

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

COMMONWEALTH	:	
	:	NO: 1508-2005
vs.	:	
	:	
	:	
STEPHEN LYONS	:	
Defendant	:	PCRA

ORDER

On March 1, 2010 following a court conference, Defense counsel was granted an additional 7 days in which to file an Amended PCRA or a Turner-Finley letter indicating no meritorious issues were raised by Defendant’s Petition. On March 8, 2010 Defense Counsel, Joel McDermott submitted a “no merit” letter to the Court in compliance with the requirements of Commonwealth v. Turner, 544 A.2d 927 (Pa. 1988). After an independent review of the entire record, this Court agrees with PCRA counsel and finds that the Defendant has failed to raise any meritorious issues in his PCRA Petition.

On April 28, 2006 the Defendant was sentenced to a six day to six month Intermediate Punishment sentence for Driving Under the Influence. On June 18, 2008, this Court revoked the Defendant’s probation and re-sentenced him to a term of incarceration which has now been completed. The Order of June 18, 2008 specifically stated:

As to each case, the Defendant is hereby re-sentenced to a period of incarceration in the Lycoming County Prison, the minimum of which shall be eighty (85) days and the maximum of which shall be one-hundred and seventy-two (172) days. The Defendant shall be given credit under Case No.

1446-2005 from April 16, 2006 to May 20, 2007 and from June 11, 2007 to October 26, 2007. The Defendant shall also be given credit for time served under Case No. 1508-2005 from May 21, 2006 to May 26, 2006, October 27, 2007 to January 6, 2008 and from March 7, 2008 to June 10, 2008. **The Court recognizes the Defendant's credit for time served equaling the maximum sentence of the Defendant, the Defendant is hereby released from supervision.** (Emphasis added).

The eligibility requirements for post conviction relief are set forth in Section 9543 of the Post Conviction Relief Act.

42 Pa.C.S.A. § 9543(a)(1)(i) provides:

(a) General rule.—To be eligible for relief under this subchapter, the petitioner must plead and prove by a preponderance of the evidence all of the following:

(1) That the petitioner has been convicted of a crime under the laws of this Commonwealth **and is at the time relief is granted:**

(i) currently serving a sentence of imprisonment, probation or parole for the crime;

Pennsylvania courts have unequivocally held that once a sentence has been served, no post-conviction relief may be had. Commonwealth v. Williams, 977 A.2d 1174 (Pa.Super. 2009).

Because the Defendant is no longer serving a sentence, or under supervision under CR-1508-2005, 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. Pursuant to Pennsylvania Rule of Criminal Procedure 907(1), the parties are hereby notified of this Court's intention to deny the Petition. 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.

AND NOW, this 11th day of March, 2010, it is hereby ORDERED and DIRECTED as follows:

1. Defendant is hereby notified pursuant to Pennsylvania Rule of Criminal Procedure 907(1) 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.
2. The Petition for Permission to Withdraw as Counsel filed March 9, 2010 is hereby GRANTED and Joel M. McDermott, Esquire may withdraw his appearance in the above-captioned matter.
3. The Defendant's Motion for Change of Counsel filed March 10, 2010 is hereby DENIED as moot.

BY THE COURT,

Richard A. Gray, J.

cc: District Attorney (KO)

Joel McDermott, Esquire

Stephen Lyons, #HU0364
SCI Albion
10745, Route 18
Albion, PA 16475-0002

Gary L. Weber, Esquire