

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA
CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-1624-2012
v.	:	
	:	
WILLIAM WELLER,	:	PCRA
Defendant	:	

OPINION and ORDER

On April 20, 2016, Counsel for the Defendant filed a Motion to Withdraw as Counsel pursuant to Commonwealth v. Turner, 544 A.2d 927 (Pa. 1988) and Commonwealth v. Finley, 550 A.2d 213 (Pa. Super.1988). After an independent review of the entire record, the Court agrees with PCRA Counsel and finds that the Defendant has failed to raise any meritorious issues in his PCRA Petition, and his petition should be dismissed.

Background

On October 15, 2012, Defendant was charged with eight (8) counts of Delivery or Possession with the Intent to Deliver a Controlled Substance, each an ungraded felony, four (4) counts of Conspiracy to Deliver a Controlled Substance, each also an ungraded felony, and one (1) count of Criminal Use of a Communication Facility, a felony of the third degree. Defendant was initially represented by Attorney George Lepley and then by Attorney Julian Allatt.

On February 13, 2015, Defendant entered a guilty plea to one count of Possession with intent to Deliver Cocaine, an ungraded felony and one count of Conspiracy to Possess with Intent to Deliver Cocaine, an ungraded felony (second or subsequent offense). Defendant was sentenced that day to an aggregate period of incarceration of eleven (11) years to twenty two (22)

years, to run concurrently with a sentence that Defendant was then serving out of Lackawanna County. Defendant did not take a direct appeal from his order of sentence.

On January 27, 2016, Defendant filed a “Motion for Post Conviction Collateral Relief, claiming that he was not given proper credit for time served, that an incorrect Prior Record Score was used and that he received a mandatory minimum sentence in violation of the law. On February 4, 2016, this Court issued an Order appointing counsel in accordance with Pa.R.Crim.P. 904(C),¹ and scheduling a conference for May 3, 2016.² Appointed counsel filed a Motion to Withdraw as Counsel and a Turner-Finley letter on April 20, 2016. Following the conference, and after thorough review, this court finds that there are no genuine issues of material fact and that Defendant is not entitled to post-conviction collateral relief, and no purpose would be served by any further proceedings.

Discussion

Under the Post Conviction Relief Act (PCRA), Defendant has one year after his judgment of sentence becomes final to request Post Conviction Relief unless circumstances exist that prevented Defendant from filing within one year and he files within 60 days of when his claim could have been presented. Defendant was sentenced on February 13, 2015. He did not file post sentence motions nor take a direct appeal to the Superior Court and as such his Judgment of Sentence became final on March 15, 2015. Defendant had until March 15, 2016, to file a request for Post Conviction Relief and thus his Petition is timely.

¹ “[W]hen an unrepresented defendant satisfies the judge that the defendant is unable to afford or otherwise procure counsel, the judge shall appoint counsel to represent the defendant on the defendant’s first petition for post-conviction collateral relief.” Pa.R.Crim.P. 904.

² That conference was rescheduled by Order dated March 1, 2016, to May 6, 2016.

Credit for time served

Credit for time served is governed by 42 Pa.C.S. § 9760(1), which provides that “[c]redit against the maximum term and any minimum term shall be given to the defendant for all time spent in custody as a result of the criminal charge for which a prison sentence is imposed or as a result of the conduct on which such a charge is based. Credit shall include credit for time spent in custody prior to trial, during trial, pending sentence, and pending the resolution of an appeal.” In this case, Defendant was taken into custody on the instant charges on August 18, 2012, and was released on bail on those same charges on October 8, 2012. Defendant was entitled to and did receive credit for that time. Defendant did not become incarcerated again on these charges until he was sentenced for them on February 13, 2015. Defendant argues that because the sentence was made “entirely concurrent” with the sentence he was serving in Lackawanna County, he should receive credit for the same period of time as the time during which he was serving *that* sentence. This argument misconstrues the meaning of concurrent; the sentences run together, not one after the other, but the second sentence does not somehow become effective at the start of the first sentence, for to do so would give credit for time which is *not* “as a result of the criminal charge for which a prison sentence is imposed”, contrary to Section 9760. Defendant is not entitled to any further credit.

Incorrect Prior Record Score

Defendant contends the court used an incorrect Prior Record Score at sentencing, asserting that it was a “3” and not a “5”. The prior record score was not relevant in this particular case, however, as the sentence was based not on the prior record score but on the terms

of a plea agreement to a specific period of incarceration.³ Further, Defendant's contention is itself incorrect. The Prior Record Score *was* a "5", based on a 2004 conviction of a felony delivery charge in Lackawanna County (2 points), a 1997 conviction of a misdemeanor false reports charge in Lycoming County (1/2 point), a 1997 conviction of three felony delivery charges in Lycoming County (at least 2 points), and a 1997 conviction of a felony delivery charge in Lycoming County (2 points).

Mandatory minimum sentence

Defendant asserts both that he received a mandatory minimum sentence in violation of the law and that he pled guilty to avoid the imposition of a mandatory minimum sentence. Setting aside the inconsistency, the record is clear that Defendant did not receive a mandatory minimum sentence. He received a standard range sentence in accordance with the terms of his guilty plea. As for the second contention, inasmuch as there were no mandatory minimums being imposed as of the date of Defendant's sentencing, such having been previously held to be unconstitutional,⁴ the court finds the contention not credible.

Conclusion

Based upon the foregoing, the Court finds no basis upon which to grant the Defendant's PCRA petition. Additionally, the Court finds that no purpose would be served by conducting any further hearing. As such, no further hearing will be scheduled. Pursuant to Pa.R.Crim.P.

³ The written guilty plea colloquy states: "Terms of Plea Agreement: 11-22 y SCI concurrent to current Lackawanna Cty case. Sentence effective immediately."

⁴ Alleyne v. United States, 133 S.Ct. 2151 (2013).

907(1), the parties are hereby notified of this Court's intention to deny the Defendant's PCRA Petition. The Defendant 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.

ORDER

AND NOW, this _____ of August 2016, it is hereby ORDERED and DIRECTED as follows:

1. Defendant is hereby notified pursuant to Pennsylvania Rule of Criminal Procedure No. 907(1), that it is the intention of the Court to dismiss his PCRA petition unless he files an objection to that dismissal within twenty (20) days of today's date.
2. The application for leave to withdraw appearance filed April 20, 2016, is hereby GRANTED and Donald Martino, Esq. may withdraw his appearance in the above captioned matter.

By the Court,

Nancy L. Butts, President Judge

cc: Philip M. McCarthy, Deputy Attorney General
Pennsylvania Office of Attorney General
Criminal Law Division
Appeals & Legal Services Section
16th Floor, Strawberry Square
Harrisburg, PA 17120
Donald Martino, Esq.
William F. Weller
Inmate #DM 7123
SCI Benner Township
301 Institution Drive
Bellefonte, PA 16823