

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
v.	:	No. 310-2002
	:	CRIMINAL DIVISION
MARK FISHER,	:	
Defendant	:	PCRA

ORDER

AND NOW, this 15th day of November, 2010, after a conference with Counsel, and upon review of the Defendant's PCRA Petition, it is clear that the Defendant is challenging whether he knowingly, intelligently, and voluntarily entered into his plea agreement. The Defendant asserts that his guilty plea was not knowingly, intelligently and voluntarily entered because he was not aware at the time the plea was entered that if he were found to have violated probation, he could be resentenced to up to seven years of incarceration.

Case law is clear that in order to enter into a guilty plea knowingly, intelligently, and voluntarily, a defendant must understand the maximum punishment that could be imposed for his behavior. See Commonwealth v. Persinger, 615 A.2d 1305 (Pa. 1992). Transcripts of the Guilty Plea and Sentence Proceedings held on March 4, 2002 before the Honorable Dudley N.

Anderson reveal that Judge Anderson expressed to the Defendant, with unambiguous lucidity, that the maximum sentence for his offense was a seven year sentence with a \$15,000 fine. N.T.

4. Furthermore, once the Defendant violated the terms of his probation, the Court had the authority to impose the same sentence available at the time of the original sentencing. See Commonwealth v. Ware, 737 A.2d 251 (Pa. Super. 1999). In this case, the Court had the authority to impose the sentence of one (1) to seven (7) years incarceration in a state correctional

institution.¹ Moreover, the Defendant has an extensive criminal history and was sentenced on at least two prior occasions to periods of probation. On May 20, 1986 the Defendant was sentenced to a four (4) year period of special supervision with the Pennsylvania Board of Probation and Parole, and on November 13, 1995, the Defendant was sentenced to a period of Intermediate Supervision with the Lycoming County Adult Probation Office for a period of thirty (30) days to eighteen (18) months. The Court believes that the Defendant's past experience with the criminal system and his previous sentences to periods of probation provided him with at least a basic knowledge of how the criminal system operates. Therefore, the Court believes that the Defendant did have knowledge that if he violated the terms of his probation, he could be resentenced to a period of incarceration. Thus, the Court finds no basis on which to find that the guilty plea was not knowingly, intelligently, and voluntarily entered into.

Based upon the foregoing, the Court finds no basis upon which to grant the Defendant's PCRA Petition. Additionally, as 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 the Court's intention to deny the Petition. The 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.

¹ In an opinion dated November 13, 2007, the Superior Court of Pennsylvania affirmed the judgment of sentence imposed on the Defendant after the revocation of his probation.

ORDER

AND NOW, this 15th day of November, 2010, the Defendant and his attorney are notified that it is the intention of the Court to dismiss the Defendant's PCRA petition unless he files an objection to that dismissal within twenty days (20) of today's date.

By the Court,

Nancy L. Butts, President Judge

xc: Ken Osokow, Esq.
Joel M. McDermott, Esq.
Mark Fisher - Defendant