

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR – 746 - 2011
: CR – 859 - 2012
vs. : CR – 929 - 2012
:
ANTHONY D. SMITH, JR., :
Defendant :

OPINION IN SUPPORT OF ORDER OF OCTOBER 29, 2013,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Defendant has appealed this court’s Order of October 29, 2013, which dismissed his Post Conviction Relief Act petition .¹ In his Concise Statement of Matters Complained of on Appeal, Defendant reiterates the issues raised in his PCRA petition and the court will therefore simply explain why the petition was dismissed.²

On December 21, 2012, in accordance with an agreement reached between Defendant and the Commonwealth, Defendant pled guilty to various charges of aggravated assault, possession with intent to deliver, robbery, cruelty to animals and persons not to possess a firearm, under docket numbers 858,³ 859 and 929 of 2012. On February 4, 2013, he was sentenced in accordance with the plea bargain to an aggregate term of ten to twenty years incarceration followed by a period of supervision of ten years. He was also sentenced that date to a consecutive term of one to two years for a probation violation (based on the charges for which he was just sentenced) stemming from a simple assault charge, under docket number 746 of 2011. No appeal from the sentence was filed.

In his PCRA petition, filed June 5, 2013, Defendant contended that his attorney misled

1 The Notice of Appeal purports to appeal from the Order of May 6, 2014, which dismissed Defendant’s second petition, filed December 16, 2013. The second petition raised the same issues as had been raised in the first petition but its filing brought to the court’s attention the fact that Defendant had never been notified of the dismissal of his first petition. The Order of May 6, 2014, dismissed the second petition because Defendant’s appeal rights with respect to the first petition were being reinstated in that Order. Therefore, the appeal properly lies from the dismissal of the first petition in the Order of October 29, 2013.

2 Defendant also attempts to complain in his Statement that “counsel failed to inform me about evidence in my case that would have helped me a lot in my case, and my lawyer told me I was getting a 5-10 year plea, and I was on mental health medication when I took my plea and I didn’t understand what type of plea I was taking.” These issues were not raised in the first petition and therefore are considered to have been waived and will not be addressed herein.

3 Inexplicably, Defendant’s petition did not include this case. The PCRA proceedings included the matter

him with respect to the sentence he would receive as part of the plea bargain, thus challenging the voluntary nature of his plea. A review of the record indicated, however, that Defendant's plea was entered with full knowledge and understanding that he would receive a sentence of ten to twenty years incarceration, followed by a ten year period of supervision. The sentence was clearly set forth on the cover page of the guilty plea colloquy and Defendant indicated in answer to Question 41 of the colloquy that he "completely underst[ood] all the instructions, terms, provisions, questions and answers" of the form. *See* Guilty Plea Colloquy p. 6. The sentence was also reviewed in open court at the time of the plea and Defendant indicated that he understood what he was agreeing to. *See* N.T. December 21, 2012, at p. 4. There is nothing to indicate that defense counsel misled Defendant as to the sentence. The court therefore believed this issue had no merit.

Defendant also stated in his PCRA petition that although he requested that counsel file an appeal, no appeal was filed. Since Defendant's convictions were based on a plea of guilty, the only issues which could have been raised on appeal were the validity of his plea and the lawfulness of his sentence. *See* Commonwealth v. Stokes, 232 A.2d 193 (Pa. 1967). Defendant has raised the validity of his plea in the instant petition and that issue has been addressed. He does not challenge the legality of his sentence. Therefore, he has suffered no prejudice and is not entitled to relief on this basis. *See* Commonwealth v. Hayes, 341 A.2d 85 (Pa. 1975); Commonwealth v. Musser, 262 A.2d 678 (Pa. 1970); Commonwealth v. Armstead, 243 A.2d 443 (Pa. 1968). This issue was thus also found to lack merit.

Dated: _____

Respectfully submitted,

Dudley N. Anderson, Judge

cc: DA
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Gary Weber, Esq.
Hon. Dudley N. Anderson

nevertheless as it was an aggregate sentence based on a plea to all charges involved.