

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**ROBERT LYONS,
Defendant**

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**No. CR-1417-2012
CRIMINAL**

OPINION AND ORDER

The Defendant filed a Petition for Habeas Corpus on June 18, 2013. As a result of continuances filed by the Defendant and scheduling video conferences with SCI Benner Township, a hearing on the Petition was held on November 19, 2013.

Background

On November 21, 1988, Robert Lyons (Defendant) pled guilty before the Honorable Thomas C. Raup for the charge of Manufacturing of a Controlled Substance.¹ On February 16, 1989, the Defendant was sentenced by Judge Raup to imprisonment for four (4) to eighteen (18) months in the Lycoming County Prison.

Subsequently, the Defendant was charged in 2012 with various assault and harassment charges. In addition, the Defendant was charged with two counts of Persons Not to Possess, which were severed from the remaining charges. Following a jury trial, the Defendant was found guilty of three (3) counts of Simple Assault, one (1) count of Possession of Weapon, one (1) count of Terroristic Threats, three (3) counts of Aggravated Assault, and one (1) count of Recklessly Endangering Another Person. The Defendant filed an appeal to the Superior Court of Pennsylvania, which is still pending. Due to the appeal, the Court's record under this docket has been transmitted to the Superior Court.

¹ 35 P.S. § 780-113(a).

Concerning the outstanding Persons Not to Possess Charge with this Court, the Defendant filed a Petition for Writ of Habeas Corpus. The Defendant contends that that he is not excluded from possessing a firearm based on his conviction in 1989 for Manufacturing of a Controlled Substance. The Commonwealth strongly disagrees and argues that the Petition is meritless.

Discussion

The only issue presented by the Defendant is whether he is lawfully charged with Persons Not to Possess. The relevant sections of § 6105 of the Pennsylvania Crimes Code states:

(a) Offense defined.

(1) A person who has been convicted of an offense enumerated in subsection (b), within or without this Commonwealth, regardless of the length of sentence of whose conduct meets the criteria in subsection (c) shall not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth.

....

(b) Other persons. – In addition to any person who has been convicted of any offenses listed under subsection (b), the following persons shall be subject to the prohibition of subsection (a):

....

(2) A person who has been convicted of an offense under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or any equivalent Federal Statute or equivalent statute of any other state, that *may be punishable by a term of imprisonment exceeding two years*.

18 Pa.C.S. § 6105 (emphasis added). Therefore, the Defendant was properly charged if he had been convicted of an offense under the Controlled Substance, Drug, Device, and Cosmetic Act that was punishable by a term of imprisonment exceeding two years.

The Defendant pled guilty and was sentenced on a charge of Manufacturing of a Controlled Substance (marijuana). In 1989, when the Defendant was sentenced, the third edition of the Sentencing Guidelines was being applied.² The parties are in agreement that the statutory maximum for the Defendant's offense was five (5) years.

The Defendant's argument, however, focuses on the fact that the Defendant did not actually receive a sentence that exceeded two (2) years, as he was sentenced to four (4) to eighteen (18) months. This argument appears to have no merit based solely on the statutory language of "may be punishable by a term of imprisonment exceeding two years."

However, the Defendant further argues in support of his position a case by the Supreme Court of Pennsylvania. In Paulshock, the defendant was disqualified from gun ownership under 18 Pa.C.S. § 6105. PA State Police v. Paulshock, 836 A.2d 378 (Pa. 2003). Almost thirty years later the defendant successfully petitioned a Common Pleas Court to allow him to again have access to guns under 18 Pa.C.S. § 6105(a). The defendant then tried to purchase a gun but State Police denied it based on Section 922(g) of the Federal Act. The Supreme Court of Pennsylvania addressed the issue of whether a Common Pleas Court's order allowing access to guns would also be sufficient to relieve the firearm disability under the Federal Act. The Supreme Court found that such orders do not relieve the federal firearms disability and therefore the defendant was not entitled to have a firearm.

The Court fails to understand how the case cited by the Defendant is relevant or supports the position that the Defendant was improperly charged with a violation of Pennsylvania state law. In addition, the Defendant's argument fails on the facts presented in Morelli. Commonwealth v. Morelli, 55 A.3d 177 (Pa. Commw. 2012). In that case the defendant pled guilty to Manufacture, Delivery or Possession of a Controlled Substance with Intent to

² The Third Edition of the Sentencing Guidelines became effective April 25, 1988.

Manufacture or Deliver. The defendant was sentenced to probation for twenty-four (24) months. Even though the defendant did not receive a term of imprisonment exceeding two years, the Commonwealth Court found that he did not have a right to possess or transfer a gun because the statutory maximum for confinement exceeded two (2) years. Based upon the statutory language as well as relevant case law, this Court finds that the Commonwealth properly charged the Defendant with Persons Not to Possess and that the Defendant's Petition for Writ of Habeas Corpus is without merit.

ORDER

AND NOW, this _____ day of December, 2013, based on the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Petition for Habeas Corpus is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

cc. DA
Mary Kilgus, Esq.
Eileen Dgien, DCA