

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

<b>COMMONWEALTH</b>	:	<b>No. CR- 162-2011;</b>
	:	<b>CR-1671-2012;</b>
<b>vs.</b>	:	<b>CR-1556-2013</b>
	:	
	:	
<b>JEREMY MASSER,</b>	:	<b>Notice of Intent to Dismiss PCRA</b>
<b>Defendant</b>	:	<b>Without Holding an Evidentiary Hearing</b>

**OPINION AND ORDER**

This matter came before the court on the Post Conviction Relief Act (PCRA) filed by Defendant Jeremy Masser. The relevant facts follow.

**162-2011**

On January 11, 2011, the police filed a criminal complaint against Masser, charging him with acquiring or obtaining a controlled substance by fraud or misrepresentation, an ungraded felony, and forgery, a misdemeanor of the first degree. On April 6, 2011, Masser pled guilty to Count 1 obtaining a controlled substance by fraud or misrepresentation, and he was sentenced to serve three (3) years on the Intermediate Punishment (IP) program. As a condition of Defendant's IP, Masser was required to attend and successfully complete the Drug Court program.

Masser violated the requirements and conditions of the Drug Court program and was sanctioned on May 4, 2011, June 27, 2011, July 8, 2012, and February 27, 2013. Masser also committed several new offenses in 2012 and 2013, some of which he was convicted of on May 19, 2014. As a result, on May 19, 2014, the court revoked Masser's IP sentence and re-sentenced him to serve 18 months to 4 years of incarceration in a state correctional institution, with 499 days credit for time served.

**1671-2012**

On September 5, 2012, the police charged Masser with three counts of aggravated assault by vehicle while driving under the influence, three counts of accidents involving death or injury while not properly licensed, two counts of driving under the influence of alcohol (DUI), three counts of furnishing alcohol to minors, driving while operating privilege is suspended or revoked and numerous traffic summaries arising out of an incident that occurred on June 27, 2012. On May 19, 2014, Masser pled guilty to Count 1, aggravated assault by vehicle while DUI, a felony of the second degree, and Count 15, driving while operating privileges suspended or revoked with a blood alcohol content of .02% or greater, a misdemeanor of the third degree. The court sentenced Masser to 2 ½ to 5 years of incarceration on Count 1 and a consecutive 6 months to 1 year of incarceration on Count 15.

**1556-2013**

Masser was charged with retail theft, criminal attempt to commit retail theft, and driving under suspension. On February 7, 2014, Masser pled guilty to Count 1, retail theft, a misdemeanor of the first degree and Count 3, driving under suspension, a summary offense. The plea agreement was for a fine on Count 3 and a middle of the standard range sentence on Count 1 to be served consecutive to any sentence he received for violating his intermediate punishment. The standard sentencing guideline range was 1-9 months. On May 19, 2014, the court sentenced Masser to a minimum of six months and a maximum of two years of incarceration on Count 1, retail theft, to be served consecutive to the sentence imposed in case 1671-2012. The court also directed that the aggregate sentence of 3 ½ to 8

years of incarceration imposed in cases 1671-2012 and 1556-2013 be served consecutive to the sentence imposed under 162-2011. Thus, the total sentence on all three cases was 5 to 12 years of incarceration in a state correctional institution.

On May 4, 2015, Masser filed a PCRA petition in which he asserted that his guilty plea was not entered knowingly, voluntarily and intelligently because his plea bargain was for a 5 to 11 year sentence but he received a 5 ½ to 12 year sentence. As this was Masser's first PCRA petition and he appeared to be indigent, the court appointed counsel to represent Masser and gave counsel an opportunity to file an amended PCRA petition or a *Turner/Finley*<sup>1</sup> no merit letter. Counsel requested copies of the transcripts of Masser's guilty plea, sentencing and violation hearings. After reviewing the transcripts, counsel filed a no merit letter.

After an independent review of the record, the court agrees with PCRA counsel that Masser's PCRA petition lacks merit. The record clearly shows that Masser did not have a plea bargain for a 5 to 11 year sentence.

There was no agreement regarding the sentence to be imposed for Masser's intermediate punishment violation. The recommendation from Masser's adult probation officer was for a 2 to 4 year sentence. Instead of following that recommendation, the court imposed a sentence of 18 months to four years.

The agreement in case 1556-2013 was not for a specific sentence but merely for a minimum sentence in the middle of the standard guideline sentencing range. The standard range was 1 to 9 months. The bottom end of the standard range was 1-3 months, the

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<sup>1</sup> *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988) and *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super.

middle of the standard range was 4-6 months, and the high end of the standard range was 7-9 months. The court complied with the plea agreement when it imposed a minimum sentence of six months.

There was no agreement with respect to the maximum sentence to be imposed; the maximum was left to the discretion of the court. The retail theft was graded as a misdemeanor of the first degree. Therefore, the statutory maximum was five years. The court imposed a maximum sentence of two years.

With respect to case 1671-2012, there was a plea agreement for 30 to 60 months on Count 1, aggravated assault while DUI and a consecutive 6 months to 1 year on Count 15, driving under suspension for an aggregate sentence in this case of 3 to 6 years, but the written guilty plea colloquy mistakenly indicated that Count 15 was to run concurrent to Count 1. This was discussed at length on the record and Masser acknowledged that he understood he would receive a 3-6 year sentence in this case. N.T., May 19, 2014, at 4-5, 7-8, 43-44.

The court acknowledges that it made a math error and mistakenly stated on the record that the aggregate sentence being imposed was a sentence of 5 to 11 years (N.T., May 19, 2014, at 53) when it was a sentence of 5 to 12 years. Nevertheless, there never was a specific plea agreement regarding the aggregate sentence to be imposed, because there was no agreement with respect to the sentence to be imposed for the intermediate punishment violation or the maximum sentence to be imposed in case 1556-2013. Since the record clearly refutes Masser's claim that he had a plea bargain for a sentence of 5 to 11 years, there

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is no need to conduct an evidentiary hearing in this case.

**ORDER**

AND NOW, this \_\_\_\_ day of February 2016, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, as no purpose would be served by conducting any further hearing, none will be scheduled and the parties are hereby notified of this court's intention to dismiss Masser's PCRA petition. Masser 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 also grants counsel's motion to withdraw. Masser is notified that he has the right to represent himself or to hire private counsel, but the court will not appoint another attorney to represent him unless he sets forth facts in his response to show that his PCRA petition contains an issue of arguable merit.

By The Court,

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Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)  
Donald F. Martino, Esquire  
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Work file