IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	**No. CR-496-2007; CR-722-2007**
	:	
vs.	**:**	**CRIMINAL DIVISION**
	:	
	:	
RONALD DIMASSIMO,	**:**	
Appellant	**:**	**1925(a) Opinion**

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

This opinion is written in support of this Court's Order dated October 8, 2009. After a conference with counsel, the Court entered the Order dated October 8, 2009, giving Appellant notice of its intent to deny his Post Conviction Relief Act (PCRA) petition without holding an evidentiary hearing pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure. The Court entered a final order denying the PCRA petition on or about December 11, 2009. This Opinion is written in response to Appellant's concise statement of error complained of on appeal, which simply states the Court "erred in denying the Defendant's PCRA petition where the record indicates that the Defendant had a legitimate claim." Appellant does not clarify just what his legitimate claim is.

Factually, Appellant had two separate criminal cases pending against him in the Lycoming County Court of Common Pleas, case 496-2007 and case 722-2007. In both cases, Appellant originally entered pleas of guilty on September 11, 2007 before the Honorable Richard Gray with a plea agreement that the sentences would run concurrent to each other. Appellant apparently changed his mind about pleading guilty to the two cases

and he was permitted to withdraw his guilty pleas on November 16, 2007.

On March 6, 2008, Appellant again entered a guilty plea in case 496-2007. The plea was to numerous counts, including aggravated assault of a police officer (a felony of the second degree), two counts of criminal attempt aggravated assault, resisting arrest and driving under the influence of alcohol. At the time of this guilty plea, the Commonwealth still was willing to offer a concurrent sentence in case 722-2007, if Appellant would plead guilty. Appellant, however, did not accept the plea offer on the second case, 722-2007. Appellant's attorney made it clear to the Court that Appellant wished to go to trial on case 722-2007. N.T., March 6, 2008, at 2.

At the end of the guilty plea hearing, the Court inquired whether the Commonwealth would still be willing to offer a concurrent sentence to case 722-2007. The prosecutor responded, "I believe it is." N.T., March 6, 2008, at 36. The Court then went to pains to explain to Appellant the advantages of a concurrent plea offer. ***Id.*** at 37-39. After doing this, the Court gave Appellant an opportunity to discuss the concurrent plea offer with his attorney, Anthony Miele. Appellant and his attorney then repeated to the Court that Appellant did not wish to plead guilty; he wanted a trial in case 722-2007. ***Id***. at 40.

The Court sentenced Appellant in case 496-2007 on May 29, 2008.

Thereafter, Appellant decided he would plead guilty to charges in case 722-2007. He entered his guilty plea on June 13, 2008. The plea agreement reached between the parties provided that two burglary counts in case 722-2007 would be sentenced consecutively to each other and consecutive to the sentence previously imposed by the Court in case 496-2007. No indication was given to Appellant that the prior concurrent offer was back on the table or that a concurrent sentence would be given in case 722-2007.

Appellant confirmed on the record he understood both the written and oral guilty plea colloquy. N.T., June 13, 2008, at 19. Appellant also confirmed to the Court that it was his own decision to enter into this guilty plea. ***Id***. at 20. The Court also discussed on the record that the agreement contemplated consecutive sentences on two burglary counts and that those sentences would be consecutive to the prior sentence in case 496-2007. ***Id***. at 22. The Court also confirmed on the record Appellant's understanding that the sentence in case 722-2007 would increase the time he served in prison from the earlier sentence in case 422-2007. ***Id.*** at 27-28. Appellant indicated he understood this reality. ***Id.*** at 28.

Appellant originally raised his claim that the sentence in 722-2007 should have been concurrent to 496-2007 in a pro se motion styled "Motion for Correction of Sentence." The Court denied this pro se motion by Order of November 21, 2008. In that order, the Court explained the unusual history of this case. At the time of the Order, the Court did not have access to the transcripts of the respective guilty pleas entered by Appellant. Thus, the Court suggested that Appellant file a PCRA petition, which Appellant then did.

In reviewing the pertinent transcripts and history of the case, it is clear Appellant did not avail himself of a possible concurrent plea offer on March 6, 2008, when Appellant refused to plead guilty in case 722-2007 on that date. The Court took pains to advise Appellant of the potential benefit of such an agreement.

When Appellant pleaded guilty to case 722-2007 on June 13, 2008, he was clearly made aware that the prior concurrent offer was no longer available and he was told he would be pleading guilty to an offer that provided for his sentence in case 722-2007 to be consecutive to his prior sentence in case 496-2007. Appellant cannot now blame his prior

attorney for his own poor decision making.

In light of the information of record, it is clear Appellant has no basis for relief in his PCRA petition.

DATE: _____ By The Court,

_____
Kenneth D. Brown, Senior Judge

cc: Kenneth Osokow, Esquire (ADA)
Jeana Longo, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)