

Adams County Legal Journal

Vol. 60

October 12, 2018

No. 23, pp. 67-73

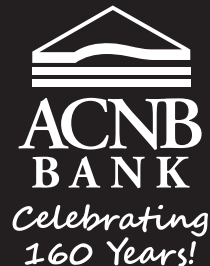
IN THIS ISSUE

COMMONWEALTH OF PENNSYLVANIA
VS. GUILLERMO ISRAEL VELAZQUEZ

Invest with Experience.

The right financial partner will help you plan for the future and manage investments with you and your family's best interests first and foremost. No need to look further...you've found the right partner at ACNB Bank.

Securities and Insurance Products are: NOT FDIC INSURED - MAY LOSE VALUE - NOT BANK GUARANTEED - NOT A DEPOSIT - NOT INSURED BY ANY FEDERAL GOVERNMENT ENTITY



ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designated for the Publication of Court and other Legal Notices. Published weekly by Adams County Bar Association, Edward G. Puhl, Esq., Editor and Business Manager.

Business Office – 117 BALTIMORE STREET, ROOM 305, GETTYSBURG, PA 17325-2313. Telephone: (717) 334-1553

Copyright© 1959 by Wm. W. Gaunt & Sons, Inc., for Adams County Bar Association, Gettysburg, PA 17325.

All rights reserved.

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that a Certificate of Organization - Domestic Limited Liability Company was filed with the Commonwealth of Pennsylvania, Department of State, in Harrisburg, Pennsylvania on September 18, 2018, under the provisions of the Pennsylvania Limited Liability Company law of 1994 as amended.

The name of the Limited Liability Company is PATRICIA A. BLACK LLC.

Patricia A. Black LLC is organized for the purpose of title abstracting, title searches, title insurance, real estate settlements, and any other lawful business purposes.

John A. Wolfe, Esq.
Wolfe, Rice & Quinn, LLC
Attorneys for Patricia A. Black LLC

10/12

CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on September 12, 2018, a Petition for Change of Name of a Minor was filed in the Court of Common Pleas of Adams County, Pennsylvania, requesting a Decree to change the name of the minor, Chankiri Sun, to Chankiri Sun Franco.

The Court has affixed the 21st day of December, 2018 at 10:00 a.m. in Court Room No. 4, Third Floor, Adams County Courthouse, as the time and place for the hearing of said Petition, when and where all persons interested may appear and show cause, if any they have, why the request of the Petition should not be granted.

10/12

NOTICE BY THE ADAMS COUNTY
CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees, and other persons concerned that the following accounts with statements of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts entering decrees of distribution on Friday, October 26, 2018 at 8:30 a.m.

REX—Orphans' Court Action Number OC-94-2018. The First and Final Account of Carol J. Rex, Executrix of the Estate of Helen D. Rex, late of Menallen Township, Adams County, Pennsylvania.

Kelly A. Lawver
Clerk of Courts

10/12 & 19

COMMONWEALTH OF PENNSYLVANIA
VS. GUILLERMO ISRAEL VELAZQUEZ

1. In order to be entitled to PCRA relief, a petitioner must plead and prove by a preponderance of the evidence ineffective assistance of counsel, which in the circumstances of the particular case, so undermined the truth-determining process that no adjudication of guilt or innocence could have taken place.

2. Having determined that Defendant's underlying legal claim has arguable merit and that defense counsels' chosen course had no reasonable basis to effectuate their client's interests, this Court must determine whether counsels' ineffectiveness worked to prejudice Defendant.

3. The standard for post-sentence withdrawal of guilty pleas dovetails with the arguable merit/prejudice requirements for relief based on a claim of ineffective assistance of counsel under which the defendant must show that counsel's deficient stewardship resulted in a manifest injustice, for example, by facilitating entry of an unknowing, involuntary, or unintelligent plea.

4. It is clear that Defendant's primary concern in this criminal case was the immigration consequences of his plea. Specifically, Defendant did not want to be deported as a result of his guilty plea. All negotiations between defense counsel and the Commonwealth revolved around a plea that would not result in Defendant's deportation. If Defendant had known his guilty plea to simple assault at §2701(a)(3) would have resulted in his deportation, Defendant would not have entered a plea in this matter.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, CP-01-CR-747-2017, COMMONWEALTH OF
PENNSYLVANIA VS. GUILLERMO ISRAEL VELAZQUEZ

Kelley L. Margetas, Esq., Attorney for Commonwealth

Vincent J. Quinn, Esq., Attorney for Defendant

Wagner, J., September 18, 2018

OPINION

Before this Court is Defendant Guillermo Israel Velazquez's (hereinafter "Defendant") Motion for Post Conviction Collateral Relief (hereinafter "PCRA Petition") filed on or about April 30, 2018. For the reasons set forth herein, Defendant's Motion for Post Conviction Collateral Relief is hereby granted.

BACKGROUND

To aid in disposition of this PCRA Petition, it is necessary to provide some procedural history and brief recitation of the facts presented at the PCRA hearing on July 19, 2018. Defendant was arrested on June 10, 2017, following a domestic altercation involving his wife and children at their Bonneauville, Adams County,

Pennsylvania home. Defendant was charged with aggravated assault¹, terroristic threats², simple assault³, and harassment⁴. Defendant is not a citizen of the United States. Following Defendant's arrest, family members contacted Attorney Troy Mattes concerning Defendant's potential immigration consequences as a result of his arrest. Attorney Mattes is a licensed attorney in Pennsylvania and practices exclusively in immigration law. Attorney Mattes referred Defendant to criminal defense attorney Jonathan Crisp for representation concerning the above criminal charges. Attorney Mattes advised Attorney Crisp, in a text message dated July 3, 2017, that the simple assault charge at 18 Pa. C.S. §2701(a)(3) is problematic concerning immigration consequences for Defendant.

On July 5, 2018 Attorney Crisp and Defendant appeared for a preliminary hearing at Adams County Central Court and Defendant waived all charges into court. Attorney Crisp and the assistant district attorney engaged in preliminary negotiations concerning a plea, which would not result in the deportation of Defendant.

Attorney Crisp transferred the case to an associate in his firm, Bryan DePowell. Attorney Crisp advised Attorney DePowell to consult with Attorney Mattes concerning the immigration and deportation consequences for Defendant. Specifically, Attorney Crisp advised Attorney DePowell to contact Attorney Mattes to ascertain which section of the simple assault statute would subject Defendant to deportation.

Attorney DePowell represented Defendant during Defendant's plea of guilty before this Court on October 26, 2017. Inexplicably, Attorney DePowell did not consult with Attorney Mattes concerning the immigration consequences in reference to the simple assault charge, prior to Defendant's October 26, 2017 plea. Attorney DePowell conducted his own research in this matter and mistakenly concluded that a plea to simple assault in violation of §2701(a)(3) would not result in the deportation of Defendant. Attorney DePowell consulted with and advised Defendant that the plea to the simple assault charge under §2701(a)(3) would not result in his deportation, prior to Defendant's plea on October 26, 2017.

¹ 18 Pa. C.S. §2702(a)(4), as a felony of the second degree.

² 18 Pa. C.S. §2706(a)(1), as a misdemeanor of the first degree.

³ 18 Pa. C.S. §2702(a)(3), as a misdemeanor of the second degree.

⁴ 18 Pa. C.S. §2709(a)(1), as a summary offense.

On October 26, 2017, Defendant entered pleas of guilty to simple assault, in violation of 18 Pa. C.S. §2701(a)(3) of the Crimes Code as a misdemeanor of the second degree and an amended count to the criminal information, disorderly conduct, in violation of 18 Pa. C.S. §5503(a)(1) of the Crimes Code as a misdemeanor of the third degree. Pursuant to agreement, Defendant was sentenced to 24 months of probation on the simple assault charge followed by a consecutive sentence of 12 months of probation on the disorderly conduct charge. Defendant entered a plea of guilty to the amended count of disorderly conduct instead of terroristic threats to avoid deportation. During the plea colloquy, following questioning by the Court, Attorney DePowell stated that Defendant did not face any immigration issues in this matter, based on the charges for which he entered pleas.

On December 4, 2017, Defendant was arrested on an ICE detainer and placed in York County Prison. The basis of the ICE detainer was the plea and sentencing on October 26, 2017 to the simple assault charge under 18 Pa. C.S. §2701(a)(3). On April 23, 2018, Defendant, represented by Attorney Mattes, was afforded a cancellation of removal hearing in the York Immigration Court. A federal judge ruled against Defendant and ordered Defendant deported. Defendant appealed this ruling through Attorney Mattes to the Board of Immigration Appeals in Washington, D.C. Defendant's immigration appeal is pending.

On April 30, 2018, Defendant, through PCRA counsel, filed Defendant's Motion for Post Conviction Collateral Relief in the above-captioned matter. Defendant claims plea and sentencing counsel, Bryan DePowell, was ineffective based on Attorney DePowell's advice that a guilty plea to simple assault under §2701(a)(3) would not subject Defendant to deportation.

A PCRA hearing was held in this matter on July 19, 2018 before this Court.

LEGAL STANDARD

In order to be entitled to PCRA relief, a petitioner must plead and prove by a preponderance of the evidence "[I]neffective assistance of counsel, which in the circumstances of the particular case, so undermined the truth-determining process that no adjudication of guilt or

innocence could have taken place.” **42 Pa. C.S.A. § 9543(a)(2)(ii)**. When evaluating claims of ineffective assistance of counsel, counsel is presumed to have been effective and petitioner bears the burden of proving otherwise. **Commonwealth v. Steele**, 961 A.2d 786, 796 (Pa. 2008).

In **Commonwealth v. Rathfon**, 899 A.2d 365, (Pa.Super.2006) the Superior Court set forth the proper standard concerning ineffective assistance of counsel claims involving a guilty plea:

We conduct our review of such a claim in accordance with the three-pronged ineffectiveness test under section 9543(a)(2)(ii) of the PCRA, 42 Pa. C.S.A. §9543(a)(2) (ii). See **Commonwealth v. Lynch**, 820 A.2d 728, 732 (Pa. Super. 2003)]. “The voluntariness of the plea depends on whether counsel’s advice was within the range of competence demanded of attorneys in criminal cases.” *Id.* at 733 (quoting **Commonwealth v. Hickman**, 799 A.2d 136, 141 (Pa. Super. 2002)).

In order for Appellant to prevail on a claim of ineffective assistance of counsel, he must show, by a preponderance of the evidence, ineffective assistance of counsel, which in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place. **Commonwealth v. Kimball**, 724 A.2d 326, 333 (Pa. 1999). Appellant must demonstrate: (1) the underlying claim is of arguable merit; (2) that 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. *Id.* The petitioner bears the burden of proving all three prongs of the test. **Commonwealth v. Meadows**, 787 A.2d 312, 319-20 (Pa. 2001).

Id. at 369.

DISCUSSION

Initially, this Court finds that Defendant’s underlying legal claim has arguable merit; “that is, whether the disputed action or omission

by counsel was of questionable legal soundness.” **Commonwealth v. Davis**, 541 A.2d 315, 318 (1988). Furthermore, this Court finds that based on the erroneous advice Attorney DePowell provided to Defendant concerning a plea to the simple assault charge at §2701(a)(3) and the impact such erroneous advice had on Defendant’s immigration status, counsel did not have any reasonable basis that was designed to effectuate Defendant’s interests. “Allegations of ineffectiveness in connection with a guilty plea cannot warrant relief unless counsel’s ineffectiveness caused an involuntary, unknowing, or unintelligent plea.” **Commonwealth v. Anderson**, 995 A.2d 1184, 1192 (Pa. Super. 2002). “Where the defendant enters a plea on counsel’s advice, the voluntary and knowing nature of that plea turns on whether counsel’s advice fell within the range of competence demanded of attorneys in criminal case.” **Id.** at 1192. Attorney Crisp had consulted with an immigration attorney in this matter, Attorney Mattes, who had correctly advised Attorney Crisp as to the simple assault subsection which would result in Defendant’s deportation. Attorney Crisp never provided this important relevant information to Attorney DePowell. To exacerbate the situation, Attorney DePowell failed to consult with Attorney Mattes, conducted his own research on this issue and wrongly concluded that a plea to §2701(a)(3) would not result in Defendant’s deportation. Based on both defense attorneys’ representation and advice to Defendant, it is clear that the particular course chosen by both counsel had no reasonable basis to effectuate Defendant’s interests.

Having determined that Defendant’s underlying legal claim has arguable merit and that defense counsels’ chosen course had no reasonable basis to effectuate their client’s interests, this Court must determine whether counsels’ ineffectiveness worked to prejudice Defendant. “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.” **Commonwealth v. Moser**, 921 A.2d 526, 531 (Pa. Super. 2007). The Superior Court in **Commonwealth v. Morrison**, 878 A.2d 102 (Pa. Super. 2005) [(en banc), appeal denied, 585 Pa. 688, 887 A.2d 1241 (2005)] stated:

The standard for post-sentence withdrawal of guilty pleas dovetails with the arguable merit/prejudice requirements

for relief based on a claim of ineffective assistance of plea counsel, ... under which the defendant must show that counsel's deficient stewardship resulted in a manifest injustice, for example, by facilitating entry of an unknowing, involuntary, or unintelligent plea. This standard is equivalent to the "manifest injustice" standard applicable to all post-sentence motions to withdraw a guilty plea.

Id. at 105 (internal citations omitted).

It is clear that Defendant's primary concern in this criminal case was the immigration consequences of his plea. Specifically, Defendant did not want to be deported as a result of his guilty plea. All negotiations between defense counsel and the Commonwealth revolved around a plea that would not result in Defendant's deportation. If Defendant had known his guilty plea to simple assault at §2701(a)(3) would have resulted in his deportation, Defendant would not have entered a plea in this matter. Therefore, the record shows that Attorney DePowell's advice prejudiced Defendant. It is reasonably probable that, but for defense counsels' errors, Defendant would not have pleaded guilty and would have gone to trial. Therefore, Defendant's plea was involuntary and unknowing. See **Commonwealth v. Hickman**, 799 A.2d 136 (Pa. Super. 2002); **Commonwealth v. Kelley**, 136 A.3d 1007 (Pa. Super. 2016).

The Commonwealth's reliance on **Commonwealth v. Francis**, 2014 WL 10965784 (Pa. Super. 2014) and **Commonwealth v. Tavara**, 2014 WL 10915520 (Pa. Super. 2014) is misplaced. While it is clear that Defendant was aware that there was a possibility he could be deported based on this Court's colloquy and the written plea colloquy signed by Defendant, the only reason Defendant entered a plea of guilty to the simple assault charge was because of Attorney DePowell's erroneous advice to Defendant. Unlike the advice provided to the Defendant in **Francis** and **Tavara**, Attorney DePowell's advice to Defendant was "legally unsound and devoid" of any reasonable basis designed to effectuate Defendant's interests. **Hickman** at 141.

Therefore, this Court concludes that Defendant's decision to enter a plea of guilty to simple assault at 18 Pa. C.S. §2701(a)(3) was not knowing, involuntary, and unintelligent and therefore, this Court grants Defendant's PCRA Petition.

ORDER OF COURT

AND NOW, this 18th day of September, 2018, for the reasons set forth in the attached Opinion, Defendant's Motion for Post Conviction Relief is granted in accordance with 42 Pa. C.S.A. §9543(a)(2)(ii). In accordance with 42 Pa. C.S.A. §9546, this Court's Sentencing Order dated October 26, 2017 is hereby vacated.

Defendant is directed to appear for trial on December 3, 2018 at 8:30 a.m. in a courtroom to be designated. Defendant is directed to appear for plea hearing on October 22, 2018 at 8:30 a.m. in a courtroom to be designated. This Order is Defendant's only notice to appear on these dates and times.

The Adams County Sheriff is hereby directed to transport Defendant from York County Prison for plea day on October 22, 2018 and for trial on December 3, 2018.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary or of administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION

ESTATE OF RUFUS STAPLES HENDON, a/k/a RUFUS STAPLES HENDON, JR., DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Julia Ann Hendon, 1034 Green Ridge Road, Orrtanna, PA 17353

Attorney: David K. James, III, Esq., 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF LYNN P. MYERS, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executor: James P. Myers, 239 East Chestnut Hill Road Aspers, PA 17304

Attorney: John A. Wolfe, Esq., Wolfe, Rice & Quinn, LLC, 47 West High Street Gettysburg, PA 17325

ESTATE OF THOMAS E. NICHOLAS a/k/a THOMAS EUGENE NICHOLAS, DEC'D

Late of the Borough of East Berlin, Adams County, Pennsylvania

Executrix: Natalie Rice, 477 Marion Road, York, PA 17406

Attorney: John J. Mooney, III, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF KENNETH E. SHUE, DEC'D

Late of the Borough of East Berlin, Adams County, Pennsylvania

Executors: Bonnie L. Shue, 445 Beaver Street, East Berlin, PA 17316; Kevin E. Shue, 20 Hunter Circle, Abbottstown, PA 17301

Attorney: Matthew L. Guthrie, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

SECOND PUBLICATION

ESTATE OF LOIS E. McWILLIAMS a/k/a LOIS ELIZABETH McWILLIAMS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Crystal K.M. Stiffler and Ted O. McWilliams, c/o David M. Laucks, Esq., Laucks & Laucks, PC, 105 West Broadway, Red Lion, PA 17356

Attorney: David M. Laucks, Esq., Laucks & Laucks, PC, 105 West Broadway, Red Lion, PA 17356

ESTATE OF MARY C. NEIDERER, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Anne M. Herrick, 544 Railroad Lane, Orrtanna, PA 17353

Attorney: David K. James, III, Esq., 234 Baltimore St., Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF DORIS E. BROUGH, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: John A. Brough, 3755 Marvin Drive, Indian Head, MD 20640

Attorney: Robert E. Campbell, Esq., Salzmann Hughes, P.C., 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ROBERT D. CRAWFORD, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Personal Representative: Robert D. Crawford, Jr., 285 Impounding Dam Rd., Hanover, PA 17331; Thomas A. Crawford, 34 Jacobs Rd., Hanover, PA 17331

Attorney: G. Steven McKonly, Esq., 119 Baltimore Street, Hanover, PA 17331

ESTATE OF LACEY KATHLEEN FINNEYFROCK, DEC'D

Late of Liberty Township Adams County, Pennsylvania

Administrator: Damion Finneyfrock, 7 Black Bass Trail, Fairfield, PA 17320

Attorney: Clayton A. Lingg, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF SHIRLEY A. GLADFELTER, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Administrator: Andrew D. Luckett, 45 Clapsaddle Road, Gettysburg, PA 17325

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF LAVERNE K. LAWRENCE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Helen K. Lawrence, c/o Barley Snyder, 14 Center Square, Hanover, PA 17331

Attorney: Barley Snyder, 14 Center Square, Hanover, PA 17331

ESTATE OF HERMAN B. LEER, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Co-Executors: Lora A. Kennedy, 885 Bushey School Road, York Springs, PA 17372; Lee A. Leer, 9190 Carlisle Pike, York Springs, PA 17372

Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

ESTATE OF DONNA BREAM ZEIGLER a/k/a DONNA B. ZEIGLER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: PNC Bank, N.A., P.O. Box 308, 4242 Carlisle Pike U1-U600-03-6, Camp Hill, PA 17001-0308

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

