

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

COMMONWEALTH OF	:	
PENNSYLVANIA,	:	
Plaintiff	:	
	:	
v.	:	NO. 94-11,533
	:	
MATTHEW SMITH,	:	
Defendant	:	

OPINION and ORDER

The defendant, Matthew Smith, has filed a PCRA petition requesting this court to resentence him or permit him to withdraw his guilty plea. From the information in the petition, it is clear that there are no genuine issues of material fact and relief is not warranted. Therefore, we dismiss the petition without a hearing. Pa.R.Crim.P. 1507(a).¹

Factual Background

On 24 October 1994, Mr. Smith pled guilty to possession with intent to deliver cocaine, possession of drug paraphernalia, and carrying firearms without a license. He was sentenced on 3 February 1995, to a term of eighteen months to five years. Mr. Smith took no direct appeal.

When Mr. Smith was not released on parole after serving his minimum he filed a pro se PCRA petition in an attempt to avoid serving any further time for his crimes. On 1 July 1999 this court appointed James Protasio counsel and ordered

¹ We note that there are numerous omissions in the amended PCRA petition. However, we will overlook these technicalities in order to address the merits of Mr. Smith's complaints.

him to file an amended PCRA petition. The amended petition alleges ineffectiveness of plea counsel for failing to advise the defendant he might serve time beyond his minimum.

Discussion

To be eligible for PCRA relief, Mr. Smith must plead and prove by a preponderance of the evidence ineffective assistance of counsel that caused an involuntary or unknowing plea. 42 Pa.C.S.A. § 9543(a)(2)(iii); Com. v. Mendoza, 730 A.2d 503, 505 (Pa. Super. 1999). To prevail on an ineffectiveness claim, Mr. Smith must show that his underlying contention possesses arguable merit, that the course chosen by counsel had no reasonable basis designed to serve Mr. Smith's interests, and that counsel's conduct prejudiced Mr. Smith. Id.

Mr. Smith claims his counsel failed to tell him he might not be released after his minimum, and instead assured him he would receive parole at that time. That would ordinarily be a contention of fact requiring a hearing, except that the guilty plea colloquy signed by Mr. Smith establishes otherwise. In response to the question, "Has anybody told you, promised you, suggested to you or indicated to you in any manner what the actual sentence of the Court will be," he answered, "No." He confirmed that response in the oral colloquy conducted by the court before accepting the plea.

A criminal defendant who elects to plead guilty has a duty to answer questions truthfully. Commonwealth v. Myers, 642 A.2d 1103, 1107 (1994). He will not be allowed to escape the consequences of his plea by lying to the court. If Mr. Smith's attorney had promised him release after serving his minimum, he

should have informed the judge at that time. Since he did not, we can only conclude that no such assurance was made, and therefore Mr. Smith is not entitled to relief.

We also note that even if Mr. Smith's attorney had made such a promise, Mr. Smith's PCRA petition must be rejected as untimely. Under 42 Pa.C.S.A. § 9545(b), a PCRA petition must be filed within one year of the date the judgment becomes final, unless an exception applies. Because Mr. Smith's judgment became final prior to the effective date of the 1995 PCRA amendments, his petition will be deemed timely if filed within one year of the effective date of Act, which was January 16, 1996. *See* Section 3(1) of the Act of Nov. 17, 1995 (Spec. Sess. No. 1) P.L. 1118, No. 32. Mr. Smith's PCRA petition was filed on 22 June 1999.

The petition alleges no exception to the filing deadline, and the only conceivable one that might apply is § 9543(b)(ii): “[T]he facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence.” Here, Mr. Smith could argue that he was not aware he would not be released upon serving his minimum until his minimum term actually expired.

If Mr. Smith had presented such an argument it would have been rejected, for Mr. Smith certainly had reason to know he might serve his entire sentence at the time he was sentenced. The court explicitly stated that Mr. Smith “shall undergo incarceration in a State Correctional Institution for an indeterminate period of time, the minimum of which shall be eighteen (18) months, and the maximum of which shall be five (5) years.” The plain meaning of this sentence would surely have awakened Mr. Smith to the fact that he received a sentence with a range of eighteen months to five years. No reasonable person could assume, after hearing that

sentence imposed, that he would definitely be released after eighteen months.

Finally, we note that Mr. Smith has alleged in his pro se petition that the sentence is illegal because it is indeterminate. Naturally, this argument is waived because Mr. Smith failed to raise it on direct appeal, and it is untimely if cloaked in an ineffectiveness claim. But more importantly, it is meritless because a sentence providing a minimum and maximum term is not only mandated by law, 42 Pa.C.S.A. 9756, but it is not an indefinite sentence. It is, rather, a definite sentence for a period of at least the minimum, with the possibility of parole after that time. This sentencing scheme reflects the legislature's judgment that the best method of sentencing criminal defenders is a mixture of judicial determination, based on the crime and the defendant, combined with discretion of the Pennsylvania Board of Probation and Parole, based on experience with the prisoner while incarcerated. The fact that this type of sentence is called "indefinite" on a Department of Corrections form is irrelevant.

ORDER

AND NOW, this _____ day of November, 1999, for the reasons stated in the above opinion, the amended PCRA petition filed by Matthew Smith on 27 October 1999 is dismissed.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell Jacques, Esq., Law Clerk
Hon. Clinton W. Smith.
James Protasio, Esq.
District Attorney
Gary Weber, Esq.