

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

<b>COMMONWEALTH</b>	:	
	:	
<b>v.</b>	:	<b>No.: 99-11,864; 99-10,835;</b>
	:	<b>99-11,036; 99-10,982;</b>
<b>THOMAS KERSTETER,</b>	:	<b>99-11,073; 99-10,721</b>
<b>Defendant</b>	:	

**OPINION AND ORDER**

Before the Court is the Defendant's PCRA petition filed in the above-captioned cases. By agreement of counsel, the Court has delayed an opinion in this case until Defendant's attorney, Donald Martino, Esquire, could obtain information from the Pennsylvania State Correctional Institution at Mahanoy. On May 27, 2004, the Court received a letter from Defendant's attorney which indicated that he had received the requested information from SCI-Mahanoy and found that it was not helpful. A copy of the letter was sent to the District Attorney's office. The letter also contains a list of stipulations allegedly reached by the parties in this matter and requests that the Court give the District Attorney time to object to the defense statement of those stipulations. Approximately four weeks have passed since the receipt of this letter. No written objections have been made by the District Attorney. When contacted to ascertain whether any objections were forthcoming, the District Attorney's Office indicated that no objections would be filed.

Accordingly, the Court adopts the proposed stipulations and makes the following findings:

1. That the plea agreement in the Defendant's case was for a three year minimum sentence with the Defendant to be made eligible for the Boot Camp Program.
2. That the Court intended to go along with the above plea agreement and so stated at the sentencing hearing.
3. That the Court intended to make the Defendant eligible for the Boot Camp Program and so stated at the sentencing hearing.
4. That the Court indicated at the sentencing that the Defendant would normally be paroled from his county sentence of nine to twenty-three months given that he had served the minimum and was receiving a state prison sentence.
5. That the Defendant received a sentence of nine to twenty-three months on August 2, 1000 and that, with the time credited to him, he had served his minimum sentence by December 13, 1999, when he was sentenced on the above cases.
6. That the Defendant's actual sentence ended up being an aggregate of three years, nine months, to seven years, eleven months.
7. That this sentence made the Defendant statutorily ineligible for the Boot Camp Program.
8. That the Defendant was born on March 26, 1980 and therefore not barred from the Boot Camp Program because of age.

The Court also finds, however, that no error was committed by the Court, nor was any error committed by Defendant's attorney at the time of sentencing when the Court imposed the three year minimum sentence with Boot Camp eligibility consistent with the plea agreement previously reached by the parties. Additionally, the Court notes that although the Defendant had

reached his minimum and was eligible for parole on the county sentence he was already serving before he appeared before the Court in these cases, no guarantee was ever given to the Defendant that he would actually be paroled from his county sentence prior to his entry into the state correctional system. No pertinent information has been provided to the Court as to why the Defendant was not paroled from his county sentence on the date that he received the sentence that is the subject of his PCRA petition, although the Court granted defense counsel's request to contact the state correctional authorities and ascertain their understanding. Defense counsel has told the Court in his letter that the information received from the state was not helpful, but he has not explained exactly what information was provided to him. The Court will not speculate as to whether there was an error in the Defendant's failure to be granted parole on his first sentence. Therefore, the Court finds no basis upon which to grant the Defendant's PCRA petition. Additionally, the Court finds that no purpose would be served by conducting any further hearing, therefore none will be scheduled. Pursuant to Pennsylvania Rule of Criminal Procedure 907(1), 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.

ORDER

AND NOW, this \_\_\_\_ day of June, 2004, the Court Defendant and his attorney that it is the intention of the Court to dismiss his PCRA petition unless he files an objection to that dismissal within twenty days of today's date.

By The Court,

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Nancy L. Butts, Judge J.

xc: DA (KO)  
Don Martino, Esquire  
Hon. Nancy L. Butts  
Judges  
Gary Weber, Esquire  
Diane L. Turner, Esquire