

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
v.	:	No. 268-2007
	:	CRIMINAL DIVISION
ANTHONY KEELS,	:	
Defendant	:	PCRA

OPINION AND ORDER

On August 29, 2011, the Defendant filed a Post Conviction Relief Act (PCRA) Petition from the December 17, 2010 Order of this Court which revoked the Defendant's previous sentence of Intermediate Punishment Supervision (IP) and resentenced him to state incarceration. As this is the Defendant's first PCRA Petition, he was appointed counsel; however, following a Grazier hearing on November 3, 2011, the Defendant chose to proceed pro-se. Following a video-conference on the PCRA Petition on December 16, 2011, the Court reviewed the merits of the Petition and determined that a hearing on the issues raised was not warranted. Therefore, this Opinion will address the merit of the issues raised in the Petition.

Background

Following the December 17, 2010 hearing on the bench warrant issued for the Defendant's failure to comply with the Sentencing Order of August 6, 2007, the bench warrant was made absolute and the Court found beyond a reasonable doubt that the Defendant violated the terms of IP when he failed to appear for sentencing on August 13, 2007. The Court found that the Defendant was placed on IP on August 6, 2007 and that only the incarceration portion of his sentence was deferred until August 13, 2007; therefore, the Court revoked the Defendant's sentence on IP and the Defendant was resentenced on Count 3, Possession with the Intent to

Deliver a Controlled Substance (cocaine), an ungraded felony, to state incarceration for two (2) to five (5) years.

Discussion

Following his resentencing, the Defendant filed a PCRA Petition alleging that he is entitled to relief as a result of a violation of the Constitution that so undermined the truth determining process that no reliable adjudication of guilt or innocence could have taken place, ineffective assistance of counsel, and the unavailability at the time of trial of exculpatory evidence that has subsequently become available.

In his initial Petition and in his brief submitted to the Court following the February 6, 2012 video-conference in this matter, the Defendant alleges that the facts entitling him to relief are that at the time of the original plea before the Honorable Dudley N. Anderson there was no plea colloquy, no witnesses were produced, and the plea was not entered into voluntarily, knowingly or intelligently. The plea to which the Defendant refers was entered into on August 6, 2007; therefore, the Court finds that the PCRA Petition filed August 29, 2011 was untimely pursuant to 42 Pa.C.S. 9545(b)(1). See Commonwealth v. Anderson, 788 A.2d 1019 (Pa. Super. 2001) where the a defendant's PCRA petition filed following a probation revocation was untimely as the facts challenged the effectiveness of trial counsel during the earlier plea, rather than a challenge to the validity of the revocation proceedings or the legality of the sentence imposed therein. Although the Defendant attempts to invoke an exception to the timeliness requirement under 42 Pa.C.S. 9545(b)(1)(ii) the Court does not find that the facts alleged were unknown to the Defendant at the time he could have filed a timely Petition. In fact, as noted above, the Court finds that the Defendant's PCRA Petition was not filed until 2011 as a result of

the Defendant's evasion of sentence for several years. This Court believes that the should not receive any benefit or forgiveness for failing to appear.

The Defendant also alleges that he is entitled to relief under the PCRA as his IP revocation hearing and PCRA Petition should have both been handled by Judge Anderson as he was the original judge in the case, and that he received ineffective assistance of counsel at the time of his December 17, 2010 hearing. As to the Defendant's first allegation, the Court finds nothing in the Pennsylvania Rules of Criminal Procedure to support the Defendant's claim that his proceedings should have been handled by Judge Anderson just because he was the initial judge assigned to his case. The Court also notes that had the Defendant reported to the Lycoming County Prison on August 13, 2007 as Judge Anderson originally ordered, there would have been no need for an IP revocation hearing. Also, Lycoming County procedure provides for one judge to handle violation hearings each week.

As to the Defendant's allegation that he received ineffective assistance of counsel at the time of his December 17, 2010 hearing, a review of the transcript of the hearing establishes that this is not the case. At the time of the hearing, Defense Counsel did ask for a continuance as he had just met the Defendant that morning and did not have the requisite information to proceed. See N.T. 12/17/10, p. 3. However, as the Defendant's case had already lingered for multiple years due to the Defendant having absconded, the Court granted Defense Counsel a recess at that time and reconvened later that same day to proceed with the hearing. See N.T. 12/17/10, p. 3. As Defense Counsel was granted all the time he needed to speak with the Defendant and with his agreement and was able to proceed with sentencing that day, the Court can find no merit to the Defendant's contention of ineffective assistance of counsel, for which the Defendant would have to establish:

(1) the underlying claim has arguable merit; (2) no reasonable basis existed for counsel's actions or failure to act; and (3) petitioner suffered prejudice as a result of counsel's error such that there is a reasonable probability that the result of the proceeding would have been different absent such error.

Commonwealth v. Reed, 971 A.2d 1216, 1221 (2009). See Commonwealth v. Pierce, 527 A.2d 973 (1987) and since the Defendant cannot, his claim fails.

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.

ORDER

AND NOW, this _____ day of April, 2012, the Defendant is 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. This decision will be served on the Defendant as set forth in Pa.R.Crim.P. 907(1).

By the Court,

Nancy L. Butts, President Judge

xc: DA
Anthony Keels
#JW-4168
SCI Retreat
State Route 11
Hunlock Creek, PA 18621-3136