

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	No: 157-2009
v.	:	
	:	CRIMINAL DIVISION
DARSEAN E. MOSLEY,	:	APPEAL
Defendant	:	

OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a)
OF THE RULES OF APPELLATE PROCEDURE

The Defendant appeals the Orders of the Court dated December 11, 2011 and January 31, 2012, which decisively dismissed the Defendant's PCRA Petition. A timely Motion for Post Conviction Collateral Relief was filed November 5, 2009 and the Court appointed as Counsel Donald F. Martino, Esquire. In an Opinion and Order dated January 3, 2011, the Court granted Attorney Martino leave to withdraw following consideration of his Motion to Withdraw as Counsel. The Court also notified the Defendant of its intention to dismiss the Petition within twenty (20) days, as the Court found that the issues raised were without merit.

On December 14, 2011, Defendant filed a Second PCRA Petition, for which the Court did not appoint Counsel. At that time, the Court became aware that an Order dismissing the first Petition had not yet been filed, and subsequently issued the Order dismissing the first PCRA Petition on December 22, 2011. Following a review of the second PCRA Petition, the Court determined that it was without jurisdiction to decide the matter and on December 23, 2011, notified the Defendant of its intention to dismiss the Petition within twenty (20) days. The Defendant filed a Notice of Appeal on January 13, 2012 and on January 30, 2012, this Court directed the Defendant, in accordance with Pa.R.A.P. No. 1925(b), to file within thirty (30) days a concise statement of matters complained of on appeal. On January 31, 2012, the Court issued an Order dismissing the second PCRA Petition. The Defendant's concise statement was not filed

with the Court but was received on February 9, 2012 through the mail as correspondence, which the Court filed with the Prothonotary. The Defendant's concise statement dealt with issues raised in both his first PCRA and his second PCRA. On February 12, 2012, the Court received a second Notice of Appeal for Defendant's second PCRA. The issues stated were the same as those stated in the first Notice of Appeal for the first PCRA. The Court now addresses all the issues raised from both the first and second PCRA Petitions raised by the Defendant.

The Defendant raises three issues on appeal: 1) that the plea agreement was in violation of the Fifth, Eighth, and Fourteenth Amendments of the U.S. Constitution and Pennsylvania Constitution Article 1 § 9 because it was outside sentencing guidelines; 2) that his guilty plea and sentence were illegal under the Double Jeopardy clause of the Fifth Amendment of the United States Constitution because he alleges that he received multiple punishments for one offense; and 3) that the plea agreement was in violation of the Fifth, Eighth, and Fourteenth Amendments and Pennsylvania Constitution Article 1 § 9 because it was coerced.

Whether the plea agreement was in violation of the Fifth, Eighth, and Fourteenth Amendments of the U.S. Constitution and Pennsylvania Constitution Article 1 § 9 because it was outside sentencing guidelines

For purposes of this Opinion and on the first issue alleging the Court imposed an illegal sentence because it was outside sentencing guidelines, the Court will rely on Judge Butts's Opinion and Order dated December 23, 2011, which denied the Defendant's second PCRA Petition.

Although the Court dismissed Defendant's petition as untimely, upon review of the claim itself the Court finds that the issue lacks merit. The Defendant alleges that his plea agreement is illegal because it was outside the sentencing guidelines. In Pennsylvania, there is a distinction between an "open plea" and a "negotiated plea." Commonwealth v. Dalberto, 436 Pa. Super.

391, 396, 648 A.2d 16, 19 (Pa. Super. 1994). “Where a plea agreement is an open one as opposed to one for a negotiated sentence, unquestionably, after sentencing the defendant can properly request reconsideration as the court alone decided the sentence and no bargain for a stated term, agreed upon by the parties, is involved.” *Id.* at 397. “Where the plea agreement contains a negotiated sentence which is accepted and imposed by the sentencing court, there is no authority to permit a challenge to the discretionary aspects of that sentence.” *Id.* at 399.

In this case, both the written and oral guilty plea colloquy informed the Defendant that the Judge was not bound by the terms of the plea agreement; however, Judge Brown did agree to comply with the terms of the plea agreement and sentenced the Defendant accordingly. N.T.31. The plea agreement was a negotiated sentence followed by the Sentencing Judge and therefore there is no authority to permit a challenge on the discretionary aspects of that sentence.

Whether the guilty plea and sentence were illegal under the Double Jeopardy clause of the Fifth Amendment of the U.S. Constitution

For purposes of this Opinion and the second issue of an illegal sentence due to double jeopardy, the Court will rely on Judge Butts’s Opinion and Order dated December 23, 2011, which denied the Defendant’s second PCRA Petition because it was not filed within one year of the date the judgment became final and did not fall within one of the enumerated exceptions.

Again, even if the petition was timely filed, the Court finds that Defendant’s claim of double jeopardy has no merit. Defendant alleges that his guilty plea and sentence were illegal because he received multiple punishments for one offense. “Where there is but one act of cause of injury, or death of a number of persons, there is but one injury to the Commonwealth, but where the acts or causes are separate, they are separate injuries to the peace and dignity of the Commonwealth.” Commonwealth v. Walker, 468 Pa. 323, 331-32, 362 A.2d 227, 231 (Pa.

1976). For a Court to impose two sentences there must be a finding that two injuries occurred to the Commonwealth. Id.

Here, Defendant's sentence was a result of two injuries occurring against the Commonwealth. The Sentencing Order states that "[t]he offenses involved robberies of a [convenience] market on two occasions with use of a knife in obtaining the money." The Court sentenced the Defendant for Count 1 Robbery and for Count 2 Robbery. Therefore, because two robberies occurred on two different occasions, there were two injuries to the Commonwealth and the Court properly sentenced the Defendant.

Whether the plea agreement was in violation of the Fifth, Eighth, and Fourteenth Amendments of the U.S. Constitution and Pennsylvania Constitution Article 1 § 9 because it was coerced

For purposes of this Opinion and the third issue of the Defendant's plea agreement being coerced, the Court will rely on Judge Butts's Opinion and Order dated January 3, 2011, which found that the Defendant's plea was knowingly, intelligently, and voluntarily entered and not coerced.

DATE: _____

By the Court,

Nancy L. Butts, President Judge

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