

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-666-2016
:
vs. : Notice of Intent to Dismiss PCRA Petition
: Without Holding An Evidentiary Hearing and
SIMEON FOSTER, : Order Granting Counsel's Motion to Withdraw
Defendant :

OPINION AND ORDER

This matter came before the court on Defendant's first Post Conviction Relief Act (PCRA) petition. The relevant facts follow.

Defendant was charged with delivery of a controlled substance (heroin), an ungraded felony; possession with intent to deliver a controlled substance (PWID), an ungraded felony; firearm not to be carried without a license, a felony of the third degree; criminal use of a communication facility, a felony of the third degree; possession of a controlled substance, an ungraded misdemeanor; theft by unlawful taking, a misdemeanor of the first degree; and receiving stolen property, a misdemeanor of the first degree.

On October 7, 2016, Defendant pled guilty to PWID and firearms not to be carried without a license, and the court sentenced Defendant to nine months to two years of incarceration on each count to be served consecutively to each other. The aggregate sentence was 18 months to four years of incarceration.

In the same proceeding, the court revoked Defendant's probation for carrying a firearm without a license in case number 1457-2014 and re-sentenced him to an additional six months to two years of incarceration. Under case number 1457-2014, the court gave Defendant credit for time served from March 28, 2016 to October 6, 2016.

Defendant filed a timely PCRA petition in which he sought credit for time served from March 28, 2016 to October 6, 2016 in case number 666-2016. As this was Defendant's first PCRA petition and he appeared to be 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 obtained a transcript of Defendant's guilty plea and sentencing hearing, reviewed the record, and filed a motion to withdraw which included a *Turner/Finley* no merit letter. Counsel advised Defendant that he was not entitled to the requested credit for time served because he had already received credit for that time in case number 1457-2014

After an independent review of the record, the court concludes that Defendant's PCRA petition lacks merit as a matter of law.

Quite simply, a defendant is not entitled to duplicate credit. *Brandt v. Pa. Dep't. of Corr.*, 902 A.2d 589, 595 (Pa. Commw. 2006)(42 Pa. C. S. §9760 does not contemplate credit for time served to be awarded twice); *Bright v. Pa. Bd. of Prob. & Parole*, 831 A.2d 775, 778 (Pa. Commw. 2003)("Section 97640(4) makes it clear that time credit on a sentence may be granted only when it has not already been credited toward another sentence."); *Taglienti v. Pa. Dep't. of Corr.*, 806 A.2d 988, 993 (Pa. Commw. 2002)("credit for time served prior to the sentencing date is governed by Section 9760 which does not provide for credit for time served on unrelated offenses or when credit has already

been credited against another sentence.”); *Commonwealth v. Merigris*, 681 A.2d 194, 195 (Pa. Super. 1996)(“a defendant should receive credit only once for time served before sentencing”); see also *Commonwealth v. Bowser*, 783 A.2d 348, 350(Pa. Super. 2001); *Commonwealth v. Hollawell*, 604 A.2d 723, 726 (Pa. Super. 1992).

ORDER

AND NOW, this ____ day of October 2017, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the court finds that no purpose would be served by conducting a hearing. Therefore, none will be scheduled and the parties are hereby notified of this Court's intention to dismiss Defendant’s PCRA petition. 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 PCRA counsel’s motion to withdraw. Defendant may represent himself or hire private counsel to represent him, but the court will not appoint counsel to represent him in this matter.

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
Trisha Hoover Jasper, Esquire
Simeon Foster, MS4965
SCI Benner Township, 301 Institution Drive, Bellefonte PA 16823
Work File