

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
v.	:	No. 139-2005; 495-2005
	:	498-2005; 1062-2006
	:	CRIMINAL DIVISION
BERNARD K. DENNIS,	:	PCRA
Defendant	:	

OPINION AND ORDER

Bernard Dennis (Defendant), originally pled and was sentenced by this Court and placed onto the Drug Treatment Court Program. Once the Defendant graduated from Drug Court, he was returned to standard Intermediate Punishment (IP) Supervision. While on that supervision, the Defendant failed to report as instructed and relapsed by using cocaine. On October 3, 2007 the Defendant came before the Honorable Kenneth D. Brown, President Judge, for a preliminary IP violation hearing. In the order issued by the Court, the Defendant was referred to report to his Probation Officer, Drug Court and go back into Counseling at Crossroads along with beginning 90 AA/NA meetings in 90 days. Ultimately, the Defendant failed to comply with these conditions and was immediately scheduled for a final IP violation hearing. On October 24, 2007, Judge Brown revoked his IP sentence under docket # 139 – 2005 and imposed a 1 – 2 year sentence to be served at a State Correctional Facility. Judge Brown approved Defendant to serve some portion of his sentence through community corrections. In addition, he further ordered the Sheriff’s not to transport Defendant until West Branch Drug & Alcohol would have an opportunity to reassess the Defendant to determine if they could find a suitable inpatient placement. Judge Brown took no further action on any violations under dockets # 498-2005 and 1062-2006.

On April 2, 2008, Defendant filed a timely Pro Se Post Conviction Relief Act (PCRA) Petition. On January 5, 2009, an Amended PCRA Petition was filed by court appointed conflict counsel Joel McDermott, Esq., alleging that Defendant was not considered for inpatient treatment, contrary to Judge Brown's sentencing order. In support of Defendant's belief that his PCRA claim is founded, he further asserts that he may challenge the failure to comply to give rise to a habeas corpus challenge, which then gives rise to a claim under the PCRA.

To have a claim under the PCRA a Defendant must prove by a preponderance of the evidence:

(2) That the conviction or sentence resulted from one or more of the following:

- (i) A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
- (ii) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
- (iii) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.
- (iv) The improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.
- (v) Deleted.
- (vi) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.
- (vii) The imposition of a sentence greater than the lawful maximum.
- (viii) A proceeding in a tribunal without jurisdiction

After review of the record, the Court finds the Defendant's assertion without merit. West Branch Drug & Alcohol Abuse Commission interviewed the Defendant on October 19, 2007, after Judge Brown's Order and determined that he only met the criteria for intensive outpatient treatment¹. Therefore, contrary to Defendant's assertion, West Branch did not rely on its September 26, 2007 evaluation in determining that the Defendant met the criteria for outpatient treatment rather than inpatient treatment. Additionally, Judge Brown's order merely stated that the Defendant as to try to obtain additional information from West Branch as to whether there was an inpatient drug program for him. As West Branch determined that only out patient treatment was indicated rather than in-patient treatment, West Branch was in compliance with the Court Order. Furthermore, long gone are the times when a Federal Habeas claim gave rise to a PCRA claim. (under the pre-amended PCRA act with repeal effective January 16, 1996, a petitioner was entitled to relief for any claim "which would require the granting of Federal habeas corpus relief to a State prisoner.)" Commonwealth v. Tedford, 960 A.2d 1, 17 (Pa. 2008). Therefore, the Court finds that even if the Defendant's sentence had not been complied with and thus gave rise to habeas corpus rights, those rights would not trigger PCRA rights before this Court.

Based upon the foregoing, 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. 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.

¹ A letter to that effect was sent by West Branch to the Court, dated October 23, 2007.

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 April 2009, the Defendant and his attorney are notified that it is the intention of the Court to dismiss his PCRA petition unless he files an objection to that dismissal within twenty (20) days of today's date.

By The Court,

Nancy L. Butts, Judge

xc: DA (KO)
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