

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: No. 97-12,154
	:
vs.	: CRIMINAL DIVISION
	:
	:
GARY ROSE,	: PCRA
Defendant	: Notice of Intent to Dismiss

ORDER

AND NOW, this ____ day of August 2000, upon review of the record and pursuant to Pa.R.Cr.P. Rule 1507(a), it is the finding of this Court that the defendant is not entitled to post conviction collateral relief.

All the issues raised in the defendant's Post Conviction Relief Act (PCRA) petition relate to the calculation of his prior record score. The only sentencing issues subject to post conviction review are whether sentences imposed exceed the lawful **maximum**. Commonwealth v. Lewis, 430 Pa.Super. 336, 634 A.2d 633 (1993), appeal denied, 539 Pa. 689, 653 A.2d 1228 (emphasis added). The Court sentenced the defendant to incarceration in a state correctional institution for a period of 9 months to 2 years for retail theft, a misdemeanor of the second degree¹ and 1 year concurrent probation for disorderly conduct, a misdemeanor of the third degree. The maximum lawful

¹Although this was the defendant's third or subsequent retail theft conviction and therefore should have been charged as a felony of the third degree, the defendant was charged and pled guilty to a misdemeanor of the second degree.

sentences for a misdemeanor of the second degree and a misdemeanor of the third degree are 2 years and 1 year, respectively. 18 Pa.C.S. §1104. Therefore, the defendant's sentences do not exceed the lawful maximum.

Challenges concerning the length of the minimum sentence do not fall within a cognizable basis for relief under the PCRA. Commonwealth v. Gonzalez, 415 Pa.Super. 65, 608 A.2d 528 (1992).

The defendant also asserts his counsel was ineffective for failing to challenge the calculation of his prior record score and/or withdrawing the motion to reconsider his sentence without his consent. These claims also are not cognizable under the PCRA because they do not affect the determination of the defendant's guilt or innocence. 42 Pa.C.S. §9543(a)(2)(ii).

As no purpose would be served by conducting any further hearing, none will be scheduled and the parties are hereby notified of this Court's intention to deny the Petition. The defendant 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.

By The Court,

Kenneth D. Brown, Judge