

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CR-2107-2015
	:
vs.	: CRIMINAL DIVISION
	:
	:
	: PCRA
DUSTIN HEDDINGS,	:
Defendant	:

OPINION AND ORDER

Before the court is an amended Petition for Post-Conviction Collateral Relief (amended PCRA Petition) filed on November 3, 2017. Petitioner Heddings (Heddings) asserts that his trial counsel was ineffective in failing to object to or contest the court’s designation of Heddings as ineligible for the Recidivism Risk Reduction Incentive, known as RRRi, based on burglary convictions graded as felonies of the second degree. Heddings further asserts that he is entitled to relief as “after-discovered evidence” rendered his sentence illegal. The “after-discovered evidence” was the dismissal of his simple assault charge from another county that was pending at the time he was sentenced in this case. Without the pending simple assault charge, Heddings contends he is eligible for a RRRi minimum.

On November 22, 2017, as directed by the court, the Commonwealth filed an Opposition Memorandum. The Commonwealth raises a handful of arguments in opposition to Heddings’ claims. First, Heddings’ petition is moot in that he has passed his stated minimum and is now entitled to parole without regard to RRRi eligibility. Second, at the time of sentencing, Heddings’ “pending” simple assault charge rendered him ineligible for RRRi. Third, the subsequent dismissal of the simple assault charges does not constitute after-

discovered evidence. It was not exculpatory evidence for trial that Heddings could not have learned with the exercise of due diligence. Fourth, even if the simple assault dismissal constitutes after discovered evidence, there is “no provision” where Heddings can “go back and be re-sentenced.”

The “mootness doctrine” requires that there be an actual controversy at all stages of review. *Ahlborn*, 453 Pa. Super. 124, 683 A.2d, 632, 639 (1996).

In this case, it is not clear and free from doubt that Heddings’ petition is moot. While at first blush it may appear that both Defendant’s minimum sentence and any potential RRRI minimum have already passed, such may not be the case in that Defendant has several other cases from other counties that may aggregate with his Lycoming County sentence and alter both his minimum date and his potential RRRI minimum date. In addition to his Lycoming County sentence, Defendant has at least two cases from Northumberland County (CP-49-CR-0000299-2015 and CP-49-0000514-2015), a case from Montour County (CP-47-0000048-2015), and a case from Luzerne County (CP-40-CR-0000019-2016). Without the sentencing orders from all of Defendant’s sentences and/or his “green sheet” from the Department of Corrections, the court cannot determine whether Defendant’s petition is, in fact, moot. The court notes that it is Defendant’s burden to show that he is eligible for PCRA relief.

Furthermore, it could be argued that the PCRA statute would permit Heddings to be re-sentenced. “As a general rule, if the court finds in favor of a PCRA Petitioner, it shall order appropriate relief and issue supplementary orders as to ... correction of sentence or other matters that are necessary and proper.” 42 Pa. C.S.A. § 9546.

ORDER

AND NOW, this ____ day of January 2018, after review of Defendant's amended PCRA petition and the memorandum in opposition filed by the Commonwealth, the court schedules a hearing and argument for **March 2, 2018, at 4:00 p.m. in courtroom #4 of the Lycoming County Courthouse.**

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
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Work File