

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 00-11,449; 00-11,450  
: 00-11,451; 00-11,452  
vs. : 00-11,453; 00-11,888  
:  
: CRIMINAL DIVISION  
DAVID W. CAMPBELL, :  
Defendant : PCRA

**OPINION AND ORDER**

Before the Court is Defendant's Motion to Modify Sentence, Nunc Pro Tunc/Motion to Withdraw Guilty Plea Nunc Pro Tunc, filed October 18, 2004, which the Court has treated as a Petition for Relief under the Post Conviction Relief Act. A conference on the petition was held December 17, 2004.

Defendant contends he was sentenced outside the guidelines and that such constitutes an unlawful sentence, and seeks to reduce his sentence by four months. He further states that if the Court is unwilling to grant this request, he wishes to withdraw his plea.

On May 2, 2001, Defendant pled guilty to six counts of theft and/or bad checks, one each of multiple counts brought in six separate informations, and on that date was sentenced to 2 ½ to 5 years incarceration, effective that date, in accordance with the plea agreement. The sentencing Order was amended on July 6, 2001, to consider time served, and changed the effective date to August 31, 2000. The sentencing Order was further amended on January 25, 2002, after it was determined the Department of Corrections would not allow the credit from August 31, 2000 to May 2, 2001, inasmuch as Defendant had already been given credit for that time with respect to other sentences Defendant was then serving.<sup>1</sup> To give Defendant the credit for time served envisioned by the plea agreement, the Court moved the effective date back to May 2, 2001, but deducted eight months from the minimum sentence. By Order dated October 1, 2003, the January 25, 2002, Order was further amended to deduct eight months from the

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<sup>1</sup> This Court's sentence was to run concurrently with the other sentences already being served. Although in one Order it was stated the sentences were to run consecutively, that was simply an error that was later corrected.

maximum sentence. Defendant now claims the resultant sentence of 22 – 52 months is unlawful as such is outside the guidelines.

Initially, the Court notes the sentence does not exceed the statutory limits (30 – 60 months). Further, in sentencing Defendant on May 2, 2001, the Court explained that it was sentencing outside the guidelines (which provided for a standard range sentence of 6 – 16 months and an aggravated range up to 19 months) based on the plea agreement and also on the number of charges and the fact the sentences were running concurrently with each other, as well as with sentences being served in two other counties for similar offenses. The Court believes this explanation satisfies the mandate of the Sentencing Code that an explanation be given when sentencing outside the guidelines. See Commonwealth v. Johnson, 666 A.2d 690 (Pa. Super. 1995)(as the sentencing guidelines are merely advisory, if the court finds it appropriate to sentence outside the guidelines, of course it may do so as long as it places its reasons for the deviation on the record). Defendant’s claim that his sentence is unlawful is simply without merit.

With respect to Defendant’s request to withdraw his plea, since such request is being made after sentencing, Defendant must show prejudice on the order of manifest injustice before withdrawal can be properly justified. Commonwealth v. Muntz, 630 A.2d 51 (Pa. Super. 1993). To show such prejudice, Defendant must show that the plea was involuntary or was entered without knowledge of the charge. Id. The guilty plea colloquy filed of record in this case, however, belies any such assertion,<sup>2</sup> and, in fact, Defendant does not even allege that his plea was involuntary or entered without knowledge of the charge; he merely asserts prosecution in this County was not proper in light of the prosecutions in the other counties, arguing all charges arose from the same criminal episode. Defendant waived the right to raise this issue by pleading guilty, however, as he so acknowledged in the colloquy when he answered yes to the question: “Do you understand that if you plead guilty you are waiving your right to object to anything that you think was improper or illegal in your apprehension and arrest, or in the investigation, and in the prosecution of the charges against you?”

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<sup>2</sup> Defendant indicates in his answers that his lawyer had explained to him all of the elements of the crimes to which he intended to plead guilty, that he fully understood the possible range of sentences that could be imposed, that he

In sum, the Court sees no basis to reduce Defendant's sentence by an additional four months. Defendant's sentence provided him with the full benefit of his bargain, as it was completely in keeping with the plea agreement, and there is absolutely nothing in the record to indicate the plea was unknowing or involuntary.

**ORDER**

AND NOW, this 18<sup>th</sup> day of January 2005, 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 Post-Conviction Collateral Relief raises no genuine issue of fact and Defendant is not entitled to post conviction collateral relief.

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 Motion. 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 Motion.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA  
David W. Campbell, EQ1245, SCI Albion, 10745 Rt. 18, Albion, PA 16475  
James Protasio, Esquire  
Gary Weber, Esquire  
Hon. Dudley Anderson

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understood he did not have to plead guilty but had a constitutional right to a trial by jury, that it was his decision to plead guilty and that he wished to plead guilty because he was guilty.