

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
TEO GORNELEH,	:	
	:	
Appellant	:	No. 2189 EDA 2012

Appeal from the PCRA Order entered on July 9, 2012  
in the Court of Common Pleas of Lehigh County,  
Criminal Division, No. CP-39-CR-0000055-2011

BEFORE: FORD ELLIOTT, P.J.E., LAZARUS and MUSMANNNO, JJ.

MEMORANDUM BY MUSMANNNO, J.:

**FILED MAY 16, 2013**

Teo Gorneleh ("Gorneleh") appeals from the Order denying his Petition for relief filed pursuant to the Post Conviction Relief Act ("PCRA"). **See** 42 Pa.C.S.A. §§ 9541-9546. Counsel for Gorneleh has filed a Petition to withdraw. We affirm and grant counsel's Petition to withdraw.

On July 5, 2011, Gorneleh pled *nolo contendere* to the charge of possession with intent to deliver a controlled substance, specifically, 6.3 grams of cocaine. N.T., 7/5/11, at 2. Gorneleh pled *nolo contendere* pursuant to a plea agreement, under which, in exchange for Gorneleh's plea to possession with intent to deliver, the Commonwealth agreed to "cap" the sentence recommendation "at the bottom of the standard range," which was 24 months in prison. **Id.** The Commonwealth also agreed to waive a mandatory minimum sentence of three years, which was based on

Gorneleh's two previous convictions of possession with intent to deliver, and to withdraw the remaining charges. *Id.* at 3.

The Commonwealth set forth the following factual basis for the plea:

The[] charges [of possession with intent to deliver a controlled substance, possession of a controlled substance, 35 P.S. § 780-113(a)(16), criminal conspiracy, 18 Pa.C.S.A. § 903, criminal use of a communication facility, 18 Pa.C.S.A. § 7512(a), and tampering with or fabricating physical evidence, 18 Pa.C.S.A. § 4910], were filed by Detective Roca, who at the time was with the Vice Unit of the Allentown Police Department.

On [December 13, 2010, Gorneleh] became the subject of a drug investigation pursuant to information received from a confidential informant.

The confidential informant provided a description of [Gorneleh], what car he drove, and a cellular telephone number that [Gorneleh] could be reached on.

Detective Roca instructed the confidential informant to place a phone call to [Gorneleh] on that cell phone number to attempt to purchase a quantity of cocaine, specifically an 8 ball of cocaine.

Arrangements were made to meet at the A Plus Minimart on 12<sup>th</sup> and Hamilton Street in Allentown.

Detective Roca drove the confidential informant to that location in an undercover capacity.

[Gorneleh] did arrive and met with the confidential informant. The two spoke for a while, then separated. A new meet[ing] spot was arranged, that was the South Side Deli parking lot off of 4<sup>th</sup> Street in the Mountainville Shopping Center.

At that time[,] Detective Roca parked his vehicle with the confidential informant inside and [Gorneleh] drove to an apartment complex behind the shopping center where the drugs were secured.

[Gorneleh] then drove back to the South Side Deli parking lot, at which time he parked close to Detective Roca and the confidential informant.

Detective Roca gave the signal for other surveillance units that were in the area to take [Gorneleh] into custody.

[A]t that time[,] [Gorneleh] exited the car, threw the suspected drugs ... down onto the ground and attempted to flee. He was taken into custody.

The drugs were recovered, sent to the Pennsylvania State Police Crime Lab for testing. ... [T]he results of that test were positive for crack cocaine. The total weight of the cocaine was 6.3 grams.

N.T., 7/5/11, at 6-8. The trial court conducted a colloquy of Gorneleh, and found that the plea was entered knowingly, voluntarily and intelligently. ***Id.*** at 9. The trial court indicated that it would request a pre-sentence report before sentencing Gorneleh. ***Id.*** at 10.

At the sentencing hearing on July 28, 2011, Gorneleh expressed dissatisfaction with his attorney, Richard Webster, Esquire ("Webster"), a public defender who had represented Gorneleh at the plea hearing. N.T., 7/28/11, at 3-4.<sup>1</sup> Gorneleh also indicated that he wished to withdraw his *nolo contendere* plea. ***Id.*** at 5. The trial court permitted Gorneleh to withdraw his plea. ***Id.*** Subsequently, Gorneleh changed his mind, and the case proceeded to sentencing. ***Id.*** at 7. The trial court sentenced Gorneleh to a prison term of two to seven years. ***Id.*** at 11.

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<sup>1</sup> The transcript of sentencing contains an incorrect date: July 28, 2012. As noted above, sentencing occurred on July 28, 2011. ***See*** Certified Record, docket entry nos. 12, 14.

On April 23, 2012, Gorneleh filed a *pro se* PCRA Petition. New counsel, Charles A. Banta, Esquire (“Banta”), entered an appearance on May 4, 2012, on behalf of Gorneleh. Banta filed an Amended PCRA Petition on Gorneleh’s behalf, and the PCRA court conducted a hearing. Subsequently, the PCRA court denied the Petition, after which Gorneleh filed this timely appeal. The PCRA court ordered Gorneleh to file a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). Gorneleh complied with that Order.

On October 1, 2012, Banta filed a Petition to withdraw as counsel and no-merit letter pursuant to ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988), and ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1988), alleging that Gorneleh’s appeal lacks merit. We first address counsel’s Petition to withdraw.

Counsel petitioning to withdraw from PCRA representation must proceed ... under [***Turner, supra*** and ***Finley, supra*** and] ... must review the case zealously. ***Turner/Finley*** counsel must then submit a “no-merit” letter to the trial court, or brief on appeal to this Court, detailing the nature and extent of counsel’s diligent review of the case, listing the issues which petitioner wants to have reviewed, explaining why and how those issues lack merit, and requesting permission to withdraw.

Counsel must also send to the petitioner: (1) a copy of the “no merit” letter/brief; (2) a copy of counsel’s petition to withdraw; and (3) a statement advising petitioner of the right to proceed *pro se* or by new counsel.

[W]here counsel submits a petition and no-merit letter that ... satisfy the technical demands of ***Turner/Finley***, the court—trial court or this Court—must then conduct its own review of

the merits of the case. If the court agrees with counsel that the claims are without merit, the court will permit counsel to withdraw and deny relief.

***Commonwealth v. Doty***, 48 A.3d 451, 454 (Pa. Super. 2012).

In the instant case, Banta filed a no-merit letter indicating that he had completely reviewed the case, listing the issues Gorneleh wished to have reviewed, and explaining why those issues lack merit. In addition, Banta filed a Petition to withdraw, provided Gorneleh with a copy of the Petition to withdraw and no-merit letter, and advised Gorneleh of his right to proceed *pro se* or with new counsel. Thus, we conclude that Banta has complied with the requirements of ***Turner/Finley***. Accordingly, we next conduct our own review to determine if Gorneleh's claims lack merit. ***Doty***, 48 A.3d at 454.

In his Amended PCRA Petition, Gorneleh alleged that (1) Webster failed to interview witnesses requested by Gorneleh; (2) Webster failed to properly prepare for trial; and (3) Webster's failures forced Gorneleh to accept a plea to a crime he did not commit. Gorneleh also alleged that the trial court violated his federal and state constitutional rights when Gorneleh raised the ineffectiveness of trial counsel at sentencing and the trial court refused to appoint new counsel.

In order to establish a claim of ineffective assistance of counsel under the PCRA, an appellant must show that: (1) the claim is of arguable merit; (2) counsel had no reasonable strategic basis for his or her action or inaction; and (3) but for the errors and omissions of counsel, there is a reasonable probability that the outcome of the proceedings would have been different.

**Commonwealth v. Moore**, 805 A.2d 1212, 1215 (Pa. 2002) (citation omitted). “A PCRA court passes on witness credibility at PCRA hearings, and its credibility determinations should be provided great deference by reviewing courts.” **Commonwealth v. Johnson**, 966 A.2d 523, 539 (Pa. 2009).

At the PCRA hearing, Gorneleh testified that he told Webster that he was not guilty of the crime. N.T., 6/26/12, at 6. Gorneleh stated that he gave Webster a list of witnesses, but Webster “just push[ed] it back to me.” **Id.** Gorneleh specified that he wanted to call his girlfriend and his co-defendant as witnesses. **Id.** at 7-8. Gorneleh also asked Webster to check the video surveillance cameras at the scene. **Id.** at 9. Gorneleh testified that Webster did not know anything about his case one or two days before trial. **Id.** Gorneleh admitted that, during the seven months between his arrest and his guilty plea, Webster visited and spoke to him a few times. **Id.** at 13.

At the PCRA hearing, Webster testified that he saw or spoke with Gorneleh either in person or by video at least six times. **Id.** at 21. Webster stated that he was prepared to go to trial, but, on the morning of trial, Gorneleh’s mother approached him asking whether a plea had been offered. **Id.** Webster stated that Gorneleh’s mother was in favor of Gorneleh taking the plea offer, and her opinion was communicated to Gorneleh, after which Gorneleh entered the *nolo contendere* plea. **Id.** at 22. Webster testified

that he spoke to Gorneleh's girlfriend several times, and subpoenaed her to testify at trial. **Id.** at 22-23. Webster stated that he attempted to speak with Gorneleh's co-defendant, Michael Cortes ("Cortes"), but Cortes's attorney would not permit Webster to speak with him. **Id.** at 23. Cortes's attorney told Webster that Cortes was prepared to testify as a Commonwealth witness against Gorneleh. **Id.**

Webster testified that he also investigated on Gorneleh's contention that a Jethron Walker ("Walker") was the confidential informant in this case. **Id.** at 24. Webster discovered that Walker was not the informant. **Id.** Webster also investigated Gorneleh's claim that there was a video surveillance camera at the A Plus store, but discovered that there was no such video surveillance. **Id.** at 26. Webster testified that he had taken copious notes of his conversations with Gorneleh, and was prepared to go to trial. **Id.** at 27.

Based on the above, the record supports the PCRA court's finding that there is no arguable merit to Gorneleh's claims of ineffective assistance of counsel. Webster testified that he had interviewed the witnesses identified by Gorneleh, and attempted to interview the co-defendant but was unable to do so. Webster also investigated whether a surveillance video existed. Webster spoke with Gorneleh on several occasions and was prepared to go to trial. Accordingly, Gorneleh is not entitled to relief on his claims of ineffective assistance of counsel.

Gorneleh also claims that the trial court erred by not appointing new counsel at the sentencing hearing. The record shows that Gorneleh told the trial court that Webster had not been representing him “like I wanted to be represented.” N.T., 7/28/12, at 3. The trial court explained to Gorneleh that Webster had been able to negotiate away the three-year mandatory sentence and obtain a plea deal. **Id.** at 4. The trial court told Gorneleh that the court would permit him to withdraw his plea, and further indicated that if Gorneleh did not wish to be represented by Webster, then he could proceed *pro se* or hire private counsel. **Id.** When Gorneleh subsequently expressed that he had “no choice” but to enter the plea, the trial court told Gorneleh that he did have a choice, and directed that Gorneleh be taken to the “bullpen” to think about what he wanted to do. **Id.** Gorneleh later returned to the courtroom, and indicated that he wished to proceed with sentencing. **Id.** at 7.

“A motion for change of counsel by a defendant for whom counsel has been appointed shall not be granted except for substantial reasons.” Pa.R.Crim.P. 122. “The decision of whether to appoint new counsel lies within the sound discretion of the trial court.” **Commonwealth v. Spatz**, 756 A.2d 1139, 1149-50 (Pa. 2000).

In the instant case, the trial court allowed Gorneleh to withdraw his *nolo contendere* plea, but explained that Webster had negotiated a favorable plea for him under the circumstances. Gorneleh subsequently indicated that



he wished to proceed with sentencing pursuant to the *nolo contendere* plea. Upon review, we discern no abuse of discretion by the trial court. In addition, Gorneleh's claim in this regard does not demonstrate his entitlement to PCRA relief. **See** 42 Pa.C.S.A. § 9543(a)(2) (setting forth grounds for relief under the PCRA).

We conclude that Gorneleh's claims lack merit. Our review discloses no other issues of merit. Therefore, we grant counsel's Petition to withdraw.

Order affirmed; Petition to withdraw as counsel granted.

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Karen Gambetta", written over a horizontal line.

Prothonotary

Date: 5/16/2013

J-S08039-13