

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

TRAVIS HENRY SEIDEL

Appellant

No. 664 MDA 2013

Appeal from the PCRA Order March 18, 2013
In the Court of Common Pleas of Berks County
Criminal Division at No(s): CP-06-CR-0003088-2011

BEFORE: PANELLA, MUNDY and PLATT*, JJ.

MEMORANDUM BY PANELLA, J.

FILED FEBRUARY 06, 2014

Appellant, Travis Henry Seidel, appeals from the order entered on March 18, 2013, which denied his petition for relief filed pursuant to the Post Conviction Relief Act¹ (PCRA). After a careful review, we affirm.

On October 27, 2011, Seidel entered an open guilty plea to third degree murder in connection with the shooting death of his friend, Tyler Dietrich, at a party on June 25, 2011. Seidel was intoxicated when a verbal and physical altercation ensued between him and Dietrich during which Seidel shot an unarmed Dietrich, at close range, in the chest. In exchange for the plea, the Commonwealth agreed to withdraw the charge of first degree murder, which carried with it a mandatory life sentence. At the time

¹ 42 PA.CON.S.TAT.ANN. §§ 9541-9546.

*Retired Senior Judge assigned to the Superior Court.

of the guilty plea hearing, an oral colloquy was conducted on the record after which the trial court determined that the plea was both knowing and voluntary.

Seidel was subsequently sentenced to a period of ten to twenty years' incarceration followed by twenty years' probation. Seidel filed no post-sentence motions and no direct appeal from the judgment of sentence. On October 3, 2012, Seidel filed a PCRA petition seeking to withdraw his guilty plea due to the deficient investigation and legal advice given to him by plea counsel. The Commonwealth filed its answer on November 30, 2012, after which the PCRA court issued its notice, pursuant to Pa.R.Crim.P. 907, of its intent to dismiss Seidel's PCRA petition. Seidel filed a response thereto and on March 18, 2013, the PCRA court issued an order denying Seidel's PCRA petition. This timely appeal followed.

On appeal, Seidel raises the following issue for our review:

Whether the [l]ower [c]ourt erred in denying the Appellant's PCRA petition without a hearing when the Appellant alleged a number of non-frivolous issues of material fact, which, if proven, could entitle the Appellant to relief?

Appellant's Brief, at 4.

Specifically, Seidel argues that plea counsel was ineffective in failing to file an omnibus pre-trial motion, in failing to explore a mental health defense as he was on medication at the time of his guilty plea and which could have been used as a defense to the homicide charge. Further, Seidel argues that plea counsel failed to fully explain the other types of homicide, including

manslaughter. **See** Appellant's Brief, at 10-14. For these reasons, Seidel contends that his guilty plea was unknowing and involuntary. We disagree.

Our review of the denial of PCRA relief "is limited to determining whether the record supports the findings of the PCRA court and whether the court's order is otherwise free of legal error." **Commonwealth v. Williams**, 730 A.2d 507, 510 (Pa. Super. 1999) (citation omitted). The findings of the PCRA court "will not be disturbed unless they have no support in the record." **Commonwealth v. Patterson**, 690 A.2d 250, 252 (1997) (citation omitted).

To prevail on a claim of ineffectiveness of counsel, a defendant "must demonstrate (1) that the underlying claim is of arguable merit; (2) that counsel's course of conduct was without a reasonable basis designed to effectuate his client's interest; and (3) that he was prejudiced by counsel's ineffectiveness." **Commonwealth v. Wallace**, 555 Pa. 397, 407, 724 A.2d 916, 921 (1999) (citation omitted). It is defendant's burden to prove all three prongs of this standard. **See Commonwealth v. Travaglia**, 541 Pa. 108, 118, 661 A.2d 352, 357 (1995). To sustain a claim of ineffectiveness, counsel's approach must be "so unreasonable that no competent lawyer would have chosen it." **Commonwealth v. Miller**, 494 Pa. 229, 233, 431 A.2d 233, 234 (1981) (citation omitted).

Further, we have explained that

[c]laims of counsel's ineffectiveness in connection with a guilty plea will provide a basis for relief only if the ineffectiveness caused an involuntary or unknowing plea. This is similar to the

“manifest injustice” standard applicable to all post-sentence attempts to withdraw a guilty plea. The law does not require that appellant be pleased with the outcome of his decision to enter a plea of guilty: “All that is required is that [appellant's] decision to plead guilty be knowingly, voluntarily, and intelligently made.”

Commonwealth v. Lewis, 708 A.2d 497, 500-501 (Pa. Super. 1998) (citations omitted).

Rule 907 of the Pennsylvania Rules of Criminal Procedure permits a trial court to dismiss a PCRA petition without a hearing only if the judge determines that no genuine issues of material fact exist on the record and the appellant is not entitled to post-conviction relief. Pa.R.Crim.P. 907. In the present case, Seidel asserts that his guilty plea was based on two material facts that rendered his plea involuntary and unknowing. First, Seidel asserts that he had been on medication at the time of the incident that affected his mental health. No mental health evaluation was performed and, Seidel argues, this could have been used as a mitigating factor in his defense. **See** Appellant’s Brief, at 12. Secondly, Seidel avers that plea counsel did not fully investigate his claims, explain the concepts of his plea to him or the various types of homicide, including manslaughter, thus rendering his plea unknowing and unintelligent. **See** Appellant’s Brief, at 12.

To the extent that a defendant claims counsel was ineffective with respect to the entry of a guilty plea, we observe the following:

A criminal defendant has the right to effective counsel during a plea process as well as during trial. The law does not require that [the defendant] be pleased with the outcome of his decision to enter a plea of guilty. Instead, the defendant must show that counsel’s deficient

stewardship resulted in a manifest injustice, for example, by facilitating entry of an unknowingly, involuntary, or unintelligent plea. The voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases. Therefore, allegations of ineffectiveness in connection with the entry of a guilty plea will serve as a basis for relief only if the ineffectiveness caused [the defendant] to enter an involuntary or unknowing plea.

Our law is clear that, to be valid, a guilty plea must be knowingly, voluntarily and intelligently entered. There is no absolute right to withdraw a guilty plea, and the decision as to whether to allow a defendant to do so is a matter within the sound discretion of the trial court. To withdraw a plea after sentencing, a defendant must make a showing of prejudice amounting to manifest injustice when it was entered into involuntarily, unknowingly, or unintelligently. A defendant's disappointment in the sentence imposed does not constitute manifest injustice.

In order to ensure a voluntary, knowing, and intelligent plea, trial courts are required to ask the following questions in the guilty plea colloquy:

- 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 that he or she has the right to a 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 ranges 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?

The guilty plea colloquy must affirmatively demonstrate that the defendant understood what the plea connoted and its consequences. Once a defendant has entered a plea of

guilty, it is presumed that he was aware of what he was doing, and the burden of proving involuntariness is upon him.... Furthermore, nothing in the rule precludes the supplementation of the oral colloquy by a written colloquy that is read, completed, and signed by the defendant and made a part of the plea proceedings.

Commonwealth v. Bedell, 954 A.2d 1209, 1212-1213 (Pa. Super. 2008)

(internal citations and quotation marks omitted).

"A defendant is bound by the statements which he makes during his plea colloquy." ***Commonwealth v. Lewis***, 708 A.2d 497, 502 (Pa. Super. 1998) (citation omitted).

In determining a defendant's actual knowledge of the implications and rights associated with a guilty plea, we have held that a court is free to consider the totality of the circumstances surrounding the plea. The trial court may consider a wide array of relevant evidence under this standard including, but not limited to, transcripts from other proceedings, off-the-record communications with counsel, and written plea agreements.

Commonwealth v. Fears, 575 Pa. 281, 836 A.2d 52, 64 (2003) (quotation marks and citations omitted).

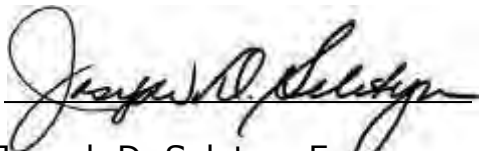
Here, based on its review of the plea colloquy, the PCRA court determined that Seidel's guilty plea was entered knowingly, voluntarily, and intelligently. ***See*** Order and Notice of Intent to Dismiss, 12/12/12, at 5. The court relied on Seidel's admission in open court that he reviewed the guilty plea colloquy and did not have any questions. ***See***, N.T. Guilty Plea, 10/27/12, at 5-7. Seidel acknowledged that he has the right to file various pre-trial motions, including an omnibus pre-trial motion to suppress and that, by pleading guilty he is giving up that right. ***See id.***, at 5. The trial

court fully explained the maximum sentencing penalties in the oral colloquy and Seidel fully understood that, by agreeing to the plea he was relinquishing his constitutional rights. **See id.**, at 5-6. Seidel further admitted that he had “not been coerced or forced in any way to make [the] admissions” and that “he was doing this on [his] own free will after adequate opportunity to discuss the case in its entirety with [his] counsel”. **Id.**, at 9. Most importantly, Seidel testified that, he was satisfied with the services of his plea counsel and signed the plea colloquy. **See id.**, at 9-10. There is no evidence in the record that medication impaired Seidel’s cognitive abilities.

Because the PCRA court’s findings are clearly supported by the record and free of legal error we may not disturb them. As such, Seidel’s claim of ineffectiveness lacks arguable merit and we are compelled to affirm the PCRA court’s denial of his PCRA petition without a hearing on those grounds.

Order affirmed. Jurisdiction relinquished.

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: 2/6/2014