IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**: No. CR-1381-2016**
	:
vs.	**:**
	: Notice of Intent to Dismiss PCRA
	: Without Holding An Evidentiary Hearing
STEVEN REEM,	**:**
Defendant	**:**

OPINION AND ORDER

This Court issued an Order on October 30, 2017 addressing PCRA counsel's motion to withdraw. The court directed counsel to file an Amended PCRA and scheduled a conference for November 29, 2017. At said conference, both PCRA counsel and Commonwealth counsel requested that the court reconsider its October 30, 2017 Order. The court with the assistance of counsel further reviewed the relevant transcript and pleadings. For the reasons set forth below, the court will give petitioner notice of the court's intent to dismiss the PCRA without holding an evidentiary hearing and will grant PCRA counsel's motion to withdraw.

On October 22, 2016, Petitioner pled guilty to Count 1 of the Information which was listed as possession with intent to deliver in violation of 35 P.S. § 780-113 (a) (30). During Petitioner's guilty plea hearing, he admitted to growing 108 marijuana plants. (Guilty Plea Hearing Transcript, August 22, 2016, pp. 17-18), (hereinafter "Transcript").

While Petitioner denied intending to deliver the marijuana, such denial was not fatal to his plea. More specifically, and as referenced on the record during Petitioner's plea, manufacturing a controlled substance is prohibited conduct by the same subsection as possession with intent to deliver. 35 P.S. § 780-113 (a) (30) (Transcript, p. 18).

In fact, the criminal complaint in the matter referenced that Petitioner's growing of 108 marijuana plants constituted the violation of § 780-113 (a) (30) of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act ("Act).

Contrary to the court's conclusion as set forth in its October 30, 2017 Order, it was not necessary for the Information or the court orders to reflect a manufacturing crime versus a possession with intent to deliver. As noted, it is the same subsection of the Act and the penalties are exactly the same.

Addressing the next issues, the court in its October 30, 2017 Order concluded that it imposed an additional one year of probation that "was not listed as part of the plea agreement" and that counsel erred in concluding that there is no requirement that the conditions of supervision relate to Petitioner's rehabilitation or sentence.

Petitioner pled guilty to an ungraded offense for a max county sentence. (Transcript, p. 4). The plea agreement precluded the court from imposing a split sentence with an additional period of probation even though it was within the statutory limit of five (5) years. Counsel did not file a motion to withdraw the plea or a motion for reconsideration of sentence. But, in this context, PCRA counsel wrote to Petitioner on this issue and Petitioner did not respond. Accordingly, Petitioner has chosen not to pursue this issue.

Regarding the requirements of Petitioner's supervision and as noted in the court's October 30, 2017 Opinion and Order, the conditions of Petitioner's supervision must be related to his sentence or rehabilitation. A review of the imposed conditions does not indicate any condition that violates this precept. Further and despite opportunities to do so, Petitioner has failed to identify any conditions that are not reasonably related to his

rehabilitation.

Counsel is presumed to have rendered effective assistance, and the burden is on the PCRA petitioner to prove otherwise. ***Commonwealth v. Treiber***, 121 A.3d 435, 445 (Pa. 2015); ***Commonwealth v. Watkins***, 108 A.3d 692, 702 (Pa. 2014). To do so, the petitioner must show that "(1) his underlying claim is of arguable merit; (2) counsel had no reasonable basis for his action or inaction; and (3) the petitioner suffered actual prejudice as a result." ***Commonwealth v. Spotz***, 84 A.3d 294, 311 (Pa. 2014).

For the reasons set forth above, as well as in the court's October 30, 2017 Opinion and Order with respect to Petitioner's remaining claims, the court concludes that Petitioner is not entitled to a hearing in that as a matter of law his underlying claims lack arguable merit.

The court recognizes that it has changed its earlier decision. The court previously erred. As Georges Canguilhem pointedly noted in his book *Ideology and Rationality in the History of Life Sciences*, "To err is human; to persist in error is diabolical." Equally as noteworthy are the words of Thomas Carlyle, the noted Scottish philosopher, who said, "The greatest mistake is to imagine that we never err."

O R D E R

AND NOW, this ___ day of December 2017, as it appears that Petitioner's claims lack merit, the court gives Petitioner notice of its intent to dismiss his petition without holding an evidentiary hearing pursuant to Rule 907 (1) of the Pennsylvania Rules of Criminal Procedure. Petitioner has twenty (20) days within which to respond to this proposed dismissal. If Petitioner does not respond or his response does not allege facts which show

that his petition has merit, the court will enter a final Order dismissing his petition without holding an evidentiary hearing.

The court also grants counsel's motion to withdraw.

If Petitioner files a response which alleges facts that arguably show his petition has merit, the court will reappoint counsel to represent petitioner and schedule an evidentiary hearing to give petitioner the opportunity to present evidence to support the merits of the claims set forth in his petition.

By The Court,

_____
Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
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Work file
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