

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:
	:
vs.	: NO. 691-2007; 693-2007; 1234-2007
	:
MIKE JONES,	:
Defendant	: 1925(a) OPINION

Date: November 17, 2009

OPINION IN SUPPORT OF THE ORDER OF JULY 22, 2009 IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

Defendant, Mr. Jones, has appealed our order of July 22, 2009, which dismissed his PCRA Petition that had been filed on March 27, 2009. In Mr. Jones’s Concise Statement of Issues on Appeal, filed September 1, 2009, Mr. Jones asserts only that we erred by failing to grant relief under the PCRA Act because the Court’s aggregate sentence “...though within the statutory maximums and within the advisory guidelines as to each individual sentence, was nevertheless unreasonable. *See Commonwealth v. Dodge*, 957 A.2d 1198 (2008).”

Following Mr. Jones’s filing of the PCRA petition, counsel was appointed and an on the record conference was held on June 8, 2009 where counsel stipulated that this was a sole issue presented by the PCRA. At that time, we noted on the record and set forth in our order dated June 8, 2009 that the matter of this Court’s sentence and whether or not it was excessive or otherwise whether this Court properly took into consideration all relevant sentencing factors had already been litigated and addressed by the Pennsylvania Superior Court in its decision entered to their docket number 47 MDA 2008, by Memorandum and Opinion filed September 17, 2008 which was docketed in Lycoming County Court on November 3, 2008. As referenced in our order, the Superior Court Opinion made a determination that,

“having reviewed appellant’s brief and the certified record in this matter, we conclude the court below considered all relevant sentencing factors and sentenced appellant appropriately. Judgment of sentence affirmed.”

Decision of September 17, 2008 at page 5.

Accordingly, following the June 8, 2009 proceeding we announced our intention in the order of that date to dismiss the PCRA petition without a hearing. No response was filed to that order. Thus, we further issued our order of July 22, 2009 dismissing the petition.

In as much as the issues raised in the PCRA petition have been previously litigated on appeal, we recommend that this current appeal be dismissed.

Further, we assert that the ruling in *Commonwealth v. Dodge*, 957 A.2d 1198 (Pa. Super 2008) is not applicable. In *Dodge*, the defendant had been sentenced to an aggregate sentence of 58 ½ to 124 years for a series of some 37 thefts. On remand from the Supreme Court, the Pennsylvania Superior Court in applying the standards announced by the Pennsylvania Supreme Court in *Commonwealth v. Walls*, 926 A.2d 957 (Pa. 2007), concluded that based on the record in *Dodge* “...the trial court had abused its discretion in imposing a life sentence for non-violent offenses with limited financial impact.” *Dodge*, 957 A.2d at 1202.

In issuing its opinion of September 17, 2008 as to our present case, the Superior Court panel had the benefit of the Superior Court decision in *Dodge* which had been filed August 1, 2008. The Superior Court in doing so determined that this Court had not abused its discretion and also noted that this Court had abided by the plea bargain as it imposed sentence and had considered Mr. Jones’s age and status as a drug dependent individual and the need for rehabilitation along with other reasons. Mr. Jones, in fact, had been sentenced to an aggregate 51 months and maximum of 240 months under three different cases that included two charges

of possession with intent to deliver heroin, delivery of heroin, and a count of simple assault. Clearly, for these serious crimes given all that we did consider as referenced by the Superior Court in its prior decision, our sentence can not be said to be unreasonable. Mr. Jones's appeal should be dismissed.

BY THE COURT,

William S. Kieser, Senior Judge

cc: Andrea Pulizzi, Esquire
DA
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Judges
Gary L. Weber, Esquire (Lycoming Reporter)