

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
SHAUN RAISOR,		No. 249 WDA 2012
Appellant		

Appeal from the Order entered January 12, 2012,
in the Court of Common Pleas of Allegheny County,
Criminal Division, at No(s): CP-02-CR-0010999-2008.

BEFORE: ALLEN, WECHT, and STRASSBURGER,* JJ.

MEMORANDUM BY ALLEN, J.:

Filed: March 8, 2013

Shaun Raisor ("Appellant") appeals from the order denying his first petition filed under the Post-Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. sections 9541-46. We affirm.

The pertinent facts and procedural history are as follows: On October 29, 2009, Appellant entered a negotiated guilty plea to third-degree murder, arson, and tampering with evidence. Consistent with the plea agreement, the trial court sentenced Appellant that same day to an aggregate term of twenty-five to fifty years of imprisonment. Appellant did not file a post-sentence motion or a direct appeal.

On April 13, 2011, Appellant filed a *pro se* PCRA petition. The PCRA court appointed counsel to assist Appellant. PCRA counsel twice filed an

*Retired Senior Judge assigned to Superior Court.

amended PCRA petition. On November 16, 2011, the PCRA court issued Pa.R.Crim.P. 907 notice of its intent to dismiss Appellant's PCRA petition without a hearing. Appellant filed a response on December 16, 2011. By order entered January 12, 2012, the PCRA court dismissed Appellant's petition. This appeal followed. Both Appellant and the PCRA court have complied with Pa.R.A.P. 1925.

Appellant raises the following issues:

I. Whether [Appellant's] guilty plea was unlawfully induced due to ineffective assistance of counsel where: (1) counsel failed to establish a factual basis to the guilty plea on the record; and, (2) counsel failed to inform [Appellant] that he could be incarcerated in an out-of-state prison?

II. Whether the [PCRA] court erred in denying [Appellant] an evidentiary hearing?

Appellant's Brief at 3 (capitalization omitted).

In reviewing the propriety of an order granting or denying PCRA relief, an appellate court is limited to ascertaining whether the record supports the determination of the PCRA court and whether the ruling is free of legal error. ***Commonwealth v. Johnson***, 966 A.2d 523, 532 (Pa. 2009). We pay great deference to the findings of the PCRA court, "but its legal determinations are subject to our plenary review." ***Id.*** Furthermore, to be entitled to relief under the PCRA, the petitioner must plead and prove by a preponderance of the evidence that the conviction or sentence arose from one or more of the

errors enumerated in section 9543(a)(2) of the PCRA. One such error involves the ineffectiveness of counsel.

To obtain relief under the PCRA premised on a claim that counsel was ineffective, a petitioner must establish by a preponderance of the evidence that counsel's ineffectiveness so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place. **Johnson**, 966 A.2d at 532. "Generally, counsel's performance is presumed to be constitutionally adequate, and counsel will only be deemed ineffective upon a sufficient showing by the petitioner." **Id.** This requires the petitioner to demonstrate that: (1) the underlying claim is of arguable merit; (2) counsel had no reasonable strategic basis for his or her action or inaction; and (3) the petitioner was prejudiced by counsel's act or omission. **Id.** at 533. A finding of "prejudice" requires the petitioner to show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." **Id.** Counsel cannot be deemed ineffective for failing to pursue a meritless claim. **Commonwealth v. Loner**, 836 A.2d 125, 132 (Pa. Super. 2003) (*en banc*), *appeal denied*, 852 A.2d 311 (Pa. 2004).

When asserting a claim of ineffectiveness of counsel in the context of a guilty plea, a defendant must show that plea counsel's ineffectiveness induced him to enter the plea. **Commonwealth v. Johnson**, 875 A.2d 328, 331 (Pa. Super. 2005). As this Court has stated:

Because a plea of guilty effectively waives all non-jurisdictional defects and defenses, after sentencing, allegations of ineffectiveness of counsel in this context provide a basis for withdrawal of the plea only where there is a causal nexus between counsel's ineffectiveness, if any, and an unknowing or involuntary plea. The guilty plea hearing becomes *the* significant procedure under scrutiny. The focus of the inquiry is whether the accused was misled or misinformed and acted under that misguided influence when entering the guilty plea.

Commonwealth v. Flood, 627 A.2d 1193, 1199 (Pa. Super. 1993)

(citations omitted).

With regard to the validity of guilty pleas, our Court has recently reiterated:

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.

Commonwealth v. Yeomans, 24 A.3d 1044 (Pa. Super. 2011) (citing ***Commonwealth v. Fluharty***, 632 A.2d 312, 314 (Pa. Super. 1993)).

Rule 590 of the Pennsylvania Rules of Criminal Procedure delineates a trial court's acceptance of a guilty plea. It first requires that a guilty plea be offered in open court. The rule then provides a procedure to determine whether the plea is voluntarily, knowingly, and intelligently entered. As noted in the Comment to Rule 590, at a minimum, the trial court should ask questions to elicit the following information:

- (1) Does the defendant understand the nature of the charges to which he or she is pleading guilty or *nolo contendere*?
- (2) Is there a factual basis for the plea?
- (3) Does the defendant understand the he or she has the right to trial by jury?
- (4) Does the defendant understand that he or she is presumed innocent until found guilty?
- (5) Is the defendant aware of the permissible range of sentences and/or fines for the offenses charged?
- (6) Is the defendant aware that the judge is not bound by the terms of any plea agreement tendered unless the judge accepts such agreement?

Pa.R.Crim.P. 590, Comment.¹

In *Yeomans*, this Court further summarized:

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.

Yeomans, 24 A.3d at 1047 (citing *Commonwealth v. Fluharty*, 632 A.2d 312, 314-15)).

¹ The Comment also includes a seventh proposed question that is only applicable when a defendant pleads guilty to murder generally.

In his first issue, Appellant claims that trial counsel assistance during the guilty plea process was deficient in two ways. Initially, Appellant claims that trial counsel was ineffective because “the plea colloquy lacked a factual basis for third-degree murder.” Appellant’s Brief at 8. “It is clear that before accepting a plea of guilty, the trial court must satisfy itself that there is a factual basis for the plea.” *Yeomans*, 24 A.3d at 1048 (citation omitted). Appellant references the following portion of the factual basis the Commonwealth provided during his plea:

[The police] took [Appellant] back to the police station where he was read his Miranda rights and agreed to make a statement.

[Appellant] actually made multiple statements once he was there. Going on tape for a third statement, he told them he had met the victim earlier that morning around 3 a.m. in the parking lot of a bar in New Kensington, that the victim had driven his pickup truck to the site of the abandoned cement plant, that there was only so far that you could drive due to the road being closed off, that three of them - - I’m sorry. The two of them got out of the vehicle, and they walked toward the abandoned plant at which time a fight [ensued] between the two gentlemen.

A knife was pulled, and [Appellant] admitted to grabbing the knife, approaching the victim from behind and stabbing him in the upper left chest and stabbing him numerous times. [Appellant] then went on to say that he pulled the body into [an] abandoned hole in the abandoned cement plant where they were tearing parts of it down. He used a black conveyor belt and some other rubble to conceal the body.

[Appellant] then got into the victim’s pickup truck, drove around for sometime, [sic] eventually coming to a location on Sardis Road where he set fire to the [pickup] truck.

N.T., 10/29/11, 11-12.

Appellant argues that because the Commonwealth stated that “a knife was pulled” on him, the record supports a theory of self-defense, and trial counsel “inexplicably failed to establish a factual basis, or object to the lack of a factual basis for the charge of third-degree murder.” Appellant’s Brief at 11. According to Appellant, “[a]t a minimum, sufficient evidence/information was required to have been presented that proved the absence of self-defense to the satisfaction of the Court.” *Id.* (footnote omitted). We disagree.

In rejecting Appellant’s claim, the PCRA court, which also sat as the trial court, reasoned as follows:

The guilty plea proceeding was consistent with Rule 590. The Court engaged [Appellant] in dialogue. His oral representations and his written answers convinces [sic] this Court he knew what he was doing.

As for the factual basis of the plea, the Court has reviewed the transcript. It believed then and it believes now that there was a sufficient factual basis for the Court to accept the plea agreement. [Appellant] admitted to stabbing the deceased. The coroner said those stab wounds were the cause of death and the manner of death was a homicide. [Appellant] admitted to setting the victim’s truck, [Appellant’s] getaway vehicle, on fire. The fire experts said the cause of the fire was incendiary and ruled it to be arson. [Appellant] admitted to covering up the dead body with stuff to conceal discovery. These facts were adequate for this Court to accept the plea.

[Appellant’s] argument that the failure of the plea to disprove the justification defense is not persuasive. [Appellant] points to no legal authority which requires such. This is so because there is none. One of the downsides of pleading guilty is you give up the ability to

contest certain evidence and how certain evidence, when coupled with oral advocacy, may have played out to 12 strangers in the jury box.

PCRA Court Opinion, 7/9/12, at 2-3.

Our review of the record supports the PCRA court's conclusion. Initially, we note that Appellant's claim does not involve circumstances where the defendant at the time of entering the guilty plea informs the court of facts that would establish a defense. *See e.g., Commonwealth v. Rosmon*, 384 A.2d 1221 (Pa. 1978). Rather, in this case, Appellant said nothing. Additionally, in his written guilty plea, Appellant acknowledged that by pleading guilty he was giving up "the right to present or assert any defenses" including self-defense. Written Guilty Plea, 10/29/09, at 4.

Moreover, it is well settled that a guilty plea is not rendered invalid by the failure of the trial court to advise a defendant of all possible defenses to the crime charged. *Commonwealth v. Weiss*, 432 A.2d 1020, 1022 (Pa. Super. 1981). Indeed, PCRA counsel's claim that the Commonwealth's rendition of the crime raised the issue of self-defense is meritless—as the Commonwealth further stated, Appellant attacked the victim from behind and stabbed him multiple times in the chest. *See* 18 Pa.C.S.A. § 505 (explaining limitations of self-defense). Thus, Appellant's ineffectiveness claim fails. *See Loner, supra*.

Appellant next claims that trial counsel's ineffectiveness "unlawfully induced" his guilty plea "because [he] was not informed on the record that he could or would be imprisoned in an out-of-state prison." Appellant's Brief

at 12. According to Appellant, “his incarceration in Virginia was a ‘direct consequence’ of his guilty plea and sentence” and “[he] would never have entered his plea had he known that he would be banished to an out-of-state prison - - far away from his family.” *Id.* at 12-13. This claim is unavailing.

Appellant fails to cite any rule of law, procedural rule or applicable case law to support this claim.² As noted by the PCRA court:

[Appellant] cites two decisions – *Padilla v. Kentucky*, ___ U.S. ___, 130 S.Ct. 1473 (2010[]) and *Commonwealth v. Rathfon*, 899 A.2d 365 (Pa. Super. 2006) – in support of his assertion. The Commonwealth distinguishes *Padilla* in its response. The Court finds [the Commonwealth’s response] persuasive. *Padilla* dealt with erroneous advice which led directly to deportation. Here, [Appellant] will not be deported upon him serving his negotiated sentence. He will still be a citizen of the United States. He will not suffer anywhere near the direct consequence Mr. Padilla did.

As for the Superior Court decision in *Rathfon*, this Court sees a major distinction. In *Rathfon*, he was promised a county sentence. He did not receive a county sentence because the law did not allow for that when his other case was considered. Here, there was no promise made that [Appellant] would serve his sentence in a particular facility. [Appellant] received what he bargained for. The fact that his “keeper”, the Department of Corrections[,], has exercised its executive branch discretion to house [Appellant] in a contract facility in another state does not move this Court to grant him relief.

² The Commonwealth asserts that Appellant is currently housed in a Pennsylvania prison. *See* Commonwealth’s Brief at 14. Appellant does not contradict this statement.

PCRA Court Opinion, 7/9/12, at 3-4.

We agree with the PCRA court's conclusion that Appellant's reliance upon *Padilla* and *Rathfon* is inapposite. Appellant's place of incarceration, under the circumstances presented, is clearly a collateral consequence of his guilty plea. *See Clark v. Beard*, 918 A.2d 155, 160 (Pa. Cmwlth. 2007) (explaining that "it is entirely a matter of the Department of Corrections' discretion where to house an inmate"; "an inmate does not have a right to be housed in a particular facility or in a particular area of a facility"); *see also Commonwealth v. Fullin*, 892 A.2d 843, 852 (Pa. Super. 2006) (stating that a criminal defendant has no constitutional or inherent right to serve his term of imprisonment in any particular institution). Thus, Appellant's ineffectiveness claim fails. *See Loner, supra*.

In his second issue, Appellant claims that the PCRA court erred in dismissing his PCRA petition without first conducting an evidentiary hearing. *See* Appellant's Brief at 14-15.

A PCRA court may decline to hold a hearing on the petition if the PCRA court determines that petitioner's claim is patently frivolous and is without a trace of support either in the record or from other evidence. *Commonwealth v. Jordan*, 772 A.2d 1011, 1014 (Pa. Super. 2001). Appellant does not claim that his petition raised a factual issue. Rather, Appellant asserts that the Commonwealth raised a factual issue through its answer to Appellant's petition. We disagree.

In rejecting Appellant's claim, the PCRA court reasoned as follows:

The supposed factual issue created by the [Commonwealth] attaching a preliminary hearing transcript to its *Answer* is nothing of the sort. The transcript was designed as an alternative argument to assist them in countering the prejudice prong of an [ineffective assistance of counsel] claim. But the reality of things is that the analysis never gets that far. As ruled earlier, there is no need in a guilty plea proceeding to set forth facts to refute any possible defense.

PCRA Court Opinion, 7/9/12, at 5. Our review of Appellant's amended PCRA petitions and the Commonwealth's answers supports the PCRA court's decision to dismiss Appellant's PCRA petition without a hearing. No genuine issue of fact existed which involved the validity of Appellant's guilty plea. In essence, Appellant seeks an evidentiary hearing to determine whether any statements he made to police would support a claim of self-defense. **See** Appellant's Brief at 14. As noted *supra*, in entering his guilty plea, Appellant waived all defenses when he entered into the negotiated guilty plea. Thus, Appellant's second issue is without merit.

In sum, because Appellant's claims of trial counsel's ineffectiveness are meritless, the PCRA court properly denied Appellant's PCRA petition without a hearing. We therefore affirm the PCRA court's order dismissing the petition.

Order affirmed.