

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
v.	:	No. 1662-2007
	:	CRIMINAL DIVISION
LEE PARKER,	:	
Defendant	:	PCRA

OPINION AND ORDER

On January 12, 2010, the Defendant filed a *Pro Se* Post Conviction Relief Act (PCRA) Petition. On February 18, 2010, Court appointed counsel for the Defendant, Andrea Pulizzi, filed an Amended PCRA Petition, and on March 9, 2010, Ms. Pulizzi filed an amendment to the PCRA Petition. In his Amended PCRA Petition, the Defendant alleges ineffective assistance of trial counsel. For the following reasons, the Court finds that the Defendant has not established sufficient grounds for relief under the PCRA.

Background

The Commonwealth charged the Defendant with Burglary, Criminal Trespass, Theft By Unlawful Taking, and Receiving Stolen Property, arising out of his stealing of item from his place of employment, Gamble Farm Inn, in Jersey Shore, Pennsylvania. The Defendant entered a guilty plea to the charge of Burglary. The trial court conducted an oral colloquy and reviewed the written guilty plea with the Defendant. Following the trial court's acceptance of the Defendant's guilty plea, on October 20, 2008, the Court sentenced the Defendant to fifteen (15) to thirty (30) months in prison with a consecutive five year probation term. The Defendant initially filed a Motion for Reconsideration of his sentence on October 31, 2008, claiming that the sentence was excessive. This Court denied the Defendant's Motion as said Motion was

untimely filed. The Defendant then filed a timely Notice of Appeal on November 19, 2008. In his Appeal, the Defendant challenged the discretionary aspects of his sentence. The Superior Court concluded that the Defendant's claim was waived on appeal as he failed to raise the discretionary aspect of his sentence claim during his sentencing proceedings or in a timely post-sent motion. See Commonwealth v. Mann, 820 A.2d 788, 794 (Pa. Super. 2003). On January 12, 2010, the Defendant filed a *Pro Se* Post Conviction Relief Act (PCRA) Petition. On February 18, 2010, Court appointed counsel for the Defendant, Andrea Pulizzi, filed an Amended PCRA Petition and on March 9, 2010, Ms. Pulizzi filed an amendment to the PCRA Petition.

Discussion

The Defendant contends in his PCRA Petition that trial counsel was ineffective because if the Public Defender's Office would have filed a timely Motion for Reconsideration of Sentence, the Defendant would have been successful in his appeal with the Superior Court.

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

42 Pa.C.S. § 9543

It appears that the Defendant's claim could arguably fall under 42 Pa.C.S. § 9543(2)(ii). However, even though the Superior Court ultimately dismissed the Defendant's appeal, the Superior Court did address the merits of the Defendant's Motion for a Reconsideration of Sentence. The Superior Court determined that the Defendant "failed to set forth the specific provision of the Sentencing Code or a fundamental norm underlying the sentencing process that the trial court violated in imposing the sentence" and that the trial court "did consider Parker's history of mental illness, his cooperation with the authorities, his need for a high level of supervision, and his employment by the victim when fashioning the sentence." See Superior Court Opinion, 11/13/09, at 4 n.4. It is clear that even if trial counsel were to have filed the Defendant's Motion for Reconsideration of Sentence in a timely manner, the Superior Court would still have affirmed the judgment of sentence in this case, as said Motion lacked merit. Therefore, the Court concludes that trial counsel's failure to timely file the Defendant's Motion

for Reconsideration of Sentence did not undermine the truth determining process such that “no reliable adjudication of guilt or innocence could have taken place.” 42 Pa.C.S. 9543(2)(ii).

ORDER

AND NOW, this _____ day of July, 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.
Andrea Pulizzi, Esq.
Lee Parker HU5819
SCI Graterford
PO Box 244
Graterford, PA 19426