

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA	
COMMONWEALTH	: No. CR-474-2009
	: CR-279-2011
vs.	:
	:
JOSEPH COLEMAN,	:
Defendant	:

OPINION AND ORDER

Upon consideration of Defendant’s “Petition for Writ of Habeas Corpus Double Jeopardy Emergency” filed on June 8, 2015, the court will summarily deny Defendant’s petition.

First, the court lacks jurisdiction to address Defendant’s claims. Defendant contends that the Pennsylvania Board of Probation and Parole (PBPP) and officials at SCI Benner Township are construing his sentence in such a way as to increase his maximum sentence and convert his county sentence into a state sentence. Defendant also asserts that they are manipulating, recalculating, and converting his sentence by decertifying his RRRI sentences in violation of his constitutional rights. These claims challenge the PBPP’s and/or the Department of Corrections’ (DOC) calculation of his sentences; therefore, the proper vehicle for redress would be an original action in the Commonwealth Court. *Commonwealth v. Perry*, 563 A.2d 511, 512-13 (Pa. Super. 1989).

Even if the court had jurisdiction to address Defendant’s claims, the court would find that they lack merit.

Under Information 259-2011, Judge Anderson sentenced Defendant to 17 to 48 months’ incarceration in a state correctional institution on Count 5, delivery of heroin and a concurrent term of 17 to 48 months’ incarceration for criminal conspiracy to deliver heroin.

Judge Anderson found that Defendant was eligible for a Recidivism Risk Reduction Incentive (RRRI) minimum sentence of 14 months and 22 days.

These new criminal convictions resulted in the court revoking Defendant's intermediate punishment sentence under Information 474-2009. The court resented Defendant to six to twelve months' incarceration in a state correctional institution, which was to be served consecutively to the sentence imposed by Judge Anderson under Information 259-2011. The court found that Defendant was eligible for a RRRI minimum sentence of four and a half months.

Defendant contends that the court's sentence under 474-2009 was a county sentence, which the PBPP and SCI Benner Township officials have unlawfully converted into a state sentence. Defendant seeks immediate release from state custody or at least return to Lycoming County for disposition. Defendant's contention is baseless.

The court specifically sentenced Defendant to six to twelve months' incarceration *in a state correctional institution*. The reason why the court directed that this sentence be served in a state institution rather than the Lycoming County prison is because, as a matter of law, this sentence aggregates with the 17 to 48 month sentence imposed by Judge Anderson. 42 Pa.C.S.A. §§9757, 9762(f); *Commonwealth v. Tilghman*, 673 A.2d 898, 901-02 (Pa. 1996)(when consecutive sentences imposed, the component maximum sentences must be aggregated); *Commonwealth v. Harris*, 620 A.2d 1175, 1179 (Pa. Super. 1993)(Section 9757 has been interpreted to require the aggregation of consecutive sentences).

It also appears that Defendant's claims regarding his RRRI sentence lack

merit. Merely because the court finds that a defendant is an eligible offender does not mean that he or she will remain an eligible offender or be paroled at the expiration of the RRRI minimum sentence. The PBPP and the DOC have roles in certifying a defendant's continued eligibility for a RRRI minimum. 61 Pa.C.S.A. §4506. Furthermore, the RRRI statute does not confer on Defendant any legal right to participate in a RRRI program, be released on parole, or file any cause of action challenging the department's determination that a participant is to be suspended or expelled from or has successfully completed or failed to successfully complete any RRRI program. 61 Pa.C.S.A. §4511.

ORDER

AND NOW, this ____ day of June 2015, the court DENIES Defendant's
"Petition for Writ of Habeas Corpus Double Jeopardy Emergency."

By The Court,

Marc F. Lovecchio, Judge

cc: District Attorney
Joseph Coleman, #KH 2131
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PBPP
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Tammy Ferguson, Superintendent
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File 474-2009
Work file