender; court ensured that term of registration requirement was on record; court gave Appellant opportunity to ask questions regarding registration requirement; Appellant asked no questions about registration requirement; court offered Appellant chance to withdraw guilty plea, which he chose not to withdraw; Appellant's multiple notifications and numerous opportunities to raise issue regarding registration requirement confirms Appellant was not ultimately prejudiced by counsel's erroneous comment; **(3)** Pennsylvania case law makes clear Megan's law is collateral consequence of certain criminal convictions, registration requirement under Megan's law is not considered "sentence" in and of itself, so this is not cognizable claim under PCRA). Accordingly, we affirm on the basis of the PCRA court's opinion.

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: 12/23/2014

ORIGINAL
IN THE COURT OF COMMON PLEAS
OF LEBANON COUNTY, PENNSYLVANIA

ENTERED & FILED
2014 APR 24 A 10:27
CLERK OF COURTS
LEBANON, PA

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

v.

KENNETH F. DEWEES,
Petitioner

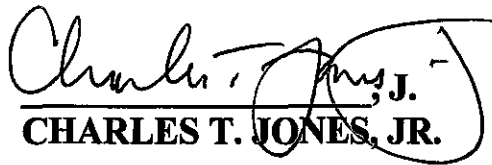
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CP-38-CR-1479-2012

ORDER

AND NOW, this 23rd day of April, 2014, upon careful consideration of the Petitioner's Post Conviction Relief Petition and Commonwealth's Response, Petitioner's Post Conviction Relief Petition is **hereby DENIED**.

BY THE COURT:


CHARLES T. JONES, JR.

Cc: District Attorney (Ryland-Tanner) *Intake*
Christopher J. Coyle, Esquire *Mailed*

PURSUANT TO Pa.R.Crim. P. 114
All parties are hereby notified
this date: 4-24-14 *hzh*
Clerk of Courts, Lebanon, PA

(45)

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OF LEBANON COUNTY, PENNSYLVANIA**

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CP-38-CR-1479-2012

OPINION BY JONES, JR., J.:

Before this Court is Petitioner’s Petition under the Post Conviction Relief Act (PCRA). For the reasons set forth herein, we deny the Petitioner’s PCRA Petition.

I. PROCEDURAL HISTORY

On December 19, 2012 Petitioner pleaded guilty to one count of Indecent Assault under 18 Pa.C.S. § 3126(a)(1).¹ This Court sentenced Petitioner to twenty-three (23) months of probation on February 20, 2013.² At the time of sentencing Petitioner completed Registration Notification paperwork notifying him that he would be required to register as a Sex Offender with the Pennsylvania State Police (herein “PSP”) for fifteen (15) years. Petitioner filed a PCRA Petition on June 4, 2013. On October 15, 2013, a PCRA hearing was held before this Court. The Commonwealth and Petitioner filed briefs on the matter on December 18, 2013. The matter is now ripe for disposition.

¹ Petitioner was represented by Keith D. Wagner, Esquire (herein “Attorney Wagner”), at this time.

² Petitioner was represented by Gerald J Brinser, Esquire (herein “Attorney Brinser”), at this time.

II. FACTUAL HISTORY

The relevant facts are as follows. On June 9, 2012, the victim, Richelle Blecker, was in the area of 529 Freeport Road. At some point that day, Petitioner arrived and struck up a conversation with Ms. Blecker. During this conversation Petitioner touched the victim's breasts, kissed her neck, and engaged in other inappropriate behavior. Ms. Blecker made a prompt complaint to family and police. Petitioner was charged with Indecent Assault on September 6, 2012.

III. THE POST-CONVICTION RELIEF ACT

The PCRA provides a process by which persons convicted of crimes they did not commit and persons serving illegal sentences can obtain relief. **42 Pa.C.S.A. § 9542.** The PCRA is the exclusive method by which collateral relief may be obtained in Pennsylvania. **Commonwealth v. Chester**, 733 A.2d 1242, 1250 (Pa. 1999). To be eligible for relief, a PCRA defendant must prove by a preponderance of the evidence all of the following:

(1) That the petitioner has been convicted of a crime under the laws of this Commonwealth and is at the time relief is granted:

(i) currently serving a sentence of imprisonment, probation or parole for the crime;

(ii) awaiting execution of a sentence of death for the crime; or

(iii) serving a sentence which must expire before the person may commence serving the disputed sentence.

(2) That the conviction or sentence resulted from one or more of the following:

(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.

(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.

(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.

(v) Deleted.

(vi) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.

(vii) The imposition of a sentence greater than the lawful maximum.

(viii) A proceeding in a tribunal without jurisdiction.

(3) That the allegation of error has not been previously litigated or waived.

(4) That the failure to litigate the issue prior to or during trial, during unitary review or on direct appeal could not have been the result of any rational, strategic or tactical decision by counsel.

When a claim of ineffective assistance of counsel is raised, additional principles apply. Trial counsel is presumed to be effective, and the Defendant bears the burden of proving otherwise. **Commonwealth v. Lewis**, 708 A.2d 497 (Pa.Super. 1998); **Commonwealth v. Williams**, 570 A.2d 75 (Pa. 1990). In determining

whether counsel rendered ineffective assistance, the Court must first determine whether the issue underlying the claim of ineffectiveness has even arguable merit. **Commonwealth v. DiNicola**, 751 A.2d 197 (Pa.Super. 2000); **Commonwealth v. Johnson**, 588 A.2d 1303 (Pa. 1991). If the claim is without arguable merit, the Court's inquiry ends, as counsel will not be deemed ineffective for failing to pursue a meritless issue. **Id.** Even if the underlying claim is of arguable merit, the Defendant must establish that the course of action chosen by counsel had no reasonable basis designed to effectuate the Defendant's interest. **Id.** In addition, the Defendant must also establish that, but for counsel's deficient performance, the result of the trial would have been different. **Id.** No relief is due, however, on any claim that has been waived or previously litigated, as those terms have been construed in the decisions of this Court. **See 42 Pa.C.S.A. § 9543(a)(3)**. PCRA is not intended "to provide relief from collateral consequences of a criminal conviction." **42 Pa.C.S.A. § 9542.**

IV. DISCUSSION

Petitioner asserts that his trial counsel, Attorneys Wagner and Brinser, were ineffective for failing to advise him that a guilty plea would require him to register with PSP for 15 years under Megan's Law.³ For the reasons that follow, Petitioner's claim is DENIED.

A. The Megan's Law requirement to register with PSP is not a sentence; rather it is a collateral consequence of a sentence. Thus, it does not fall under the PCRA.

³ 42 Pa.C.S.A. § 9791 et seq. This statute expired on December 20, 2012 and was replaced with 42 Pa.C.S.A. § 9799 et seq. on the same date.

The registration requirement under Megan's Law is not in and of itself a sentence and is not a cognizable claim under the PCRA. **Commonwealth v. Price**, 876 A.2d 988, 992 (Pa.Super. 2005); **Commonwealth v. Mesker**, 34 A.3d 841 (Pa.Super. 2011). Petitioner was sentenced to 23 months' probation. Under the law of the Commonwealth, Megan's law is a collateral consequence of a certain criminal convictions. See **Commonwealth v. Williams**, 574 Pa. 487 (2003).

B. Petitioner's Guilty Plea was Knowing, Intelligent, and Voluntary despite the alleged failures of his trial counsel to properly inform him that he would be required to register as a Sex Offender under Megan's Law because Petitioner was notified of the requirement by the District Attorney and this Court on more than one occasion.

Relief may be granted for ineffective assistance of counsel on the basis of a guilty plea when it can be shown that counsel's ineffectiveness caused the plea to be unknowing and involuntary. **Commonwealth v. Yager**, 454 Pa.Super. 428, 437 (1996). This standard is similar to the "manifest injustice" applicable to all post-sentence attempts to withdraw a plea. **Id.**

Petitioner alleges that Attorney Wagner failed to inform him at the time he entered his guilty plea that he would be required to register with PSP under Megan's Law. Petitioner claims that this failure caused him to enter a guilty plea that was unknowing and involuntary. "The judge shall conduct a separate inquiry of the defendant on the record to determine whether the defendant understands and voluntarily accepts the terms of the plea agreement on which the guilty plea ... is based." **Pa.R.C.P. Rule 590(B)(2)**. The Court is required to ask a series of questions on the record to determine if a defendant understands his or her rights, understands the charge(s) against them, and understands the punishment that might

be imposed. See **Commonwealth v. Persinger**, 532 Pa. 317 (1992); **Commonwealth v. Kulp**, 476 Pa. 358 (1978); **Commonwealth v. Mendoza**, 730 A.2d 503 (Pa.Super. 1999).

The transcript of Petitioner's Plea, dated December 19, 2012, shows that the Court not only addressed the mandatory questions to establish a knowing, intelligent, and voluntary plea, but the Court also informed Attorney Wagner and Petitioner himself that he would be required to register under Megan's Law. (N.T. at 2 12/19/2012). The Notice of Sentencing, also dated December 19, 2012, clearly states at the bottom that the Petitioner would be required to register under Megan's Law and that Petitioner would have this requirement explained to him at Sentencing on February 20, 2013.

Petitioner claims that on the day of his sentencing, Attorney Brinser incorrectly advised him that he would not be subject to Megan's Law. However, on that same day, prior to sentencing, Petitioner filled out and signed the registration notification acknowledging that he would be required to register with PSP for 15 years. The record also reflects that prior to the imposition of sentence the District Attorney made it clear that Petitioner would be subject to registration under Megan's Law as a Tier 1 Offender. (N.T. at 11 02/20/2013). The Court ensured that the term of the registration requirement was on the record as well. (N.T. at 11-12 02/20/2013). The Court gave Petitioner the opportunity to ask questions if he had any and Petitioner did not mention anything regarding the registration requirement.

Petitioner was made aware on several occasions, in Court, and on the record and even initialed and signed the notification paperwork stating that he would be required to register with PSP as a Sexual Offender for 15 years. Petitioner was offered the opportunity at sentencing to withdraw his guilty plea and chose not to do so. (N.T. at 12-23 02/20/2013). Petitioner's claim of ineffective assistance of counsel is nullified by the multiple notifications from the Court and the

Commonwealth of this requirement. If Petitioner's attorney told him differently, then he could and should have brought it up when the Court and District Attorney spoke about the requirement when Petitioner was pleading guilty and being sentenced. Since Petitioner was aware of the registration requirement, his plea of guilty was knowing, intelligent, and voluntary.

V. CONCLUSION

For the reasons set forth above, Petitioner's PCRA Petition is denied.