

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: NO. 00-11,964
	: 01-10,051
	:
vs.	:
	:
JOHN K. DERR,	:
Defendant	:

OPINION IN SUPPORT OF ORDER
OF FEBRUARY 3, 2003 IN
COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Defendant appeals this Court’s Order dated February 3, 2003, which dismissed his Petition for Post Conviction Relief. Defendant’s Petition for Post Conviction Relief had alleged ineffective assistance of counsel in failing to calculate his prior record score correctly and to notify the Court of the miscalculation, leading to a misapplication of the sentencing guidelines. The Court determined that Defendant was challenging the discretionary aspects of his sentence and, relying on Commonwealth v Wolfe, 580 A.2d 857 (Pa. Super. 1990) and Commonwealth v Jordan, 772 A.2d 1011 (Pa. Super. 2001), found his challenge to counsel’s ineffectiveness in this regard not cognizable under the P.C.R.A. It appears that under Dadario v Goldberg, 773 A.2d 126 (Pa. 2001), however, since Defendant has claimed he was denied the effective assistance of counsel in violation of the Sixth Amendment and Article 1, Section 9 of the Pennsylvania Constitution, Section 9543 (a)(2)(ii) of the P.C.R.A. does provide Defendant with relief. See also Commonwealth v Padden, 783 A.2d 299 (Pa. Super. 2001) (the proper interpretation of Section 9543 (a)(2)(ii) of the P.C.R.A. permits all constitutionally cognizable claims of ineffective assistance of counsel to be raised in a P.C.R.A.

proceeding). The Court therefore concludes at this time the Order of February 3, 2003 was entered in error and Defendant's Petition for Post Conviction Relief should not have been dismissed on the grounds that the claim raised was not cognizable under the P.C.R.A.

Dated: April 18, 2003

By The Court,

Dudley N. Anderson, Judge

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