

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-980-2018
 :
 JESSE MITCHELL, JR., :
 Defendant :

OPINION AND ORDER

This matter came before the court on the Post Conviction Relief Act (PCRA) petition filed by Jesse Mitchell, Jr. (hereinafter “Mitchell”). The relevant facts follow.

On June 11, 2018, the Pennsylvania State Police filed a criminal complaint against Mitchell charging him with two counts each of delivery of a controlled substance, possession with intent to deliver a controlled substance and possession of a controlled substance. The complaint alleged that Mitchell sold cocaine to a confidential informant on May 22, 2018 and May 23, 2018.

On July 9, 2018, Mitchell entered a negotiated guilty plea to a consolidated count of delivery of a controlled substance. The guilty plea called for a sentence of one year less one day to two years less one day to be served in the county prison followed by two years of probation.

On August 21, 2018, the court sentenced Mitchell in accordance with the plea agreement.

On or about February 13, 2019, Mitchell sent a letter to the court.¹ In the letter Mitchell requested a reduction of his sentence due to a medical condition. Mitchell alleged

that he needed cortisone shots but he was not receiving them while incarcerated at the county prison. Instead, he was receiving other pain medications, which were not working and were causing him to experience stomach problems.

The court treated Mitchell's letter as a PCRA petition pursuant to *Commonwealth v. Johnson*, 803 A.2d 1291, 1293 (Pa. Super. 2002). As Mitchell was indigent and this was his first PCRA petition, the court appointed counsel to represent Mitchell. Counsel reviewed the record and filed a motion to withdraw which included a *Turner/Finley*² no merit letter.

Following an independent review of the record, the court finds that Mitchell's PCRA petition lacks merit and he is not entitled to the relief requested as a matter of law.

The record clearly shows that Mitchell's guilty plea was knowingly, voluntarily, and intelligently entered. The court advised Mitchell of the elements of the offense and the maximum penalties. Transcript, July 9, 2018, at 7-8. Mitchell was advised of the rights he was giving up by pleading guilty and he indicated that he understood those rights. Transcript, at 9; Written Guilty Plea Colloquy. Mitchell admitted that he sold cocaine because he was in need of money for a security deposit. Transcript, at 14-15. Mitchell also indicated that he was aware that the court was not bound to accept the terms of any plea agreement. Transcript, at 8. The court, however, did accept the terms of the plea agreement, and Mitchell received the negotiated sentence.

¹ The letter was not dated, but the envelope was postmarked February 13, 2019.

² *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988); *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988)(*en banc*).

The sentence imposed was not illegal. The statutory maximum permissible sentence for a first-time delivery of cocaine is ten years. 35 P.S. §780-113(f)(1.1). The maximum sentence imposed in this case was two years less one day.

The court lacks the authority to modify a negotiated sentence, as “both parties are entitled to receive the benefit of their bargain.” *Commonwealth v. Melendez-Negron*, 123 A.3d 1087, 1093 (Pa. Super. 2015); *see also Commonwealth v. Townsend*, 693 A.2d 980, 983 (Pa. Super. 1997)(“[W]here the parties have reached a specific sentencing agreement ... the court cannot later modify the terms of the agreement without the consent of the Commonwealth” because “this would deny the Commonwealth the full benefit of the agreement which it reached ... and the defendant, in turn, would receive a windfall.”). Therefore, even if Mitchell could prove that the sentence imposed had been illegal or the plea had not been entered knowingly, voluntarily and intelligently, the only relief the court could award is to vacate the plea and sentence and reinstate all of the charges. *See Melendez-Negron, id.*

ORDER

AND NOW, this ___ day of October 2019, upon review of the record, as no purpose would be served by conducting a hearing, none will be scheduled and the parties are hereby notified of this court's intention to deny the petition. Mitchell 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. Mitchell is advised

that he has the right to represent himself or to hire private counsel, but the court will not appoint counsel to represent him further in this matter unless, within the 20-day period, he files a response which shows that his claim is meritorious and an evidentiary hearing is necessary.

By The Court,

Marc F. Lovecchio, Judge

cc: District Attorney
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Jesse Mitchell, Jr.
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Gary Weber, Esquire (Lycoming Reporter)
Work File