

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CR-1302-2019;
	: CR-1356-2019
vs.	:
	: Opinion and Order Denying Petition
	: to Reconsider Dismissal and Dismissing
NOAH SAMUEL STROUP,	: Defendant's PCRA petition
Defendant	:

**OPINION and ORDER**

On or about March 10, 2025, the court gave Defendant and his counsel notice of its intent to dismiss his Post Conviction Relief Act (PCRA) petition as untimely. In response to that Opinion and Order, Defendant filed a Petition to Reconsider Dismissal on March 30, 2025. In the Petition, Defendant asked the court to act under Pa. R. Crim. P. 907(3) and grant a hearing simply on the issue of whether *Commonwealth v. Lantzy*, 736 A.2d 564, 571 (Pa. 1999) compels reinstatement. The court rejects Defendant's request.

The court finds that *Lantzy* is distinguishable in that it dealt with the reinstatement of appeal rights nunc pro tunc where a defendant had requested his counsel to file an appeal but counsel failed to do so. If counsel fails to file a requested appeal and the other PCRA requirements are satisfied, prejudice is presumed. *Lantzy*, 736 A.2d at 572. The same is not true of post sentence motions. See *Commonwealth v. Liston*, 977 A.2d 1089, 1094 and n.9 (Pa. 2009).

There is no allegation in the amended PCRA petition that Defendant requested counsel to file an appeal but failed to do so. Instead, the allegation is that Defendant asked counsel to file a post sentence motion to reconsider sentence and request concurrent sentences. Under the facts and circumstances of this case, however, such a motion would be frivolous. Defendant entered a negotiated guilty plea which called for an aggregate sentence

of 10 to 20 years' incarceration in a state correctional institution, consisting of 6 to 12 years' incarceration for conspiracy to commit robbery in case 1302-2019 and a consecutive term of 4 to 8 years' incarceration for conspiracy to commit robbery in case 1356-2019.

Defendant was aware shortly after July 26, 2022 that counsel had not filed a post sentence motion. His PCRA petition was not filed until May 6, 2024, more than one year thereafter. Therefore, his petition was untimely and the court lacked jurisdiction to hold an evidentiary hearing or to grant him any relief.

Even if the petition were not untimely, Defendant did not satisfy the requirements of the PCRA. To prove ineffective assistance of counsel, a petitioner must show (1) the claim is of arguable merit; (2) counsel had no reason for the challenged act or omission; and (3) prejudice. *Commonwealth v. Anderson*, 327 A.3d 273, 281 (Pa. Super. 2024). A failure to satisfy any prong is fatal to the claim. *Id. Lantzy* stands for the proposition that when counsel fails to file a requested appeal prejudice is presumed because the individual has a constitutional right to appeal under Article V, Section 9 of the Pennsylvania Constitution. The same is not true for post sentence motions. There is no constitutional right to file a post sentence motion. Instead, the filing of post sentence motion is a product of the Rules of Criminal Procedure. *See* Pa. R. Crim. P. 720.

Defendant cannot establish that the claim is of arguable merit or that counsel had no reason for his omission. Any post sentence motion to request concurrent sentences in this case would be frivolous. When the parties enter a negotiated guilty plea and the court accepts the plea, all parties are bound by the terms of the plea agreement. *Commonwealth v. Parsons*, 969 A.2d 1259, 1268 (Pa. Super. 2009). The plea agreement required consecutive sentences in each case for an aggregate sentence of 10-20 years. A guilty plea amounts to the

waiver of all defects and defenses except those concerning the jurisdiction of the court, the legality of the sentence and the validity of the plea. *Commonwealth v. Reichle*, 589 A.2d 1140, 1141 (Pa. Super. 1991). “Where the plea agreement contains a negotiated sentence which is accepted by the sentencing court, there is no authority to permit a challenge to the discretionary aspects of that sentence.” *Id.*

“Counsel cannot be deemed ineffective for failing to pursue a meritless claim.” *Commonwealth v. Loner*, 836 A.2d 125, 132 (Pa. Super. 2003). Given the terms of the negotiated guilty plea, any request for a concurrent sentence constitutes a meritless or frivolous claim.

Furthermore, plea counsel (like all attorneys) are bound by the Rules of Professional Conduct. Counsel cannot file a motion that lacks a basis in law or fact. *See* Pa. R. Prof'l Conduct 3.1. (“A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.”). There was no basis in law or fact for concurrent sentences in this case where Defendant accepted a plea agreement for consecutive sentences.

A lawyer also has a duty of candor to the tribunal. *See* Pa. R. Prof'l. Conduct 3.3. This rule requires a lawyer to disclose to the court any legal authority that is adverse to the position of the client and not disclosed by the other party. In light of these rules and the lack of merit to the request for concurrent sentences, there was a reasonable basis apparent in the record for counsel not to file the requested post sentence motion.

For the foregoing reasons, the court DENIES Defendant's Petition to Reconsider Dismissal and enters the following order dismissing the PCRA petition.

**ORDER**

AND NOW, this 10<sup>th</sup> day of April 2025, after review of Defendant's Petition to Reconsider Dismissal to the court's Opinion and Order giving notice of its intent to dismiss Defendant's Post Conviction Relief Act (PCRA) petition, the court DENIES the Petition to Reconsider Dismissal filed on behalf of Defendant on March 30, 2025 and DISMISSES Defendant's PCRA petition.

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 requirement set forth in Rule 904 of the Rules of Appellant 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.**

By The Court,

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Nancy L. Butts, President Judge

cc: Martin Wade, Esquire (ADA)  
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