

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CR- 319-2007
	:
vs.	: Notice of Intention to Dismiss
	: PCRA Petition Without Holding
	: an Evidentiary Hearing and Granting
STEVEN P. TAWNEY, II,	: Counsel's Motion to Withdraw
Defendant	:

OPINION AND ORDER

This matter came before the court on the motion to modify and reduce sentence filed by Steven P. Tawney, II (“Tawney”), which the court treated as a Post Conviction Relief Act (PCRA) petition in accordance with Commonwealth v. Johnson, 803 A.2d 1291, 1293 (Pa. Super. 2002)(“We have repeatedly held that the PCRA provides the sole means for obtaining collateral review, and that any petition filed after the judgment of sentence becomes final will be treated as a PCRA petition). The relevant facts follow.

Tawney was arrested and charged with conspiracy to commit burglary, burglary, criminal trespass, theft by unlawful taking, receiving stolen property, and criminal mischief. On April 9, 2007, in exchange for a standard range sentence to be served concurrent to any other sentence, Tawney pled guilty to criminal trespass, a felony of the second degree; theft by unlawful taking, a felony of the third degree; and criminal mischief, a summary offense. On June 5, 2007, Tawney received a sentence of six (6) months to five (5) years of incarceration in a state correctional institution for theft by unlawful taking, and a consecutive three-year term of probation for criminal trespass. On August 17, 2007, Tawney filed a pro se motion to modify sentence nunc pro tunc, which was denied on November 9, 2007.

In July of 2012, parole agents found controlled substances, drug paraphernalia and a large amount of money in Tawney's residence. He was charged with new criminal offenses, as well as probation violations.

Tawney pled guilty to the new criminal charges and received a sentence of four (4) to eight (8) years of incarceration in a state correctional institution.

On September 5, 2013, Tawney came before the court for his probation violation hearing as a convicted violator. Probation officials were seeking a sentence of two to four years of incarceration at a state correctional institution to be served consecutive to the sentence Tawney received on the new criminal charges. Tawney's counsel, however, noted that Tawney was cooperating with law enforcement and had agreed to forfeit over \$46,000. The court considered all the relevant factors, including but not limited to the circumstances of case, Tawney's age and background, Tawney's cooperation, and his poor supervision history and then imposed a sentence of one (1) to two (2) years of incarceration in a state correctional institution to be served consecutive to his sentence on the new criminal charges.

On November 22, 2013, Tawney filed his motion to modify and reduce sentence, which the court treated as a PCRA petition. In his motion, Tawney alleged that the court erred in sentencing him by failing to consider the sentencing guidelines, his good rapport with his supervising parole agent, his employment, his good behavior for six years, his family situation, and his cooperation. The court appointed counsel to represent Tawney and gave counsel an opportunity to either file an amended PCRA petition or 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, 550 A.2d 213 (1988). Counsel filed a no merit

letter and a motion to withdraw as counsel.

The court has conducted an independent review of the record and agrees that Tawney's petition lacks merit.

Tawney claims the court erred in failing to consider the sentencing guidelines. He argues that the sentence imposed was four times the aggravated range and the court did not give adequate reasons for deviating from the sentencing guidelines. This claim is frivolous.

It is well-settled that the sentencing guidelines simply do not apply to sentences imposed as a result of probation or parole revocations. 204 Pa. Code §303.1(b); Commonwealth v. Ferguson, 893 A.2d 735, 739 (Pa. Super. 2006); Commonwealth v. Coolbaugh, 770 A.2d 788, 792 (Pa. Super. 2001); Commonwealth v. Philipp, 709 A.2d 920, 921 (Pa. Super. 1998); Commonwealth v. Cappellini, 690 A.2d 1220, 1224 (Pa. Super. 1997). When a court imposes a sentence following a revocation of probation, it "is limited only by the maximum sentence that it could have imposed originally at the time of the probationary sentence." Coolbaugh, supra. The court was re-sentencing Tawney for criminal trespass, a felony of the second degree. The maximum sentence for a felony of the second degree is ten (10) years. 18 Pa.C.S. §1103(2). The minimum sentence generally cannot exceed one-half of the maximum sentence. 42 Pa.C.S. §9755(b). Therefore, the court could have imposed a sentence of five (5) to ten (10) years of incarceration for Tawney's probation violation.

Tawney also contends that the court erred because it failed to consider the following circumstances: the four to eight year sentence he had just received for his new

drug conviction; the fact that he had not been arrested for over six (6) years; his good rapport with his supervising agent; his full-time employment since being released; and his wife and his ten-year old daughter. The record belies Tawney's contentions.

Tawney's sentence on his new drug conviction was mentioned several times during the proceedings. Transcript, pp. 3, 5, 9, 11, 12, 17. The court also specifically stated that it was giving Tawney an additional one to two years for the probation violation because a total of five to ten was appropriate under all the circumstances. Transcript, p. 18. The court noted that Tawney was re-paroled in 2008 and, but for a warning for consuming alcohol, he was doing okay until he was "essentially caught in the act" in 2012. Transcript, p. 10.

Tawney brought the remaining circumstances to the court's attention. When given an opportunity to speak, the first thing Tawney mentioned was that he "had a pretty good rapport with my PO." Transcript, p.12. He also noted that he worked constantly from the day he came home and he had a ten-year old daughter and a wife that would like to see him home. Transcript, pp. 16, 17.

The court also was aware that he forfeited over \$46,000 and vehicles as part of his plea agreement on the new drug conviction. Transcript, pp. 6, 16.

The circumstances that Tawney claims the court failed to consider are specifically the considerations that caused the court to reject the parole agent's recommendation for a two (2) to four (4) year sentence and impose a one (1) to two (2) year sentence. The court specifically stated,

In your particular case it seems like you have made some conscious choices here. The problem is that your choices hurt a lot of

people. You know, you said you have a ten-year-old daughter.

THE DEFENDANT: Yes, sir.

THE COURT: ...But the reality is that by you doing what you were doing you've exposed your daughter to being victimized by somebody selling drugs.

You have exposed all of our children. The more dealers we have out there, the more we are exposing our own children to becoming slaves to an addiction which is the last thing we want to do.

Now, having said all of that, I recognize certain factors involved in your case. It could have been far worse. What I'm going to do is I'm going to give you an extra one to two years. I think five to ten is appropriate under all of the circumstances. I'm going to weigh the factors we spoke about, and I think there is some reason to give that some sort of weight in your favor.

At the same time I wouldn't be doing my job if I gave you anything less than that. I think one to two is appropriate because I think five to ten under all of the circumstances is appropriate, and that's a lot more time that you had to do before. But you made the choice, not me. And I hope you use the time to your benefit. Because if you don't, then you might as well just throw away the key the next time.

Transcript, pp. 17-19. The court considered all of the appropriate circumstances when it re-sentenced Tawney on his probation violation and made him RRRI eligible. Tawney was not prejudiced by anything done by his counsel at the probation violation hearing; he was only helped. His claims to the contrary are baseless.

In light of the foregoing, the court will grant defense counsel's motion to withdraw.

ORDER

AND NOW, this ___ day of June 2014, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the parties are hereby notified of this court's intention to deny the motion to modify and reduce sentence filed by Steven P. Tawney, II, which the court has treated as a PCRA petition. As no purpose

would be served by any further proceedings, none will be scheduled. Tawney 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.

The court grants the motion to withdraw as counsel filed by Donald Martino. Tawney is notified that he may hire a private attorney or he may represent himself, but the court will not appoint counsel to represent him in this matter.

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
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