

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

<b>COMMONWEALTH OF</b>	:
<b>PENNSYLVANIA</b>	:
<b>Plaintiff,</b>	:
	:
<b>vs.</b>	: <b>NO. 06-10,554; 06-10,599</b>
<b>CRAIG MCDANIELS,</b>	:
<b>Defendant</b>	:

**OPINION AND ORDER**

This matter comes before the Court on the first amended petition for Post Conviction Collateral Relief filed by Defendant, McDaniels. Previously, the Superior Court had dismissed a direct appeal for failure of the Defendant to preserve the discretionary aspects of the sentence for appellate review. Assuming the Defendant was prejudiced as a result of the failure, the only issue raised in the petition is that the sentence imposed by the Court, that being 2-4 years on the felony count and 1-2 years on the misdemeanor count were excessive and contrary to fundamental norms. Other than that bald statement, there was no specifics stated on why it was excessive or how it was contrary to fundamental norms. No cases have been cited for that proposition.

In deciding whether this was excessive or not it should be remembered that the Court is not bound by the sentencing guidelines. The sentencing guidelines do not apply to sentences imposed as a result of revocation of probation. 204 Pa. Code 303.1(b). Therefore, “the sentencing court obviously need not explain deviation from the guidelines where they do not apply.” Commonwealth v. Phillip, 709 A.2d 920 (Pa. Super. 1998).

The felony on which Defendant was sentenced carried a 7 year maximum sentence and the misdemeanor a maximum 2 year sentence, making a 9 year aggregate sentence possible. Here the Court sentenced Mr. McDaniels to a total aggregate sentence of 6

years, with a 3 year minimum. “In considering whether a sentence was manifestly excessive we must give great weight to the sentencing judge’s discretion as he is in the best position to measure various factors such as the nature of the crime, the defendant’s character, and his displays of remorse, defiance or indifference.” Commonwealth v. Anderson, 552 A.2d 1064 (Pa. Super. 1988) *alloc. Denied*, 571 A.2d 379 (Pa. 1989). It should be remembered that there were multiple violations including two (2) positive drug tests as well as a situation where Mr. McDaniels left the state. The Court noted on the record that Mr. McDaniels lied about having permission to leave the state. The Court is aware of no authority that would make the sentence excessive given the defiance displayed by Mr. McDaniels during his probationary sentence by continuing to use drugs and leaving the state.

Assuming for the sake of argument that the above mentioned reasoning were incorrect, Defendant’s PCRA petition is meritless. Defendant claims that his counsel was ineffective and that the ineffectiveness forms the basis for post conviction relief. The Pennsylvania Supreme Court has laid out a three prong test for determining whether post conviction relief is appropriate based upon a claim of ineffectiveness of counsel. A Defendant must demonstrate that: (1) his underlying claim is of arguable merit; (2) the particular course of conduct pursued by counsel did not have some reasonable basis designed to effectuate his interests; and (3) but for counsel’s ineffectiveness, there is a reasonable probability that the outcome of the proceedings would have been different. A failure to satisfy any prong of the test requires rejection of the claim. Commonwealth v. Sneed, 899 A.2d 1067 (Pa. 2006). Counsel’s acts or omissions relating to the discretionary aspects of sentencing is not considered cognizable because the verdict would not have been different if the alleged mistakes by counsel had not occurred. Commonwealth v. Blackwell, 647 A.2d 915, 926 (Pa. Super. 1994). Counsel cannot be deemed ineffective

for raising a baseless claim. Id. Therefore, because Defendant's underlying claim is meritless, it fails to satisfy the first prong of the test and requires rejection of the claim.

**ORDER**

**AND NOW**, this \_\_\_\_ day of December, 2008, the petition for Post Conviction Collateral Relief is dismissed.

By the Court,

Richard A. Gray, Judge

RAG/kae

cc: Kenneth Osokow, ADA  
Kamam Tallo, Public Defender