

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA**

**v.**

**JAMES EDWARD HADDIX,  
Defendant**

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**CP-41-CR-0000992-2015**

**PCRA**

**OPINION AND ORDER**

On December 1, 2017, Counsel for the Defendant filed a Motion to Withdraw as Counsel along with a Motion to Dismiss pursuant to Commonwealth v. Turner, 544 A.2d 927 (Pa. 1988) and Commonwealth v. Finley, 550 A.2d 213 (Pa. Super. 1988). After an independent review of the entire record, the Court agrees with PCRA Counsel and finds that the Defendant has failed to raise any meritorious issues in his PCRA Petition, and his petition should be dismissed.

***Background***

On January 28, 2016, James Edward Haddix (Defendant) pled guilty to eleven (11) counts of a Sexual Abuse of Children<sup>1</sup> (Possession of Child Pornography), all felonies of the second degree, pursuant to a negotiated plea agreement. According to the terms of the plea agreement, sentence would be imposed on one count with concurrent sentences on the remaining ten counts. The plea to the first count was “open”; however, the standard guideline ranges suggested twelve (12) to twenty-four (24) months with an aggravated/mitigated range of twelve (12) months. The Court determined that the aggravating circumstances in 204 Pa. Code § 303.10(e)(1) sexual abuse of children enhancement applied to Defendant thus adding eighteen (18) months to the lower limit and the upper limit of the standard guideline range.

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<sup>1</sup> 18 Pa.C.S. § 6312(2).

Twelve (12) months became thirty (30) months, and twenty-four (24) months became forty-two (42) months.

Sentence of the Court imposed on May 10, 2016 was to a minimum of thirty (30) months to a maximum of sixty (60) months in a state correctional institutional on each count. As agreed to at the time of the guilty plea, the sentences were ordered to be served concurrently. The Pennsylvania Board of Probation and Parole was asked to prepare the presentence investigation and the Sexual Offender Assessment Board was asked to prepare a predator assessment in preparation for sentencing. Both reports were considered by the Court at the time of sentencing.

No post sentence motion or direct appeal was filed thus Defendant's Judgment of Sentence became final on June 9, 2016.

On May 4, 2017, Defendant filed a Motion for Post Conviction Relief alleging the unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.

The Court issued an Order appointing counsel in accordance with Pa.R.Crim.P. 904(C), and scheduled a court conference for August 29, 2017. Through various scheduling issues, the court conference was not held until January 30, 2017. Following the conference, and after thorough review, this Court finds that there are no genuine issues of material fact and that Defendant is not entitled to post-conviction collateral relief, and no purpose would be served by any further proceedings.

## Discussion

Incarcerated defendants, or those on probation or parole for a crime, are eligible for relief under the PCRA when they have pled and proved by a preponderance of the evidence the following four components:

- 1) Defendant has been convicted of a crime under the laws of PA and is at the time relief is granted currently serving a sentence of imprisonment, probation or parole for the crime.
- 2) Conviction or sentence resulted from one or more of the following
  - i. A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States 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.
  - ii. 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.
  - iii. A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.
  - iv. The improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.
  - v. Deleted.
  - vi. The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.
  - vii. The imposition of a sentence greater than the lawful maximum.
  - viii. A proceeding in a tribunal without jurisdiction.
- 3) Allegation of the error has not been previously litigated or waived; and
- 4) Failure to litigate the issue prior to or during trial, during unitary review or on direct appeal could not have been the result of any rational, strategic, or tactical decision by counsel.

42 Pa.C.S. § 9543 (eligibility for relief).

Defendant is currently incarcerated in SCI Mercer in the above captioned docket number so he is potentially eligible for relief. The Defendant alleges that his counsel was ineffective for failing to call a proposed specialist to testify on his behalf and that he is subject to an illegal sentence because the sentencing enhancement the Court applied was enacted after his offense period of January 15, through March 27, 2015.

In order to succeed on a claim of ineffective assistance of counsel, Defendant must overcome the presumption of counsel effectiveness by proving the following three factors, that: (1) Defendant's underlying claim has arguable merit, (2) trial counsel had no reasonable basis for her action or inaction, and (3) the performance of trial counsel prejudiced Defendant. Commonwealth v. Pierce, 527 A.2d 973, 975-76 (Pa. 1987). See also, Strickland v. Washington, 466 U.S. 668, 687-91, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); Commonwealth v. Sampson, 900 A.2d 887, 890 (Pa. Super. 2006), appeal denied, 907 A.2d 1102 (Pa. 2006) (citing Commonwealth v. Lynch, 820 A.2d 728, 733 (Pa. Super. 2003)). A claim of ineffectiveness will be denied if the petitioner's evidence fails to satisfy any one of these prongs. Commonwealth v. Busanet, 54 A.3d 35, 45 (Pa. 2012).

***Was Trial Counsel ineffective for failing to call a proposed specialist?***

Defendant's challenge is to a discretionary aspect of his sentence. Defendant believes had a specialist been called that a sentencing enhancement would not have been applied. The sentencing enhancement was applied based on the number of images the Defendant had possessed and was not related to the Court's consideration of mitigating factors.

In order to be cognizable under the PCRA, a claim regarding the discretionary aspects of a sentence must be raised in the context of an ineffectiveness claim. Commonwealth v. Watson, 835 A.2d 786, 801 (Pa. Super. 2003). Therefore, the Court must consider the three prongs *supra*. In the context of a challenge to the discretionary aspects of a sentence, prejudice may be established only by pleading and proving that the challenge would have resulted in "a reduction in the sentence." Commonwealth v. Reaves, 923 A.2d 1119, 1132 (2007) (internal quotations and citations omitted).

Each of the charges to which Defendant pled guilty had an Offense Gravity Score of "9". Defendant's Prior Record Score was "0". Sentencing Guidelines with enhancements due to the number and nature of the images suggest thirty (30) months to forty-two (42) months as a minimum sentence for each conviction. The thirty (30) month minimum sentence was at the absolute bottom of the standard guideline range, not an aggravated range as Defendant appears to believe.

The Sentencing Transcript shows that the Court very much considered the Petitioner's past history of sexual abuse. Several of the witnesses that testified on the Defendant's behalf, the Defendant's attorney, and the presentence investigation alerted the Court to the Defendant's past history. Trial Counsel argued to the Court to mitigate the suggested standard guideline sentence by twelve (12) months in light of the Defendant's history, and his willingness to accept responsibility for what he had done and for the remorse that he showed. Sentencing, 5/10/2016 at 33. The Sentence of the Court shows that the Court did give Petitioner the minimum sentence as suggested by the guidelines because the Court considered all of these

factors. A specialist would not have provided information to the Court that it did not already consider and would not have resulted in a reduction of sentence because in the Court's view it was already reduced quite significantly.

***Was the sentencing enhancement applied to the Defendant ex post facto?***

Act 104 of 2013 directed the Sentencing Commission to provide for a sentence enhancement within its guidelines for an offense under 18 Pa.C.S. § 6312 (relating to sexual abuse of children), specifying variations from the range of sentences applicable based on such aggravating circumstances as the age of the child or a determination of prepubescence, the number of images possessed by the defendant and the nature and character of the abuse depicted in the images.

The Sentencing Commission's second amendment to its Seventh Edition of Guidelines added the Sexual Abuse of Children Enhancement pursuant to the legislative mandate *supra*. The guidelines were amended on June 27, 2014, and became effective on September 26, 2014. 44 Pa. Bull. 4071. Thus, they were not applied to Defendant *ex post facto* and the claim has no merit.

***Conclusion***

Based upon the foregoing, the Court finds no basis upon which to grant the Defendant's PCRA petition. Additionally, the Court finds that no purpose would be served by conducting any further hearing. As such, no further hearing will be scheduled. Pursuant to Pennsylvania Rule of Criminal Procedure 907(1), the parties are hereby notified of this Court's intention to deny the Defendant's PCRA Petition. The Defendant 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.

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of February, 2018, it hereby ORDERED and DIRECTED as follows:

1. Pursuant to Pennsylvania Rule of Criminal Procedure 907(1) and for the reasons discussed in the foregoing opinion, the Defendant is hereby notified that this Court intends to dismiss his PCRA petition, which was filed on May 4, 2017. The Defendant may respond to the proposed dismissal within 20 days of the date of the notice.
2. The **Petition to Withdraw from Representation**, filed on December 1, 2017, is hereby **GRANTED**, and **William J. Miele, Esq.** may withdraw from the above-captioned case.

By the Court,

Nancy L. Butts, President Judge

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