

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CR-1967-1999
	: CR-466-2000
vs.	: CR-634-2003
	:
ROBBIE MOREHART,	: Notice of Intent to Dismiss PCRA
Defendant	: Without Holding an Evidentiary Hearing
	: And Order Granting Counsel's Motion to
	: Withdraw

OPINION AND ORDER

This matter came before the court on Robbie Morehart's petition for post-sentence relief, which the court treated as a Post Conviction Relief Act (PCRA) petition pursuant to *Commonwealth v. Johnson*, 803 A.2d 1291, 1293 (Pa. Super. 2002). The relevant facts follow.

Under docket number CR-1967-1999, Defendant Robbie Morehart (hereinafter Ms. Morehart) was charged with two counts of false reports to law enforcement, both graded as misdemeanors of the third degree, and harassment, a summary offense. On May 31, 2000, Ms. Morehart entered a guilty plea to harassment and was sentenced to pay the costs of prosecution, a fine of \$300, as well as attend and complete the MAAP program. The false reports charges were dismissed.

Under docket number CR-466-2000, Ms. Morehart was charged with two counts of simple assault, each graded as a misdemeanor of the second degree, and harassment, a summary offense. On May 31, 2000, Ms. Morehart entered a guilty plea to harassment and was sentenced to pay the costs of prosecution and a fine of \$100 and to attend and complete the MAAP program. The simple assault charges were dismissed.

Under docket number CR-634-2003, Ms. Morehart was charged with two

counts of involuntary deviate sexual intercourse (IDSI), two counts of aggravated indecent assault, two counts of indecent assault, one count of endangering the welfare of a child, and one count of corrupting the morals of a minor. On June 14, 2004, Ms. Morehart entered a no contest plea to all of the charges, except the two counts of aggravated indecent assault. On March 3, 2005, Ms. Morehart was sentenced to an aggregate sentence of five (5) to ten (10) years' incarceration in a state correctional institution and a consecutive period of six years' probation under the supervision of the Pennsylvania Board of Probation and Parole, which consisted of 5-10 years' incarceration for IDSI, 4 years' probation for endangering the welfare of a child, and 2 years' probation for corruption of the morals of a minor.

Ms. Morehart served her entire incarceration sentence and began serving her probation. On October 13, 2016, based on a counseled admission, the court found Ms. Morehart in violation of the conditions of her probation. The court revoked her probation and re-sentenced her to 1-2 years' incarceration for endangering the welfare of a child and a concurrent 6 months to 2 years' incarceration for corruption of the morals of a minor. The court gave Ms. Morehart credit for time served from July 15, 2016 to October 12, 2016, but found that Ms. Morehart was not eligible for a recidivism risk reduction incentive (RRRI) due to the nature of her prior convictions.

On February 7, 2017, Ms. Morehart filed her petition for post-sentence relief, which the court has treated as a first PCRA petition. In her petition, Ms. Morehart contends that she is eligible for a RRRI minimum. As it appeared that Ms. Morehart was indigent, the court appointed counsel to represent her and gave counsel an opportunity to file either an amended PCRA petition or a "no merit" letter pursuant to *Commonwealth v. Turner*, 544

A.2d 927 (Pa. 1988) and *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988)(en banc). Counsel obtained a transcript of Ms. Morehart's probation violation hearing, reviewed the record, and then filed a motion to withdraw as counsel, which contained a *Turner/Finley* no merit letter. Counsel concluded that Ms. Morehart was not eligible for RRRI because corruption of minors is an offense for which sexual offender registration is required.

After an independent review of the record, the court also determines that Ms. Morehart is not eligible for the relief requested.

Initially, the court notes that although Ms. Morehart included cases CR-1967-1999 and CR-466-2000 on her petition, she is not eligible for relief on either of these docket numbers because she is not serving a sentence of incarceration, probation or parole under those case numbers. 42 Pa. C. S. §9543(a)(1).

With respect to docket number CR-643-2003, the court again concludes that Ms. Morehart is not eligible for RRRI.

The RRRI statute defines the term eligible offender as follows:

“Eligible offender.” A defendant or inmate convicted of a criminal offense who will be committed to the custody of the department and who meets all of the following eligibility requirements:

(1) Does not demonstrate a history of present or past violent behavior.

(2) Has not been subject to a sentence the calculation of which includes an enhancement for the use of a deadly weapon as defined under law or the sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing or the attorney for the Commonwealth has not demonstrated that the defendant has been found guilty of or was convicted of an offense involving a deadly weapon or offense under 18 Pa.C.S. Ch. 61 (relating to firearms and other dangerous articles) or the equivalent offense under the laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of

Puerto Rico or a foreign nation.

(3) Has not been found guilty of or previously convicted of or adjudicated delinquent for or an attempt or conspiracy to commit a personal injury crime as defined under section 103 of the act of November 24, 1998 (P.L. 882, No. 111), known as the Crime Victims Act, except for an offense under 18 Pa.C.S. § 2701 (relating to simple assault) when the offense is a misdemeanor of the third degree, or an equivalent offense under the laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation.

(4) Has not been found guilty or previously convicted or adjudicated delinquent for violating any of the following provisions or an equivalent offense under the laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation:

18 Pa.C.S. § 4302 (relating to incest).

18 Pa.C.S. § 5901 (relating to open lewdness).

18 Pa.C.S. Ch. 76 Subch. C (relating to Internet child pornography).

Received a criminal sentence pursuant to 42 Pa.C.S. § 9712.1 (relating to sentences for certain drug offenses committed with firearms).

Any offense for which registration is required under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders).

(5) Is not awaiting trial or sentencing for additional criminal charges, if a conviction or sentence on the additional charges would cause the defendant to become ineligible under this definition.

(6) Has not been found guilty or previously convicted of violating section 13(a)(14), (30) or (37) of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, where the sentence was imposed pursuant to 18 Pa.C.S. § 7508(a)(1)(iii), (2)(iii), (3)(iii), (4)(iii), (7)(iii) or (8)(iii) (relating to drug trafficking sentencing and penalties).

61 Pa. C. S. §4503.

Ms. Morehart does not meet the requirements of paragraph (3) or (4). Under docket number 643-2003, Ms. Morehart was found guilty or convicted of IDSI, indecent assault of a child, endangering the welfare of a child and corruption of the morals of a minor. IDSI, indecent assault of a child and corruption of the morals of a minor are offenses for which registration is required under 42 Pa. C. S. Ch. 97 Subchapter H. See 42 Pa. C. S.

§9799.14.

Even if Ms. Morehart would not be required to register under SORNA due to the recent Pennsylvania Supreme Court decision in *Commonwealth v. Muniz*, 164 A.3d 1189 (Pa. July 19, 2017), she still would not be eligible for RRRI because her convictions for IDSI and indecent assault are personal injury crimes under the Crime Victims Act, 18 P.S. §11.103. The definition of a personal injury crime in section 103 includes, but is not limited to, any act, attempt or threat to commit an act which would constitute a misdemeanor or felony under 18 Pa.C.S. Ch. 31 (relating to sexual offenses). Ms. Morehart has been convicted of acts that constitute IDSI, a felony of the first degree, and indecent assault of a child, a misdemeanor of the first degree. Both IDSI and indecent assault are crimes listed in Chapter 31 of the Crimes Code. See 18 Pa. C.S. §§3121, 3126.

The court recognizes that the crimes for which Ms. Morehart is currently serving a sentence are not personal injury crimes. The disqualification, however, is not limited to current offenses, but also includes previous convictions.

Since Ms. Morehart is clearly not eligible for RRRI, her PCRA conviction lacks merit as a matter of law.

Accordingly, the following Order is entered.

ORDER

AND NOW, this ___ day of October 2017, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the parties are hereby notified of this court's intention to dismiss Ms. Morehart's petition without holding an evidentiary hearing. Ms. Morehart may respond to this proposed dismissal within twenty

(20) days. If no response is received within that time period, the court will enter an order dismissing the petition.

The court also grants PCRA counsel's petition to withdraw. Ms. Morehart is advised that she may represent herself or she may hire private counsel to represent her, but the court will not appoint counsel to represent her further in this matter.

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
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