

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

: No. CR-1759-2016

:

vs.

:

: Notice of Intent to Dismiss PCRA

: Without Holding An Evidentiary Hearing

LINDA ERGOTT,

: and Granting Counsel's Motion to

Defendant

: Withdraw

OPINION AND ORDER

This matter came before the court on Defendant's Post-Sentence Motion to Modify Sentence, which the court treated as a Post Conviction Relief Act (PCRA) petition. *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).

By way of background, Defendant was charged with two counts of aggravated assault, two counts of simple assault, possessing an instrument of crime, and recklessly endangering another person arising out of an incident that occurred on or about September 19, 2016, where Defendant struck her husband multiple times with a baseball bat.

On October 17, 2016, Defendant pled guilty to simple assault and recklessly endangering another person, both misdemeanors of the second degree. The court sentenced Defendant to one (1) to two (2) years' incarceration in a state correctional institution on each offense to be served consecutive to one another for an aggregate sentence of two (2) to four (4) years' incarceration. Defendant did not file a post-sentence motion within ten (10) days or an appeal within thirty (30) days.

After her judgment of sentence became final, Defendant filed her Post Sentence Motion to Modify Sentence, which the court treated as a PCRA petition. As this was Defendant's first PCRA petition and she was indigent, the court appointed counsel to represent Defendant and gave counsel an opportunity to file either an amended PCRA petition or a "no merit" letter pursuant to *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988) and *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988)(en banc). Counsel received an extension to obtain a transcript of Defendant's guilty plea and sentencing hearing. Ultimately, counsel filed a motion to withdraw, which included a *Turner/Finley* no merit letter.

After an independent review of the record, the court finds that Defendant is not entitled to relief as a matter of law.

In her petition, Defendant seeks to have the court modify and reconsider her sentence for the following reasons: (1) her mother-in-law's health had taken a turn for the worse with dementia; (2) Defendant can complete all of her programs and regain her sobriety with a sentence of 1-2 years; (3) Defendant and her husband are working with Genesis House Counseling; and (4) Defendant would like to be free to return to Boston, Massachusetts if she should lose her mother-in-law, who is also her best friend. Defendant asserts that she wrote her attorney to file this motion in time and by the time he wrote her back it was too late.

Even if plea counsel had filed Defendant's motion in a timely manner, the court would not be able to modify or change Defendant's sentence.

Defendant entered a negotiated plea agreement for an aggregate sentence of two (2) to four (4) years' incarceration. The transcript establishes Defendant's plea was

knowingly, voluntarily and intelligently entered. The transcript shows that Defendant understood the nature of the charges against her, her right to a jury trial, and the presumption of innocence. Transcript at 4-6; see also Written Guilty Plea Colloquy. She also was aware of the permissible range of sentences and aware that the judge was not bound by the terms of the plea agreement unless he accepted the agreement. Transcript at 4-5. Defendant indicated that it was her decision to plead guilty, no one was forcing or pressuring her to plead guilty, no one had given her any promises or inducements to plead guilty, and her attorney did not do anything wrong or fail to do anything that was causing her to plead guilty. Transcript at 6-7. She pled guilty and gave a factual basis for her plea. Transcript at 8-9.

With respect to the length of her sentence, the following exchange took place:

THE COURT: ... and it looks like your plea agreement is for the bottom end of the standard range on each to run consecutive to each other for a total period of two to four years. Do you understand that?

MS. ERGOTT: Yes.

THE COURT: Now, is the two to four years, that's something that you agreed upon, correct?

MS. ERGOTT: Yes.

Transcript at 4-5.

“[A] negotiated sentence is binding on the court where the sentence is plainly set forth on the record, understood and agreed to by the parties and approved by the court.” *Commonwealth v. Anderson*, 643 A.2d 109, 113 (Pa. Super. 1994). Since the transcript establishes that Defendant understood and agreed to the sentence of two to four years’

incarceration, and her plea agreement was accepted by the court, the court was bound to impose the negotiated sentence of two to four years' incarceration.

In conclusion, the court was required to impose the sentence of two to four years' incarceration in a state correctional institution and it cannot modify or change that sentence.

Accordingly, the following order is entered.

ORDER

AND NOW, this ___ day of November 2017, 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 dismiss Defendant's petition without holding an evidentiary hearing. 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.

The court also grants counsel's motion to withdraw. Defendant may represent herself or hire private counsel, but the court will not appoint counsel to represent her on this matter.

By The Court,

Marc F. Lovecchio, Judge

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