

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 02-11,417
	:
vs.	: CRIMINAL DIVISION
	:
MICHAEL McGRATH,	:
Defendant	: PCRA Petition

OPINION AND ORDER

Before the Court is Defendant's Second Motion for Post Conviction Collateral Relief, filed December 17, 2003.¹ Defendant was sentenced February 25, 2003, following a plea of guilty to manufacture of a controlled substance and a related charge, to fifteen months to three years incarceration. Defendant claims in his motion "the plea agreement I signed was for 15-30 months" and that he "would like [his] sentence to be the 15-30 months we agreed on." A review of the written guilty plea colloquy indicates that both counts to which Defendant pled guilty were punishable by a maximum of ten years incarceration, that the standard sentence guideline range was fifteen to twenty-one months, and that under the terms of the plea agreement, Defendant was to be sentenced at the bottom of the standard range. There is nothing in the written colloquy to indicate any agreement at all with respect to a maximum term of incarceration, only a minimum term. Further, a review by the Court Reporter of the notes of the proceeding indicates there was no discussion of a maximum sentence. The Court thus finds nothing in the record to support Defendant's claim of an agreement he be sentenced to fifteen to thirty months incarceration.

Our Supreme Court has mandated that second or subsequent petitions for post-conviction relief "will not be entertained unless a strong prima facie showing is offered to demonstrate that a miscarriage of justice may have occurred." Commonwealth v. Lawson, 549 A.2d 107, 112 (Pa. 1988). The Superior Court has explained that the Lawson standard is met if the petitioner can demonstrate "either that the proceedings resulting in his conviction were so

¹ His first such motion was denied by Order dated October 1, 2003, entered after a conference.

unfair that a miscarriage of justice which no civilized society can tolerate occurred or that he is innocent of the criminal charges." Commonwealth v. Loach, 618 A.2d 463, 467 (Pa. Super. 1992). Not only has there not been any such prima facie showing in the instant case, a review of the merits of the petition shows no basis for the motion in the first place.

ORDER

And now, this day of January, 2004, for the foregoing reasons, Defendant's Motion for Post Conviction Collateral Relief, filed December 17, 2003, is hereby DENIED without hearing.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
 Michael McGrath, Jr., FG9934, 301 Morea Road, Frackville, PA 17932
 Hon. Dudley Anderson