

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 653 – 2005
	:	CR – 1505 - 2006
	:	CR – 660 - 2006
vs.	:	
	:	CRIMINAL DIVISION
RANDALL RAYMOND,	:	
Defendant	:	PCRA

OPINION AND ORDER

Before the Court is Defendant’s Motion for Post-Conviction Collateral Relief, filed March 22, 2007. A conference on the motion was held May 9, 2007.

On January 24, 2007, Defendant’s parole/probation was revoked and he was sentenced to serve the balance of his sentence in No. CR - 653 – 2005 (a period of approximately four months), a consecutive three month period of incarceration in No. CR – 1505 – 2006, and a consecutive one-year period of probation in No. CR – 660 – 2006. In the instant Motion for Post-Conviction Collateral Relief, Defendant contends his counsel was ineffective for failing to file an appeal from the January 24, 2007, sentence. Although he originally indicated in the petition that certain evidence should have been presented at the sentencing hearing, he now indicates through counsel that there was no evidence which should have been presented, and that the gist of his complaint is that he feels it unfair that he was sentenced to seven months incarceration for the violation, a hot urine.

Since a claim of ineffective assistance of counsel will succeed only where the underlying issue has merit, the Court will first address the merit of Defendant’s claim that his sentence was unfair. It is noted Defendant does not argue that the sentence was illegal, only that “most people get three days to three months”. A review of Defendant’s recent history will serve to explain the basis for the Court’s sentence in this matter.

On October 26, 2005, Defendant pled guilty to criminal trespass and was sentenced to one year probation. On January 12, 2006, by stipulation, additional hours of community service were added as a result of a violation of the conditions of supervision. On February 3,

2006, a bench warrant was issued due to Defendant's absconding from supervision on January 12, 2006. On March 30, 2006, Defendant was arrested on a new charge of criminal trespass,¹ and was released on bail on May 8, 2006. Ten days later, a bench warrant was issued due to Defendant's absconding from supervision on May 15, 2006. On June 9, 2006, Defendant was picked up on that bench warrant and as a result of giving a false name to police, was charged with false identification to authorities. On June 26, 2006, Defendant pled guilty to defiant trespass and was sentenced to one year probation, and was also re-sentenced as a result of the revocation of his probation for the first criminal trespass charge, to six to twelve months incarceration. On October 9, 2006, Defendant pled guilty to false identification and was sentenced to thirty days to one year incarceration, consecutive to the six to twelve month sentence. Defendant was released on parole in December 2006, and on January 23, 2007, was arrested for the violation of his parole/probation involved in the instant motion.

It is apparent that Defendant is either unwilling or unable to comply with conditions of supervision. The Court therefore believes the sentence of incarceration imposed in this matter was appropriate under the circumstances.

Inasmuch as the underlying issue is without merit, the Court would not find Defendant's counsel to be ineffective for having failed to raise it in an appeal.

ORDER

AND NOW, this 24th day of May 2007, 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.

¹ A second count, of defiant trespass, was subsequently added to the information.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
James Protasio, Esquire
Randall Raymond, c/o LCP
Gary Weber, Esq.
Hon. Dudley Anderson