

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: No. 98-11562; 99-10661
	:
vs.	: CRIMINAL DIVISION
	:
	:
JESSIE DRUMMOND, aka	:
JESSIE MITCHELL	: PCRA
Defendant	: Notice of Intent to Dismiss

ORDER

AND NOW, this ___ day of August 2000, upon review of the record and pursuant to Pa.Cr.Crim.P. Rule 1507(a), it is the finding of this Court that the defendant's Petition for Post Conviction Relief filed in the above-captioned matter raises no genuine issue of fact and the defendant is not entitled to post conviction collateral relief.

Basically, the defendant is not satisfied with the terms of his plea agreement. He contends: (1) his counsel coerced him into pleading guilty by telling him he would spend the rest of his life in prison; (2) counsel was ineffective in not obtaining a more reasonable plea agreement; (3) counsel coerced him to plead above the standard guidelines; (4) the police engaged in sentencing entrapment by waiting to arrest him; and (5) the sentences were excessive because some were run consecutive when all of the sentences should have been concurrent. All these issues are either not cognizable under the PCRA or are meritless.

In order to prevail on claims that counsel was ineffective, the defendant must establish that any such ineffectiveness affected the truth-determining process such that no reliable adjudication of guilt or innocence could have taken place. 42 Pa.C.S.

§9543(a)(2)(ii). Similarly, to prevail on a claim that his guilty plea was unlawfully induced,

the defendant must establish he is innocent. 42 Pa.C.S. §9543(a)(2)(iii). In response to the question “Why do you wish to plead guilty?”, the defendant responded “because I am guilty.” Written Guilty Plea Colloquy, Question 22, p.5. Therefore, these claims are without merit.¹

Furthermore, the defendant’s minimum sentences were at the bottom of the standard range of the sentencing guidelines. The offense gravity score for each conviction was 6 and the defendant’s prior record score was 3. Therefore, the standard range of the sentencing guidelines was 12-18 months. On each conviction the defendant received a minimum sentence of 1 year or 12 months. Therefore, the defendant’s sentence were at the bottom of the standard range of the guidelines.

The sentencing claims are not cognizable under the PCRA. The only sentencing issue which is cognizable under the PCRA is that the sentences imposed exceeded the lawful maximum. Commonwealth v. Lewis, 430 Pa.Super. 336, 634 A.2d 633 (1993), appeal denied, 539 Pa. 689, 653 A.2d 1228. The maximum lawful sentence for each felony drug conviction is 10 years.² 35 P.S. §780-113(f)(1.1). The highest maximum sentence received by the defendant was 3 years on count 1 of No. 98-11,562. On all other counts, the defendant’s maximum sentence was 2 years. Therefore, the defendant’s sentence did not exceed the lawful maximum.

As no purpose would be served by conducting any further hearing, none will

¹The Court notes the defendant’s claim that counsel told him he would literally spend the rest of his life in jail in belied by the exhibits attached to the defendant’s petition.

²The defendant was convicted of conspiracy to deliver cocaine and several deliveries of cocaine.

be scheduled and the parties are hereby notified of this Court's intention to deny the Petition. 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.

By The Court,

Kenneth D. Brown, J.

cc: Kenneth Osokow, Esquire (ADA)
James Protasio, Esquire
Jessie Drummond, aka Jessie Mitchell, #EB-1273
801 Butler Pike, Mercer PA 16137
Law Clerk