

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

<b>COMMONWEALTH</b>	<b>:</b>	<b>No. CR-534-2012;</b>
	<b>:</b>	<b>CR-595-2012;</b>
<b>vs.</b>	<b>:</b>	<b>CR-612-2012</b>
	<b>:</b>	
	<b>:</b>	
<b>DEBRA PERRY,</b>	<b>:</b>	<b>Notice of Intent to Dismiss PCRA and</b>
<b>a/k/a MARIA WITCHARD,</b>	<b>:</b>	<b>Order Granting Motion to Withdraw as</b>
<b>Defendant</b>	<b>:</b>	<b>Counsel</b>

**OPINION AND ORDER**

Before the Court is Defendant’s “Petition for Resentencing under Act 81 RRRI” which the Court treated as a petition filed under the Post Conviction Relief Act. The relevant facts follow.

Under CR-0534-2012, Defendant was charged with retail theft, a felony of the third degree, and false identification to law enforcement, a misdemeanor of the third degree. Under CR-595-2012, Defendant was charged with retail theft, a felony of the third degree. Under CR-612-2012, Defendant was charged with retail theft, a felony of the third degree, receiving stolen property, a misdemeanor of the first degree, and false identification to law enforcement, a misdemeanor of the third degree.

On April 30, 2012, Defendant entered a guilty plea to three counts of retail theft, one for each of the above Informations, and the Court sentenced her to an aggregate sentence of 18 to 54 months of incarceration followed by 54 months of probation. In its sentencing order, the Court found that Defendant was not eligible for a Recidivism Risk Reduction Incentive (RRRI) minimum because of a prior robbery conviction.

Defendant did not file a post sentence motion or an appeal.

On or about May 23, 2013, Defendant submitted her “Petition for Resentencing under Act 81 RRRI.” The Court treated the petition as a PCRA petition and appointed counsel to represent her. See Commonwealth v. Johnson, 803 A.2d 1291 (Pa. Super. 2002)(any petition filed after judgment of sentence becomes final treated as PCRA petition); Pa.R.Cr.P. 904(C)(regarding appointment of counsel for first PCRA petition).

On July 16, 2013, defense counsel filed a petition to withdraw and attached a no-merit letter in accordance with Commonwealth v. Turner, 518 Pa. 491, 544 A.2d 927 (1988) and Commonwealth v. Finley, 379 Pa. Super. 390 (1988). Counsel indicated that he obtained Defendant’s prior record from the District Attorney’s office, which confirmed that she had been convicted of robbery on July 20, 1993 in Lackawanna County, CP-35-326-CR-1993.<sup>1</sup> He wrote to Defendant, explained that the RRRI statute precluded a person with a prior robbery conviction from being eligible, and asked her to tell him why she believed she was eligible for RRRI. As evidenced by counsel’s second letter, Defendant wrote to counsel and indicated that she believed, based on Rules 404 and 609 of the Pennsylvania Rules of Evidence, that her robbery conviction would not disqualify her from RRRI because it was more than ten years old. Defense counsel then aptly explained to Defendant that these Rules of Evidence simply precluded the Commonwealth from utilizing her robbery conviction to impeach her credibility at trial; they did not preclude her robbery conviction from rendering her ineligible for RRRI.

Upon a thorough review of the record, the Court whole-heartedly agrees that Defendant’s petition lacks merit.

The RRRI statute defines “eligible offender” as a person who has not been previously convicted of a personal injury crime, except simple assault when the offense is a misdemeanor of the third degree. 61 Pa.C.S. §4503(3). A personal injury crime includes an act which constitutes a misdemeanor or felony under 18 Pa.C.S. Ch. 37. 18 P.S. §11.103. Defendant was convicted of robbery in violation of 18 Pa.C.S. §3701(a)(1), which is a felony under 18 Pa.C.S. Ch. 37. Therefore, she clearly is not eligible for RRRI.

Defense counsel correctly explains in his letter dated June 21, 2013 that neither Rule 404 nor Rule 609 of the Pennsylvania Rules of Evidence puts a ten year restriction on the convictions that disqualify a person from being an eligible offender under the RRRI statute. These rules deal with the admissibility of a defendant’s convictions for impeachment purposes at trial; they do not in any way impact the RRRI statute. Although the legislature recently put a ten year restriction on certain disqualifying convictions for Boot Camp and State Intermediate Punishment, see 61 Pa.C.S. §§3903 and 4103, the legislature has not adopted such a restriction for RRRI.

**ORDER**

AND NOW, this \_\_\_ day of September 2013, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the Court is satisfied that there are no genuine issues of material fact, Defendant is not entitled to relief as a matter of law and no purpose would be served by any further proceedings. Therefore, the Court gives Defendant notice of its intent to dismiss her petition without holding an evidentiary hearing. Defendant may respond to this proposed dismissal within

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<sup>1</sup> This conviction is under the name Sylvia Fields, which is one of Defendant’s many aliases.

twenty (20) days. If no response is received within that time period, the Court will enter an order dismissing the petition.

The Court also grants defense counsel's motion to withdraw.

Defendant is notified that she may represent herself or she may hire private counsel but unless she files a response within twenty (20) days that would show that an evidentiary hearing is needed in this case she is no longer entitled to court-appointed counsel.

By The Court,

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Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)  
Donald Martino, Esquire  
Maria Witchard, OS 7296  
SCI Cambridge Springs, 451 Fullerton Avenue, Cambridge Springs, PA 16403-1238  
Gary Weber, Esquire (Lycoming Reporter)  
Work file