

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

**COMMONWEALTH OF PENNSYLVANIA** : **No. 01-11,532**  
:   
**vs.** : **CRIMINAL DIVISION**  
:   
:   
**JASON MONTGOMERY,** :   
**Defendant** : **PCRA**

**O R D E R**

AND NOW, this \_\_\_ day of March 2004, upon review of the record and pursuant to Rule 907(a) of the Pennsylvania Rules of Criminal Procedure, it is the finding of this Court that Defendant's Motion for Reconsideration and Modification of Sentence which the Court treated as a Post Conviction Relief Act (PCRA) Petition filed in the above-captioned matter raises no genuine issue of fact and Petitioner is not entitled to relief.

The Court found the defendant in violation of his intermediate punishment, parole and probation and re-sentenced him on October 30, 2002. The Court sentenced the defendant 13-36 months incarceration on two counts of unauthorized use of a motor vehicle in case number 01-10,614. In case number 01-11,531 the Court sentenced the defendant to one year probation consecutive to the sentence imposed in case number 01-10,614. In case number 01-11532, the Court imposed one year probation for the first theft offense and two years probation for another theft count. These probationary sentences were consecutive to each other and to the other case numbers. The aggregate sentence imposed was 13-36 months

incarceration and four years consecutive probation.

The defendant filed a pro se Motion for Reconsideration and Modification of Sentence on July 28, 2003.

In his motion the defendant seeks either to have his probationary sentences run concurrent to each other and concurrent to case numbers 01-11,568 and 01-11,614 or concurrent to each other and consecutive to these case numbers. The basis for the defendant's request is essentially that since being incarcerated he is a changed person.

The Court commends the defendant for his progress, but cannot grant him the relief requested. A motion to modify sentence must be filed no later than 10 days after imposition of sentence. The defendant was sentenced on October 30, 2002. His motion was not filed until July 28, 2003. Therefore, the motion is untimely and must be denied.

Out of an abundance of caution, the Court treated the motion as a PCRA petition and appointed counsel to give the defendant the opportunity to see if he had any claim under the PCRA. To be eligible for relief under the PCRA, the defendant must plead and prove that his conviction resulted from one or more of the circumstances set forth in 42 Pa.C.S.A. §9543(a)(2). The only provision of subsection (a)(2) that directly deals with sentencing is subparagraph (vii), which involves an imposition of sentence greater than the lawful maximum. The defendant's sentence does not exceed the lawful maximum. Discretionary aspects of sentencing are only cognizable under the PCRA in the context of an

ineffective assistance of counsel claim under subparagraph (ii). See Commonwealth v. Watson, 835 A.2d 786, 798-800 (Pa.Super. 2003). The basis for the defendant's request, however, does not arise out of a claim of ineffective assistance of counsel. Instead, the basis of his request is that he has changed subsequent to sentencing.

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

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Kenneth D. Brown, P.J.

cc: Kenneth Osokow, Esquire (ADA)  
William Kovalcik, Esquire  
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