



to commence serving his sentence on March 31, 2009, without prejudice to file a petition under the Post Conviction Relief Act (PCRA).

On March 31, 2009, Defendant's appeal rights were reinstated. Defendant filed post-sentence motions on April 6, 2009, which were denied on June 15, 2009. Defendant filed a Notice of Appeal on June 29, 2009. On March 9, 2010, the Superior Court of Pennsylvania denied the Defendant's Post-Sentence Motions. The Court discovered that Defendant had not been ordered to report to Lycoming County Prison. On March 22, 2011, Defendant was ordered by this Court to report to prison by April 5, 2011. Defendant's sentence did not commence until April 5, 2011. On October 6, 2011, the Defendant filed a *Pro Se* PCRA Petition. Lori Rexroth, Esq., Court appointed counsel for the Defendant, filed an Amended Motion for Post Conviction Collateral Relief.

### ***Discussion***

The Defendant contends in his PCRA Petition that his substantive due process rights were violated by the long delay from the time of the imposition of the sentence to the service of the sentence. 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

In West, the Superior Court of Pennsylvania determined that a claim that Defendant's substantive due process rights were violated by the lengthy delay in the execution of the sentence is not cognizable under the PCRA. Commonwealth v. West, 2005 Pa. Super. 61, 868 A.2d 1267, 1272 (Pa. Super. 2005). The Defendant's plea for relief "sounds in habeas corpus" and therefore the argument should be made within the habeas corpus framework. Id. Therefore, Defendant's PCRA Petition should be dismissed and the claim should be brought through a petition for habeas corpus relief.

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of May, 2012, the Defendant and his attorney are notified that it is the intention of the Court to dismiss the Defendant's PCRA petition because it is not cognizable under the PCRA. The Court will dismiss Defendant's claim unless Defendant files an objection to that dismissal within twenty days (20) of today's date.

By the Court,

Nancy L. Butts, President Judge

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