

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

COMMONWEALTH : No. **CR-1050-2014; CR-1387-2014**
 : **CR-2016-2014**
vs. :
 :
 : **Order Dismissing**
CARL MOYER, : **Defendant's PCRA petition**
Defendant :
 : **ORDER**

AND NOW, this 19th day of December 2018, after review of Defendant's response to the court's order giving notice of its intent to dismiss Defendant's Post Conviction Relief Act (PCRA) petition, the court dismisses Defendant's PCRA petition.

Defendant claims that 42 Pa. C.S. §5505 primarily deals with errors by the court and that the court did not have the authority to modify his sentence absent the Commonwealth filing a motion requesting the court to do so. Defendant relies on *Borrin*,¹ *Holmes*,² and *Nickens*.³ These cases are distinguishable from Defendant's case. In those cases, the court modified the defendant's more than 30 days after the sentence was imposed. Here, the court announced its original sentence, vacated it, and re-sentenced Defendant on the same date.

The court has the authority to modify or rescind its orders on its own motion within 30 days. 42 Pa. C.S. §5505. Beyond the 30-day period, the court's authority or jurisdiction is limited to correcting patent and obvious errors. *Holmes*, 933 A.2d at 615 (holding that the jurisdictional limits of section 5505 do not impinge on the time-honored inherent authority of courts to correct patent errors); *Borrin*, 12 A.3d at 451 (a trial court maintains the authority to correct clear clerical errors in its orders even after the expiration of

¹ *Commonwealth v. Borrin*, 12 A.3d 466 (Pa. Super. 2011).

² *Commonwealth v. Holmes*, 933 A.2d 57 (Pa. 2007).

the 30-day time limitation set forth in 42 Pa. C.S. §5505). In fact, the *Nickens* court recognized the trial court's statutory authority to modify any order within 30 days pursuant to section 5505, but specifically noted that section 5505 did not apply in that case because the original sentence was entered on January 19, 2006 and the order modifying the sentence was not entered until April 4, 2006. *Nickens*, 923 A.2d at 472 n.5.

The court also notes that the cases cited by Defendant regarding the binding nature of plea agreements are inapplicable in this case because entered tendered an open plea. Therefore, there was no agreement regarding the sentence to be imposed in this case.

Defendant is hereby notified that he has the right to appeal from this order to the Pennsylvania Superior Court. The appeal is initiated by the filing of a Notice of Appeal with the Clerk of Courts at the Lycoming County courthouse, and sending a copy to the trial judge, the court reporter and the prosecutor. The form and contents of the Notice of Appeal shall conform to the requirements set forth in Rule 904 of the Rules of Appellate Procedure. The Notice of Appeal shall be filed within thirty (30) days after the entry of the order from which the appeal is taken. Pa.R.App.P. 903. If the Notice of Appeal is not filed in the Clerk of Courts' office within the thirty (30) day time period, Defendant may lose forever his right to raise these issues.

The Clerk of Courts shall mail a copy of this order to the defendant by certified mail, return receipt requested.

³ *Commonwealth v. Nickens*, 923 A.2d 469 (Pa. Super. 2007).

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
Carl Moyer, Jr., LX-9469 (certified mail)
SCI Huntingdon, 1100 Pike Street, Huntingdon PA 16654
CR-1050-2014
CR-1387-2014
Work file
Suzanne Fedele, Prothonotary/Clerk of Courts