

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	
<b>v.</b>	:	<b>No. 273-CR-2008</b>
	:	<b>CRIMINAL DIVISION</b>
<b>RONALD SANDER, JR.,</b>	:	
<b>Defendant</b>	:	<b>PCRA</b>

**OPINION AND ORDER**

On April 30, 2012, current Counsel for the Defendant filed a Motion to Withdraw as Counsel along with a Motion to Dismiss pursuant to Commonwealth v. Turner, 544 A.2d 927 (1988) and Commonwealth v. Finley, 550 A.2d 213 (Pa.Super.1988). After an independent review of the entire record, the Court agrees with PCRA Counsel and finds that the Defendant has failed to raise any meritorious issues in his PCRA Petition, and that his petition should be dismissed.

***Background***

Ronald Sander, Jr., was charged on February 7, 2008 with Involuntary Deviate Sexual Intercourse of a person under the age of thirteen (13), Indecent Assault, Corruption of Minors, and Unlawful Sexual Contact with a Minor. On December 16, 2008, Defendant pled guilty to Corruption of Minors and Unlawful Sexual Contact with a Minor pursuant to a negotiated plea agreement whereby he would receive a sentence of six (6) to sixteen (16) years incarceration. Accordingly, on April 2, 2009, Defendant was sentenced to six (6) to sixteen (16) years in a State Correctional Institution.

On April 7, 2009, Defendant filed a Motion to Modify Sentence, which was denied on May 1, 2009. On the same day, Defendant filed an appeal to the Superior Court of Pennsylvania, which was denied on June 23, 2010. Defendant filed a *pro se* Petition for Allowance of Appeal with the Supreme Court of Pennsylvania on July 27, 2010, which was denied on April 5, 2011.

On March 5, 2012, Defendant filed a Post Conviction Relief Act (PCRA) Petition. Donald F. Martino, Esquire was appointed to represent the Defendant for his PCRA Petition. On April 30, 2012, Attorney Martino filed a Motion to Withdraw as Counsel as he determined that the PCRA Petition lacked merit. After an independent review of the record, the Court agrees with Attorney Martino and finds that Defendant fails to raise any meritorious issues in his PCRA Petition.

### ***Discussion***

Defense Counsel's Turner-Finley letter to the Defendant sets forth with specificity the issues raised in the Defendant's PCRA Petition: (1) Defendant's conviction was obtained in violation of the U.S. Constitution, specifically that he was interviewed illegally prior to his arrest; (2) Defendant was deprived of his Fourteenth Amendment Due Process right to notice of the charges against him and notice of the elements of the charges against him; specifically that the fourth count of the Information was added at the time of his guilty plea; (3) Defendant was denied his Fifth Amendment Double Jeopardy protections through multiple prosecutions; (4) Defendant's multiple sentences for the same offense based on a single criminal act were illegal and also in violation of Fifth Amendment Double Jeopardy protections; (5) the Court abused its discretion in sentencing Defendant outside the sentencing guideline range; (6) Defendant was deprived his Sixth Amendment right to effective assistance of counsel regarding the plea agreement and sentencing; and (7) Defendant was deprived of his Fourteenth Amendment right to the effective assistance of appellate counsel for failing to raise appropriate appellate claims and filing a brief in accordance with Anders v. California, 386 U.S. 738 (1967) and Commonwealth v. McClendon, 434 A.2d 1185 (1981).

***Defendant's conviction was obtained in violation of the U.S. Constitution; specifically that he was interviewed illegally prior to his arrest***

Defendant contends that his conviction was obtained in violation of the U.S. Constitution because he was interviewed illegally prior to his arrest. "Where the record clearly demonstrates that a guilty plea colloquy is conducted, during which it became obvious the defendant understood the nature of the charges against him, the voluntariness of the plea is established." Commonwealth v. Lewis, 634 A.2d 633 (Pa. Super. 1993). The entry of a plea of guilty "usually constitutes a waiver of all defects and defenses except those concerning the jurisdiction of the court, legality of sentence, and validity of plea." Commonwealth v. Coles, 530 A.2d 453, 457 (Pa. Super. 1987); Commonwealth v. Moyer, 444 A.2d 101 (1982); Commonwealth v. Casner, 461 A.2d 324 (1983).

Here, Defendant pled guilty pursuant to a plea agreement where he would receive a sentence of six (6) to sixteen (16) years incarceration. Defendant completed and signed a guilty plea colloquy, which also had the plea agreement attached. On April 2, 2009, Defendant was sentenced in accordance with the terms of the plea agreement. On December 16, 2008, the Court reviewed the terms of the plea agreement with the Defendant. The Defendant provided a factual basis for the charges against him. Defendant also indicated that he was pleading guilty on his own freewill, that it was his ultimate decision, and that he understood the plea agreement. The Court believes the record is clear that the Defendant entered a guilty plea voluntarily. In doing so, Defendant waived all defects and defenses except those concerning the jurisdiction of the court, legality of sentence, and validity of the plea. Therefore, the Court finds that Defendant has waived the issue of whether he was illegally interviewed prior to his arrest.

***Defendant was deprived of his Fourteenth Amendment Due Process right to notice of the charges against him and notice of the elements of the charges against him; specifically that the fourth count of the Information was added at the time of his guilty plea***

The Court adopts the reasoning used in the first issue to find that Defendant has waived this issue by entering a knowing and voluntary guilty plea. Notwithstanding waiving this issue, the Court also believes that the Defendant's issue lacks merit. The Defendant entered into a plea agreement prior to him pleading guilty. On December 16, 2008, the Court explained to the Defendant each crime and what the maximum punishment would be for each crime prior to him pleading guilty. The Defendant was fully aware of the charges against him based on the plea agreement he entered and the Court explaining the charges to him. Further, Defendant could have still withdrawn his guilty plea prior to sentencing on April 2, 2009. The Supreme Court has explained that there is no absolute right to withdraw a guilty plea, however, a pre-sentence request to withdraw a guilty plea should be liberally granted when there exists any fair and just reason for the withdrawal. Commonwealth v. McLaughlin, 366 A.2d 238 (Pa. 1976); Commonwealth v. Forbes, 299 A.2d 268, 271 (Pa. 1973). Therefore, the Court finds that the Defendant was aware of the charges against him prior to his guilty plea and that this issue lacks merit.

***Defendant was denied his Fifth Amendment Double Jeopardy protections through multiple prosecutions***

The Court adopts the reasoning used in the first issue to find that Defendant has waived this issue by entering a knowing and voluntary guilty plea. Further, the Court believes that the Defendant's Double Jeopardy claim does not have any merit.

The Double Jeopardy Clause bars any subsequent prosecution in which the government, to establish an essential element of an offense charges in that prosecution, will prove conduct that constitutes an offense for which the defendant has already been prosecuted . . . . The critical inquiry is what conduct the state will prove, not the evidence the state use to prove that conduct.

Commonwealth v. Aikins, 618 A.2d 992, 993 (Pa. Super. 1993) (citing Grady v. Corbin, 495 U.S. 508, 521 (1990)).

Here, Defendant was only prosecuted once under the docket CR-273-2008 for events that occurred on August 31, 2007. The Court is only aware of two other cases against the Defendant, which were the result of offenses that occurred on August 21, 2007 and September 17, 2007 for Criminal Mischief and Simple Assault, respectively. The Court is unclear on how his charges of Involuntary Deviate Sexual Intercourse of a person under the age of thirteen, Indecent Assault, Corruption of Minors, and Unlawful Sexual Contact with a Minor constitute Double Jeopardy in this circumstance. Therefore, for the reasons discussed, the Court believes that the Defendant's issue lacks merit.

***Defendant's multiple sentences for the same offense based on a single criminal act were illegal and also in violation of Fifth Amendment Double Jeopardy protections***

The Court adopts the reasoning used in the first issue to find that Defendant has waived this issue by entering a knowing and voluntary guilty plea. In addition, the Court finds that Defendant's Double Jeopardy issue lacks merit. Defendant received a sentence of six (6) to sixteen (16) years incarceration on the offense of Unlawful Contact with a Minor. The Corruption of Minors charge, which resulted in a sentence of one (1) to two (2) years incarceration, ran entirely concurrent to the offense of Unlawful Contact with a Minor. Defendant received one (1) sentence of six (6) to sixteen (16) years, which was in accordance to the plea agreement, which the Defendant accepted.

***The Court abused its discretion in sentencing Defendant outside the sentencing guideline range***

The Court adopts the reasoning used in the first issue to find that Defendant has waived this issue by entering a knowing and voluntary guilty plea. Further, the Court finds that the issue

also lacks merit because the Court did not sentence the Defendant outside the sentencing guidelines. Pennsylvania's maximum sentence for Unlawful Sexual Contact with a Minor, a felony of the first degree, is twenty (20) years and a \$25,000 fine. Unlawful Sexual Contact with a Minor, 18 Pa.C.S. § 6318, has the same Offense Gravity Score (OGS) as the underlying offense, if it is a F3 or greater. Here, the underlying offense was Involuntary Deviate Sexual Intercourse – Juvenile, a felony one, which has an OGS of fourteen (14). The maximum sentence for Corruption of Minors, a misdemeanor of the first degree, is five (5) years and a fine of \$10,000. The Court believes that the Defendant had a Prior Record Score of zero (0) at the time of sentencing giving him a standard range of 72 to the statutory limit. Therefore, Defendant's sentence of six (6) to sixteen (16) years is consistent with the sentencing guideline range.

***Defendant was deprived his Sixth Amendment right to effective assistance of counsel regarding the plea agreement and sentencing***

Once again, the Court adopts the reasoning used in the first issue to find that Defendant has waived this issue by entering a knowing and voluntary guilty plea. Moreover, the Defendant's issue of being deprived of effective counsel lacks merit. To make a claim for ineffective assistance of counsel, a defendant must prove the following: (1) an underlying claim of arguable merit; (2) no reasonable basis for counsel's act or omission; and (3) prejudice as a result, that is, a reasonable probability that but for counsel's act or omission, the outcome of the proceeding would have been different. Commonwealth v. Cooper, 941 A.2d 655, 664 (Pa. 2007) (citing Commonwealth v. Carpenter, 725 A.2d 154, 161 (1999)). A failure to satisfy any prong of this test is fatal to the ineffectiveness claim. Cooper, 941 A.2d at 664 (citing Commonwealth v. Sneed, 899 A.2d 1067, 1076 (2006)). Further, Counsel is presumed to have been effective.

Id.

The Defendant fails to specify why he was given ineffective assistance of counsel. The sentence was consistent with the sentencing guidelines. The sentence was also in accordance to the plea agreement that the Defendant entered with the Commonwealth. The Court is unable to see any meritorious issue of an ineffective assistance of counsel claim and therefore believes the Defendant's issue lacks merit.

***Defendant was deprived of his Fourteenth Amendment right to the effective assistance of appellate counsel for failing to raise appropriate appellate claims and filing a brief in accordance with Anders v. California, 386 U.S. 738 (1967) and Commonwealth v. McClendon, 434 A.2d 1185 (1981).***

Defendant contends that appellate counsel failed to raise appropriate appellate claims and was ineffective for filing a petition to withdraw, which was granted by the Pennsylvania Superior Court. As stated above, to make a claim for ineffective assistance of counsel, a defendant must prove the following: (1) an underlying claim of arguable merit; (2) no reasonable basis for counsel's act or omission; and (3) prejudice as a result, that is, a reasonable probability that but for counsel's act or omission, the outcome of the proceeding would have been different.

Commonwealth v. Cooper, 941 A.2d 655, 664 (Pa. 2007) (citing Commonwealth v. Carpenter, 725 A.2d 154, 161 (1999)). A failure to satisfy any prong of this test is fatal to the ineffectiveness claim. Cooper, 941 A.2d at 664 (citing Commonwealth v. Sneed, 899 A.2d 1067, 1076 (2006)). Further, Counsel is presumed to have been effective. Id.

Here, Defendant appealed the Pennsylvania Superior Court challenging the discretionary aspects of his sentence and the validity of his guilty plea. Defendant's counsel filed a petition to withdraw and a brief under Anders v. California, 386 U.S. 738 (1967) and Commonwealth v. McClendon, 434 A.2d 1185 (1981) arguing that Defendant's appeal was wholly frivolous. The Superior Court granted counsel's petition to withdraw and affirmed the judgment of sentence. Commonwealth v. Sander, No. 760 MDA 2009, slip op. at 1 (Pa. Super. Filed June 23, 2010).

The Pennsylvania Super Court stated that “[i]n addition to examining the issues presented by appellate counsel in her Anders brief, we have conducted an independent review of the entire record and we cannot discern any other potentially non-frivolous issues. In light of the foregoing, we grant counsel’s petition to withdraw and affirm the judgment of sentence.” Id. at 7. Therefore, the Court finds that Defendant’s issue lacks merit because counsel did not have a meritorious issue to raise on appeal and properly filed a motion to withdraw as counsel.

### ***Conclusion***

Based upon the foregoing, 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. As such, no further hearing will be scheduled. Pursuant to Pennsylvania Rule of Criminal Procedure 907(1), the parties are hereby notified of this Court’s intention to deny the Defendant’s PCRA 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 May, 2012, it is hereby ORDERED and DIRECTED as follows:

1. Defendant is hereby notified pursuant to Pennsylvania Rule of Criminal Procedure No. 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 application for leave to withdraw appearance filed April 30, 2012, is hereby GRANTED and Donald Martino, Esq. may withdraw his appearance in the above captioned matter.

By the Court,

Nancy L. Butts, President Judge

xc:    DA  
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