

20-7129

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

NOV 16 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Tyreek Torrence Ly64674 PETITIONER

(Your Name)

vs.

Commonwealth of Penn, et al RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Penn. Superior Court No. 1906 EDA 2018

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Tyreek Torrence

(Your Name)

1100 Pike Street

(Address)

Huntingdon, PA 16654

(City, State, Zip Code)

N/A

(Phone Number)

RECEIVED

NOV 24 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. Was Petitioner given an illegal sentence?
2. Was Petitioner's constitutional right to due process violated?
3. Was Petitioner's guilty plea unlawfully induced?
4. Was trial counsel ineffective in entering an involuntary or unknowingly guilty plea?
5. Whether the court erred in not granting relief on the PCRA Petition alleging counsel was ineffective.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

R. Seth Williams, Larry Krasner (District Attorney for the City and County of Philadelphia, Pennsylvania)

Kevin Kauffman (Superintendent @ SCI Huntingdon)

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Superior court appears at Appendix A to the petition and is

reported at 1906 EDA 2018; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was 8.17.20.
A copy of that decision appears at Appendix B.

A timely petition for rehearing was thereafter denied on the following date: Did not file, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. 42 Pa. Const. Stat. Ann. 742
2. 42 Pa. C.S. 9543 (a)(2)(iii)
3. U.S.C.A. Const. Amend. V, VI, XIV
4. 42 Pa. C.S. 9542

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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Strickland v. Washington, 104 S. Ct. 2052, 2069 (1984)	5, 10
Machibroda v. United States, 368 U.S. 487, 493, 82 S.Ct. 510, 513, 7 L.Ed.2d 473 (1962) ...	8
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STATEMENT OF THE CASE

I. Factual History

According to the testimony from the April 6, 2015 Motion Hearing, on July 17, 2013, Mr. Ronald Brown was working as a deliveryman for Carnival Four Pizza and received a call to make a delivery to the area of 1139 Union Street I Philadelphia. M.T. 4/6/15, pgs. 9-10. Mr. Brown testified that when he arrived at the location, he saw a man holding a gun and Appellant approach him. Mr. Brown dropped the pizza and his car keys and Appellant grabbed him by the collar and pulled him to the ground. N.T. 4/6/15, pg.13. Once on the ground, Appellant put Mr. brown on his stomach and took the money out his pockets. The individual accompanying Appellant took Mr. Brown's keys and went to his van. Appellant then go in the passenger side of the van and the pair drove off. N.T. 4/6/15, pg. 4. Mr. Brown recalled seeing Appellant several times prior to July 17, 2013 in the area. N.T. 4/6/15, pg. 12. Mr. Brown testified that he was brought to the Southeast Detectives, to 55th and Pine on July 21, 2013 and identified Appellant in a photograph array, N.T. 4/6/15, pg. 16.

Detective Danial Strunk, Badge 9252, testified on April 6, 2015 that during his shift on July 21st of 2013 into July 22nd of 2013, he received information of an individual whom was arrested "in a minivan that was taken during a carjacking back on July 17th of 2013." N.T. 4/6/15, pg. 33. As a result of receiving that information, Detective Strunk called Mr. Brown and asked him if he could identify the individual who allegedly stole his minivan in a photo array. N.T. 4/6/15, pgs. 33-4. According to Detective Strunk, Mr. Brown identified Appellant. N.T. 4/6/15, pg. 6.

II. Procedural History

On July 22, 2103, Appellant was arrested and charged with Robbery-Threat of Immediate Serious Injury, Conspiracy – Robbery-Threat of Immediate Serious Injury, Theft by Unlawful Taking-Movable Property, Receiving Stolen Property, Firearms not To Be Carried W/O License, Possession of Firearm Prohibited, Carry Firearms Public in Phila, Simple Assault, Recklessly Endangering Another Person, Unauthorized Use Motor/Other Vehicles, and Robbery of Motor Vehicle.

On August 5, 2013, Appellant appeared before the Honorable Karen Simmons for a preliminary hearing and the charges were held for court.

On August 5, 2013, Appellant appeared before the Honorable Karen Simmons for a preliminary hearing and the charges were held for court.

On August 13, 2014, the Honorable Chris R. Wogan denied Appellant's Motion for Release Pursuant to Rule 600.

On April 6, 2015, Appellant litigated a Motion to Suppress Identification before the Honorable Chris R. Wogan. Judge Wogan denied the defense motion. Additionally, the Commonwealth argued a motion to admit other crimes evidence. Judge Wogan denied the Commonwealth's motion. Appellant was represented by Jason Kadish, Esquire,

On April 7, 2015, Appellant entered a Guilty Plea – for Robbery-Threat Immediate Serious Injury, Conspiracy – Robbery – Threat of Immediate Serious Injury, Firearms not To Be Carried W/O License, Possession of Firearms Prohibited, and Robbery of Motor Vehicle before Judge Wogan.

On April 7, 2015, Appellant was sentenced to an aggregate term of incarceration of 6 – 33 years. He received 66 months – 204 months on the robbery charge and 12 months – 198.

months on robbery of a motor vehicle charge. He also received a probationary sentence of 20 years concurrent with the sentence of incarceration.

On March 7, 2016, Appellant filed *pro se* PCRA petition.

On November 1, 2017, current counsel, Peter A. Levin, Esquire, filed an Amended PCRA alleging the following grounds for relief;

1. The guilty plea was unlawfully induced.
2. Trial counsel was ineffective for causing Appellant to enter an involuntary or unknowing plea.

On June 12, 2018, the Honorable Angelo Foglietta, held an evidentiary hearing. Upon the conclusion of the hearing. Judge Foglietta denied Appellants PCRA petition.

On June 26, 2018, Appellant, by and through his attorney, filed a notice of appeal.

On August 17, 2018, Appellant filed a timely 1925(b) Statement.

On May 16, 2019, Judge Foglietta filed a Judicial Opinion.

SUMMARY OF THE ARGUMENT

In view of the totality of circumstances at play in the instant matter, it seems evident that the Appellant's contention that his counsel was ineffective has merit.

The right to effective counsel is a fundamental right under federal and state constitutions. Specifically, the Sixth Amendment guarantees the effective assistance of counsel at all of criminal proceedings, including during the plea process. U.S.C.A. Const. Amend. VI. Therefore, in this case, counsel's error was so serious as to deprive Appellant of a fair trial and he is entitled to relief.

ARGUMENT

I. THE PCRA COURT WAS IN ERROR IN NOT GRANTING RELIEF ON THE ISSUE THAT COUNSEL WAS INEFFECTIVE.

The right to effective counsel is a fundamental right under the federal and state constitutions. Specifically, the Sixth Amendment guarantees the effective assistance of counsel at all stages of a criminal proceeding, including during the plea process. U.S.C.A. Const. Amend. 6. As such, the Pennsylvania Supreme Court has set the test for determining whether trial counsel rendered ineffective assistance. When a defendant alleges a constitutional violation based on a claim of ineffective assistance of trial counsel, the standard of review is:

Whether the issue / argument/ tactic which counsel has foregone and which forms basis for the assertions of ineffectiveness is arguable merit . . . Once this threshold is met [the court will] apply the 'reasonable basis' test to determine whether [the attorney has effectuated] his client's interests. . . if [the court] determine(s) there was no reasonable basis for counsel's chosen course then the accused must demonstrate that counsel's ineffectiveness worked to his prejudice.

Commonwealth v. Paolello, 542 Pa. 47, 76, 665 A.2d 439 (1995) (citations omitted)

Thus, the three prong test enunciated in Paolello, designed to ensure a fair trial and reliable verdict, required that a Appellant allege: 1) an assertion of ineffective that has arguable merit; 2) lack of reasonable basis for counsel's actions; and 3) prejudice resulted as a result of counsel's failures. Therefore, in this case, If Appellant can show that counsel's error was serious as to deprive her of fair trial, then counsel will be deemed ineffective and Appellant is entitled to relief. Strickland v. Washington, 466 U.S. 668 (1984).

In the instant case, Appellant is serving a sentence of imprisonment for a crime under the laws of Pennsylvania. His allegations fall under the specified categories outlined in § 9543 (a)(2).

A. The guilty plea was unlawfully induced

The Appellant contends that he was unlawfully induced to plead guilty to charges that he did not understand. Specifically, the Appellant alleges that through pressure exerted by the Appellant's trial counsel he was forced unknowingly, involuntarily, and coercively to plead guilty to plead guilty to charges that he did not understand and did not understand the sentence he could receive.

Appellant alleged the following in his pro se PCRA and in letters to PCRA counsel.

1. His lawyer never made Appellant aware of all the options available to him in regard to trial. He was not aware that if there were a stipulated trial or bench trial, that he preserved his rights to appeal.
2. Appellant claims that his counsel coerced him to plead guilty telling him that Judge Wogan was a tough sentence and would sentence him to the maximum.
3. Counsel informed Appellant after the suppression (identification) hearing which was denied, that Judge Wogan offered a deal with a minimum sentence of six and one half (6 1/2) years, and the minimum sentence would be given to Appellant after he signed off on the deal. Appellant was under the impression after speaking to his counsel that the maximum would be the back-half of the minimum sentence, which would make the sentence six and one half (6 _) years to thirteen (13) years. After Appellant signed off on the deal, Judge Wogan sentenced him to a total sentence of six and one half (6 1/20 to thirty three (33) years. This was twenty (20) years more than he was "informed" by counsel that it would be. (See N.T. 6/12/18 at p.8)
4. Appellant was under the impression that he could appeal the denial of the Motion to Suppress if he pled guilty. His Attorney had argued at the hearing that a photographic

likeness of the Appellant was exhibited to witnesses for the Commonwealth under circumstances which were unduly suggestive and violated due process of law as guaranteed by the Constitution of the Commonwealth of Pennsylvania. His counsel told Appellant that this was a very good issue.

5. Appellant also believed that he could appeal the sentence he was given even though he pled guilty but his attorney never put in for an appeal or a reconsideration of sentence so that he could appeal. (See N.T. 6/12/18 at p.11)

The law is clear that in order for a guilty plea to be valid, it must be entered knowingly, intelligently, and voluntarily. Commonwealth v. Martin, 416 Pa. Super. 507, 611 A.2d 731 (1992). To determine whether a guilty plea was entered knowingly and intelligently, a reviewing court must examine the totality of the circumstances surrounding the entry of the guilty plea. Commonwealth v. Allen, 732 A.2d 582, 589 (1999).

In ascertaining whether or not a defendant is entering his guilty plea knowingly, intelligently, and voluntarily, a trial court is obliged to determine whether: 1) the defendant understands the nature of the charges to which he is pleading guilty; 2) there is a factual basis for the plea; 3) the defendant understands that he has the right to a jury trial; 4) the defendant understands he is presumed innocent until he is found guilty; 5) the defendant is aware of the permissible ranges of sentences and/or fines for the offense charged; and 6) the defendant is aware that the judge taking the plea is not bound by terms of any plea agreement. See Commonwealth v. Culp, 476 Pa. 358, 382 A.2d 209 (1978); Pa.R.Crim.P. 319, 42 Pa. C.S.A.. Suitable evidence to be examined includes, but is not limited to, transcripts from other proceedings, off-the-record communications with counsel, and written plea agreements. Commonwealth v. Allen, 732 A.2d 582, 589 (1999).

In view of the totality of the circumstances at play in the instant matter, it seems evident that the Appellant's contention that the guilty plea was unlawfully induced is or arguable merit. The statutory language of this Commonwealth provides that in order to be eligible for PCRA relief, the Appellant's conviction or sentence must have resulted from, "a plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the Appellant to plead guilty *and the Appellant is innocent.*" 42 Pa.C.S. § 9543(a)(2)(iii) (emphasis added). A claim under this statute would be cognizable in the instant matter due to the fact that the Appellant continually asserted his innocence to both his trial counsel and the Court. However, due to the inducing acts and coercive nature of both forces upon the Appellant, he was unlawfully induced to plead guilty to a charge based upon facts to which he did not consent. Moreover, "a guilty plea, if induced by promises or threats which deprive it of the character of a voluntary act, is void." Machibroda v. United States, 368 U.S. 487, 493, 82 S.Ct. 510, 513, 7 L.Ed.2d 473 (1962).

Here the Appellant was 20 years old and although having been involved in the juvenile court system, he was not familiar with adult court. His attorney should have entered into a stipulated trial and then Appellant's rights to appeal the denial of the suppression motion as well as the sentence would have been preserved.

Based upon the foregoing, it seems evidence that where such a "manifest injustice" has occurred, a statutory mandate exists within this Commonwealth and its case law to permit a withdrawal of the guilty plea in order to correct this "manifest injustice," to dismiss this conviction and order a trial.

Furthermore, in his opinion, the Honorable Angelo J. Foglietta referred to the colloquy of the Appellant when he entered his guilty plea to show that his plea was not unlawfully induced. See 5/16/2019 Opinion at p. 9-10. However, any colloquy or instruction by the court at sentencing could not overcome the coercive actions of trial counsel. Furthermore, as argued above, Appellant was under the impression that the maximum sentence he could receive was around thirteen (13) years. While it was later stated that Appellant *could* receive a longer sentence, the whole point of forfeiting his right to a trial and agreeing to plead guilty was to avoid a longer sentence.

Judge Foglietta also stated the most important aspect was that Appellant acknowledged that he was satisfied with Mr. Kadish's representation and stated he did not wish reconsideration on an appeal to be followed. *Id.* at 10. Firstly, Appellant made the statement that he was satisfied with his representation before he received his sentence. Secondly, Appellant is not an attorney, he was unaware of whether he should file a motion for reconsideration or an appeal. This is the job of his attorney to aid him in these decisions; Mr. Kadish failed to do so.

B. Trial counsel's assistance was ineffective for causing the Appellant to enter an involuntary or unknowing guilty plea.

The right to effective counsel is a fundamental right under the federal and state constitutions. Specifically, the Sixth Amendment guarantees the effective assistance of counsel at all stages of a criminal proceeding, including during the plea process. U.S.C.A. Const. Amend.

6. As such, the Pennsylvania Supreme Court has set the test for determining whether trial

counsel rendered ineffective assistance. When a defendant alleges a constitutional violation based on a claim of ineffective assistance of trial counsel, the standard of review is:

Whether the issue / argument/ tactic which counsel has foregone and which forms basis for the assertions of ineffectiveness is arguable merit . . . Once this threshold is met [the court will] apply the 'reasonable basis' test to determine whether [the attorney has effectuated] his client's interests. . . if [the court] determine(s) there was no reasonable basis for counsel's chosen course then the accused must demonstrate that counsel's ineffectiveness worked to his prejudice.

Commonwealth v. Paolello, 542 Pa. 47, 76, 665 A.2d 439 (1995) (citations omitted)

Thus, the three prong test enunciated in Paolello, designed to ensure a fair trial and reliable verdict, required that a Appellant allege: 1) an assertion of ineffective that has arguable merit; 2) lack of reasonable basis for counsel's actions; and 3) prejudice resulted as a result of counsel's failures. Therefore, in this case, If Appellant can show that counsel's error was serious as to deprive her of fair trial, then counsel will be deemed ineffective and Appellant is entitled to relief. Strickland v. Washington, 466 U.S. 668 (1984).

The first prong of the Paolello test is whether the trial counsel's alleged inducement of the Appellant's guilty plea is of arguable merit. 542 Pa. 75-76. In this case, the prong is met as the trial counsel's ineffectiveness and coercive actions played a large role in the unlawful inducement of the Appellant's guilty plea. Counsel never adequately informed Appellant as to the sentence he could receive, the fact that he could not appeal the suppression and never filed for a reconsideration of sentence.

The second prong of the Paolello test is whether there was a "reasonable basis" to justify counsel's alleged ineffectiveness. 542 Pa. at 75-76. In this case, there was no reasonable basis for the Appellant to plead guilty if he could not appeal the denial of the suppression motion.

The third prong is whether the Appellant has suffered actual prejudice as a result of counsel's ineffectiveness. 542 Pa. at 75-76. In this case, there is a clear showing of actual prejudice as a result of the counsel's ineffectiveness.

Therefore, Appellant has shown all necessary elements to warrant relief where trial counsel was ineffective for causing the Appellant to enter an involuntary or unknowing guilty plea.

REASONS FOR GRANTING THE PETITION

1. To grant relief from an illegal sentence.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Tyreek Torrence

Date: November 15th 2020