

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 00-11,964
	: 01-10, 051
	:
vs.	: CRIMINAL DIVISION
	: PCCR Petition
JOHN K. DERR,	:
Defendant	:

OPINION AND ORDER

Before the Court is Defendant’s Petition for Post Conviction Relief, filed November 12, 2002. A conference on the Petition was held January 7, 2003.

Defendant pled guilty on September 7, 2001 to aggravated assault and persons not to possess firearms. The plea agreement called for a standard range sentence with respect to each count, the sentences to run concurrent. In the instant Petition for Post Conviction Relief, Defendant contends the Court incorrectly calculated Defendant’s prior record score and therefore applied the incorrect sentencing guidelines. Defendant asserts that this misapplication of the guidelines renders his sentence illegal and that trial counsel was ineffective in failing to calculate his prior record score correctly and object to the Court’s calculation, thus allowing an illegal sentence to be entered. Defendant seeks to have the original sentencing Order vacated and to be resentenced.

The Commonwealth argues that this Court cannot consider Defendant’s claim regarding the miscalculation of his prior record score and misapplication of the sentencing guidelines as such did not render his sentence illegal and therefore his claim is not cognizable under the Post Conviction Relief Act. It appears the Commonwealth is correct in this regard. A claim that the prior record score or the offense gravity score was miscalculated and thus the guidelines were misapplied constitutes a challenge to the discretionary aspects of a sentence. Commonwealth v Archer, 722 A.2d 203 (Pa.

Super. 1998); Commonwealth v Medley, 725 A.2d 1225 (Pa. Super. 1999). The Courts have specifically held that the improper utilization of the sentencing guidelines is an error of law but such does not render the sentence illegal. Id. The Courts have further held that a challenge to prior counsel's ineffectiveness with respect to the discretionary aspects of a sentence is not cognizable under the PCRA. Commonwealth v Wolfe, 580 A.2d 857 (Pa. Super. 1990); Commonwealth v Jordan, 772 A.2d 1011 (Pa. Super. 2001). In the instant matter, the Commonwealth is therefore correct that the Court may not address the issue raised by Defendant in the context of a PCRA Petition.

ORDER

AND NOW, this 2nd day of February, 2003, for the foregoing reasons, the Petition for Post Conviction Relief filed by Defendant on November 12, 2002 is hereby dismissed.

By the Court,

Dudley N. Anderson, Judge

cc: DA
Eric Linhardt, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson