

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

<b>COMMONWEALTH</b>	: <b>No. CR-151-2015</b>
	:
<b>vs.</b>	: <b>CRIMINAL DIVISION</b>
	:
	:
<b>BRETT SHOEMAKER,</b>	:
<b>Defendant</b>	:

**OPINION AND ORDER**

This matter came before the court on Brett Shoemaker’s Post Conviction Relief Act (PCRA) petition. The relevant facts follow.

On December 18, 2014, Jason Dockey of the Williamsport Bureau of Police filed a criminal complaint against Defendant Brett Shoemaker (hereinafter “Shoemaker”), charging him with failing to register, a violation of 18 Pa.C.S. §4915.1 graded as a felony of the second degree. The affidavit of probable cause alleged that Shoemaker was evicted from his residence on William Street on December 1, 2014 and moved to a residence on Memorial Avenue, but did not register this change of address until December 15, 2014, which was beyond the 72 hours within which he was required to register any such change.

On September 3, 2015, Shoemaker pled guilty to this offense in exchange for a sentence of 27 months to five years’ incarceration in a state correctional institution and concurrent supervision and restitution on several other cases.

On November 3, 2015, the court sentenced Shoemaker in accordance with the plea agreement. The court also awarded Shoemaker credit for time served from December 18, 2014 to January 20, 2015 and from March 22, 2015 to November 2, 2015.

On November 2, 2016, Shoemaker filed a pro se PCRA petition in which he

asserted that counsel was ineffective, his guilty plea was unlawfully induced and an illegal sentence was imposed because the offense should have been graded as a misdemeanor of the second degree.

The court appointed counsel to represent Shoemaker 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).

On February 28, 2017, PCRA counsel filed a motion to withdraw which contained a *Turner/Finley* no merit letter.

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

Shoemaker failed to register in December 2014. His PCRA claims are based on his erroneous belief that he was prosecuted pursuant to 18 Pa.C.S. §4915 and, based on that statute, his offense should be a misdemeanor of the second degree which carries a maximum sentence of two years.

Section 4915 was repealed effective December 20, 2011 and was replaced with 18 Pa.C.S. §4915.1. Under section 4915.1, when a lifetime registrant such as Shoemaker fails to register a change of address as required by 42 Pa. C.S. §9799.15, he commits a felony of the second degree. 42 Pa.C.S. §4915.1(c)(1). Therefore, Shoemaker’s petition clearly lacks merit and he is not entitled to relief as a matter of law.

**ORDER**

AND NOW, this 19<sup>th</sup> day of June 2017, upon review of the record and

pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the court finds that there are no genuine issues of material fact, Shoemaker is not entitled to relief and no purpose would be served by any further proceedings. The parties are notified of the court's intention to dismiss Shoemaker's PCRA petition without holding an evidentiary hearing. Shoemaker 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 grants PCRA counsel's motion to withdraw. Shoemaker 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,

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Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)  
Trisha Hoover Jasper, Esquire  
325 Market Street, Williamsport PA 17701  
Brett Shoemaker, #MH1893  
SCI Laurel Highlands, 5706 Glade Pike, PO Box 631, Somerset PA 15501  
Gary Weber, Lycoming Reporter  
Judge Marc F. Lovecchio