IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
Appellee	:	
	:	
v.	:	No. 389-CR-2020
	:	
JOHN A. MARTOCCI,	:	
	:	
Appellant	:	

Michael S. Greek, Esquire — Counsel for the Commonwealth
District Attorney

Michael P. Gough, Esquire — Counsel for the Appellant

MEMORANDUM OPINION

Serfass, J. - March 14, 2025

John A. Martocci (hereinafter "Appellant") appeals from this Court's Order of December 24, 2024, denying his "First Amended Motion for Post-Conviction Relief". We file the following Memorandum Opinion pursuant to Pa.R.A.P. 1925(a), respectfully recommending that the instant appeal be denied and that the aforesaid Order be affirmed for the reasons set forth hereinafter.

FACTUAL AND PROCEDURAL HISTORY

On April 8, 2020, the Pennsylvania State Police filed a criminal complaint against Appellant charging him with one count of criminal homicide in connection with the April 6, 2020 shooting death of Kenneth Knibiehly which, pursuant to 18 Pa.C.S.A. Section 2501(a), is graded as a felony of the first degree. Following a

preliminary hearing on June 10, 2020, at which Appellant was represented by Mark L. Minotti, Esquire, and Robert Eyer, Esquire, the aforesaid charge was bound over to this Court. On or about June 16, 2020, the Carbon County District Attorney's Office filed the Criminal Information in this matter charging Appellant with one count of criminal homicide.

On or about February 1, 2022, Appellant executed a stipulation for the entry of a "[g]uilty plea to count 1 graded as 3rd degree murder". The guilty plea stipulation executed by Appellant, his counsel and Carbon County District Attorney Michael S. Greek, Esquire, contained no recommendation regarding the sentence to be imposed by this Court. Pursuant to the stipulation, Appellant entered a plea of guilty on March 21, 2022. Sentencing was deferred pending preparation, receipt and review of a pre-sentence investigation report (hereinafter "the PSI").

On July 22, 2022, following review of the PSI, Appellant appeared with Attorneys Minotti and Eyer for a sentencing hearing. On that same date, this Court imposed a sentence of incarceration in a state correctional institution of not less than twelve (12) years nor more than twenty-four (24) years. Appellant filed neither a post-sentence motion with this Court nor an appeal to the Pennsylvania Superior Court.

On May 10, 2023, Appellant filed a pro se Motion for Post-Conviction Collateral Relief. Via Order dated May 12, 2023, we appointed Michael P. Gough, Esquire to represent Appellant as PCRA counsel. On September 29, 2023, Attorney Gough filed a "First Amended Petition for Post-Conviction Relief" on behalf of Appellant in which claims of ineffective assistance of counsel were raised against Attorneys Minotti and Eyer. The Commonwealth filed an Answer thereto on October 13, 2023. A PCRA hearing, at which Appellant and Attorney Eyer testified, was held before this Court on March 12, 2024. Following submission of the post-hearing briefs of counsel, we entered an Order denying Appellant's "First Amended Petition for Post-Conviction Relief" on December 24, 2024.

On January 15, 2025, Appellant filed an Appeal to the Superior Court of Pennsylvania requesting review and reversal of this Court's December 24, 2024 PCRA Denial Order. On that same date, we entered an Order directing Appellant to file a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). In compliance with our Order, Appellant filed his "Concise Statement of Matters Complained of on Appeal" on January 23, 2025.

ISSUES

In his concise statement, Appellant raises the following issues for review by the Honorable Superior Court:

1. This Court erred and abused its discretion in not finding that former counsel rendered ineffective assistance by inducing the [Appellant] to plea to murder in the third degree premised on a minimum sentence of ten (10) years and then failing to properly afford the [Appellant] the option to withdraw such plea when this Court rejected such minimum sentence; and

2. This Court erred and abused its discretion in not finding that former counsel for the [Appellant] rendered ineffective assistance for failing to undertake a proper and complete investigation of certain aspects of the case centering on an assertion at trial of self-defense which failure ultimately led to the [Appellant] determining to plead guilty.

DISCUSSION

Initially, we note that both issues articulated in Appellant's concise statement were previously raised in Appellant's PCRA petition. Therefore, we will review and discuss these issues as addressed in our Order denying post-conviction relief.

To prevail on a petition for PCRA relief, a petitioner must plead and prove by a preponderance of the evidence that his conviction or sentence resulted from one or more of the circumstances enumerated in 42 Pa.C.S.A. §9543(a)(2). These circumstances include ineffective assistance of counsel which "so

undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place." 42 Pa.C.S.A. §9543(a)(2)(ii). A claim that counsel's errors caused an involuntary guilty plea is considered under the ineffectiveness of counsel provision of the PCRA and not 42 Pa.C.S.A. §9543(a)(2)(iii) governing guilty pleas. Commonwealth v. Hickman, 799 A.2d 136 (Pa.Super. 2002).

The law presumes counsel has provided effective assistance. Commonwealth v. Rivera, 10 A.3d 1276, 1279 (Pa.Super. 2010). "[T]he burden of demonstrating ineffectiveness rests on [the] appellant." Id. To satisfy this burden, the appellant must plead and prove by a preponderance of the evidence that: (1) the underlying claim has arguable merit; (2) no reasonable basis existed for counsel's actions or failure to act; and (3) there is a reasonable probability that the outcome of the challenged proceeding would have been different absent counsel's error. Commonwealth v. Fulton, 830 A.2d 567, 572 (Pa. 2003). A failure to establish any of these three prongs will defeat a claim of ineffective assistance of counsel. Commonwealth v. Walker, 36 A.3d 1, 7 (Pa. 2011).

A claim has arguable merit where the facts upon which it is based, if determined to be accurate, give rise to a prima facie basis for questioning whether counsel's representation fell below

an objective standard of reasonableness. Commonwealth v. Jones, 876 A.2d 380, 385 (Pa. 2005). In examining whether counsel's actions lacked a reasonable basis, we must determine "whether no competent counsel would have chosen that action or inaction, or, [whether] the alternative [] not chosen, offered a significantly greater potential chance of success." Commonwealth v. Stewart, 84 A.3d 701, 707 (Pa. Super. Ct. 2013) (*en banc*) (citations omitted), *appeal denied*, 93 A.3d 463 (Pa. 2014). In determining whether a reasonable basis for counsel's actions existed, we must evaluate counsel's performance based on counsel's perspective at the time the conduct occurred, Commonwealth v. Carson, 913 A.2d 220, 273-4 (Pa. 2006), and make "all reasonable efforts to avoid the distorting effects of hindsight," while also avoiding "*post hoc* rationalization of counsel's conduct." Commonwealth v. Sattazahn, 952 A.2d 650, 656 (Pa. 2008) (citations omitted). "To demonstrate prejudice, the [Appellant] must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of proceeding would have been different." Commonwealth v. King, 57 A.3d 607, 613 (Pa. 2012). *See also* Hill v. Lockhart, 474 U.S. 52, 59-60 (1985) ("The . . . 'prejudice' requirement . . . focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process."). "A reasonable probability is a probability sufficient to undermine

confidence in the outcome of the proceeding." King, 57 A.3d at 613 (citation omitted). Importantly, "counsel cannot be deemed ineffective for failing to raise a meritless claim." Commonwealth v. Fears, 86 A.3d 795, 804 (Pa. 2014).

A. Issue One. Whether former counsel rendered ineffective assistance by allegedly inducing Appellant to enter a guilty plea to murder in the third degree premised on a minimum sentence of ten (10) years.

"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." Commonwealth v. Moser, 921 A.2d 526, 531 (Pa. Super. 2007) (quotations and citation omitted). "Where the Defendant enters his plea on the advice of counsel, the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." *Id.* (quotations and citations omitted). "Thus, to establish prejudice, the Defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Commonwealth v. Brandt, 74 A.3d 185, 192 (Pa. Super. 2013) (quotations and citations omitted).

In the instant matter, Appellant claims that former counsel was ineffective because he was "induced" by counsel into entering a guilty plea with the understanding that the court would impose a minimum sentence of ten (10) years and that counsel then failed to properly afford Appellant the option to withdraw such plea when the court imposed a minimum sentence of twelve (12) years. This assumes that a consensus or agreement was reached between defense counsel, the prosecution and the Court that Appellant would be sentenced to a minimum term not exceeding ten (10) years. Such an assertion is contrary to the Guilty Plea Stipulation executed by Appellant, the written Guilty Plea Colloquy form executed by Appellant, Appellant's oral testimony at the guilty plea hearing and the testimony of former counsel at the PCRA hearing.

In Lafler, the United States Supreme Court reaffirmed a defendant's right to effective assistance of counsel during the plea-bargaining process. Lafler v. Cooper, 132 S.Ct. 1376, 3184 (2012) (citing, *inter alia*, Padilla v. Kentucky, 559 U.S. 356, 364 (2010); McMann v. Richardson, 397 U.S. 759, 771 (1970)). Here, Appellant entered a guilty plea pursuant to a written stipulation resulting in a conviction and, after accepting Appellant's guilty plea, this Court directed the Carbon County Adult Probation Department to prepare a Pre-Sentence Investigation Report. Prior to Sentencing, Appellant and his counsel were provided with a copy

of the Pre-Sentence Investigation Report which contained a recommendation to this Court for the imposition of a standard range sentence of not less than twelve (12) years nor more than twenty-four (24) years. In accordance with the PSI, Appellant was sentenced to a period of incarceration in a state correctional institution of not less than twelve (12) years nor more than twenty-four (24) years.

The Guilty Plea Stipulation executed by Appellant contains no recommendation regarding his sentence. Furthermore, had there been such a provision, Appellant signed a Guilty Plea Colloquy form which provides in paragraph 27 that the Court is not a party to any agreement or recommendation made by the parties and that any recommendation and/or stipulation regarding the sentence is not binding on the Court and that he knowingly waives the right to withdraw his plea if the Court does not concur in the recommended sentence. He explicitly acknowledges paragraph 27 by writing in the affirmative. Furthermore, Appellant affirmed in paragraph 38 of the colloquy form, that no promises had been made to enter a plea of guilty other than the plea agreement that had been negotiated for him by his attorneys, and affirmed in paragraphs 43 and 44 that he was satisfied with the representation of his attorneys and that he had ample time to consult with them before entering the plea. The Court explained the standard range of

sentence as well as the minimum and maximum sentences set forth in the sentencing guidelines. Appellant affirmed that he understood the range of sentence provided in the guidelines and he affirmed that he had not been promised anything in return for his plea. He cannot credibly contend that his plea was unknowing or involuntary.

Attorney Minotti testified at the PCRA hearing that, prior to sentencing, both he and Attorney Eyer reviewed the PSI with Appellant including the recommended sentence of not less than twelve (12) years nor more than twenty-four (24) years. Former counsel also explained to Appellant that he had the right to withdraw his guilty plea and "take it to trial", and that counsel were ready, willing and able to go to trial. Ultimately, Appellant made the decision to proceed with the guilty plea and accept the sentence of this Court.

In Strickland, the United States Supreme Court held that the test for ineffective assistance of counsel for Prong Two of PCRA relief is that, but for counsel's errors, the outcome of the proceedings would have been different. Strickland v. Washington, 466 U.S. 688, 694 (1984). Appellant contends that he would not have entered a plea of guilty if he had known the Court would impose a twelve (12) year minimum sentence. Where, as here, the Guilty Plea Stipulation is silent as to any agreed upon or recommended sentence, the Court advised Appellant of the

permissible range of sentence prior to the entry of his guilty plea and a Pre-Sentence Investigation Report, recommending the sentence which was ultimately imposed, was provided to Appellant's counsel who reviewed it with him prior to sentencing and advised him of his right to withdraw the plea, there is no basis for PCRA relief.

The Supreme Court of Pennsylvania has previously ruled on disappointed expectations arising from a guilty plea stipulation. In Waddy, the defendant claimed that his life-sentence was not what he had expected to receive when he entered a guilty plea. Commonwealth v. Waddy, 345 A.2d 179 (Pa. 1975). Our Supreme Court found that the defendant's counsel was effective and **that disappointed expectations are not grounds for the invalidation of guilty pleas**. *Id.* at 181 (emphasis added). See also Commonwealth v. Sanutti, 312 A.2d 42 (Pa. 1973). Moreover, where the defendant is informed of the maximum sentence that could be imposed, a plea is not unknowing when entered with the hope that the court would impose a more lenient sentence. Commonwealth v. Patterson, 690 A.2d 250 (Pa.Super. 1997). Here, Appellant demonstrated his understanding during the guilty plea colloquy that there was no agreement as to sentencing, that the standard range of the sentencing guidelines provided for a minimum sentence of anywhere between seven and a half (7½) years to twenty (20) years and that

his maximum total sentencing exposure was forty (40) years. Because this Court imposed a sentence of twelve (12) to twenty-four (24) years, we cannot find that Appellant's plea was unknowing or involuntary and his claims to the contrary are meritless.

B. Issue Two. Whether former counsel for Appellant was ineffective for failing to undertake an investigation of certain aspects of the case centering on an assertation at trial of self-defense which failure ultimately led to Appellant determining to plead guilty.

Appellant claims that he shot Kenneth Knibiehly (hereinafter "the victim") in self-defense. He maintains that because former counsel did not conduct a proper investigation into his self-defense contentions, he felt compelled to forego trial and plead guilty.

Specifically, Appellant contends that former counsel was ineffective for failing to interview Donna Swanson, the woman who was present at the residence during the shooting, or the security officers who were first on scene as to whether any of them had moved the victim's gun and placed it in his pocket so as to bolster a claim of self-defense and evidence tampering. While we acknowledge that "counsel has a duty to undertake reasonable investigations or to make reasonable decisions that render particular investigations unnecessary", Commonwealth v. Basemore,

744 A.2d 717, 735 (Pa. 2000), here there is no evidence that any witness would testify that they had touched the victim's gun as such testimony would be inconsistent with prior testimony, interviews and written statements provided to law enforcement. Moreover, "strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation", Commonwealth v. Tedford, 960 A.2d 1, 39 (Pa. 2008). The failure of defense counsel to investigate, interview or subpoena five potential witnesses was not a basis for obtaining post-conviction relief on grounds of ineffectiveness of counsel where there was no evidence that witnesses would testify in such a manner as to exculpate the defendant from guilt. Commonwealth v. Hampton, 410 A.2d 349 (Pa. 1979). Here, former counsel testified that they had cross-examined Ms. Swanson and the security guards at the preliminary hearing and that they had been provided sufficient information through discovery to conduct effective cross-examinations at trial.

Appellant also contends that former counsel was ineffective by failing to investigate the location of the shell casing discharged by his firearm. In this regard, Appellant noted that the shell casing was found inside the victim's residence which he claims he had never actually entered. Appellant maintains that

former counsel should have retained a ballistics expert concerning the location of the shell casing and that the failure to do so constitutes ineffectiveness. However, the failure to consult with and present expert testimony is not ineffective assistance of counsel when it is purely speculative that such testimony would have refuted the state's theory of the case. Commonwealth v. Bryant, 855 A.2d 726 (Pa. 2004). Here, Appellant's claim that the location of the shell casing would support a claim of self-defense or refute the Commonwealth's theory of the case is pure speculation.

Former counsel credibly testified that they reviewed with Appellant the pros and cons of "imperfect self-defense". Specifically, former counsel testified that they had explained the risks with such a defense in this case as Appellant had driven to the victim's residence with a loaded weapon, his testimony was inconsistent, he lied to the Pennsylvania State Police, and his many earlier text messages to Ms. Swanson could provide a potential motive for the crimes. Counsel had a reasonable strategic basis in explaining to Appellant the numerous risks associated with "imperfect self-defense." Despite these risks, counsel was prepared to proceed to trial. Ultimately, Appellant made the decision to forego trial and plead guilty. Therefore, his claims of ineffective assistance of counsel are without merit.

CONCLUSION

Based upon the foregoing, we respectfully recommend that the instant appeal be denied and that our Order dated December 24, 2024, denying Appellant's "First Amended Motion for Post-Conviction Relief", be affirmed accordingly.

BY THE COURT:

Steven R. Serfass, J.