

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 97-11,838

VS. :

GAMAL SUMMERS :

OPINION AND ORDER

Defendant has filed a petition under the Post Conviction Relief Act (PCRA), 42 Pa. C.S.A. §9541 et seq., alleging that original trial counsel was ineffective in his representation of Defendant at his sentencing hearing. After reviewing the applicable caselaw, this Court must deny Defendant's request for relief.

On February 22, 1999 Defendant, Gamal Summers, appeared before this Court for sentencing after having been convicted by a jury on charges of aggravated assault, 2 counts of simple assault and disorderly conduct. The jury found that the Defendant, while visiting his wife in the maternity ward of the Williamsport Hospital, failed to comply with the rules of the floor along with a request to leave. As the Defendant was escorted out of the maternity ward by hospital security, he scuffled with the guards, threatened a nurse and bit one of the guards. The Court found no mitigating or aggravating factors, and sentenced the Defendant to 8 (eight) to 24 (twenty-four) months on the aggravated assault and 2 (two) to 6 (six) months on a simple assault count for an aggregate state prison sentence of 10 (ten) to 30 (thirty) months. This Court additionally made the Defendant eligible for the Boot Camp program. As the sentences were announced, however, defense counsel notified the Court that a 10 (ten) month

minimum sentence would not be a Boot Camp sentence. Since the Court clearly expressed its desire for the Defendant to qualify for, and attend the Boot Camp program, the Court increased his sentence to a minimum of 12 (twelve) months. It was clear to the Court that Defendant, based upon the circumstances stated at the hearing, would receive a state sentence even prior to the Boot Camp discussion.

Defendant alleges that his original counsel was ineffective for requesting an increase in the Court's sentence to make him eligible for the Boot Camp program, as the sentence originally intended to be imposed by the Court would still have made him eligible for the program. After reviewing the facts and applying them to the Act, this Court cannot find the Defendant's claim, as presented, eligible for relief under the statute. In order to be eligible for relief under the Post Conviction Relief Act, the Defendant must plead and prove, by a preponderance of the evidence, that his sentence resulted from "ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place." Commonwealth vs. Moore, 439 Pa. Super. 48, 653 A.2d 24 (1995). Furthermore, "claims of ineffectiveness which were issues of discretionary aspects of sentencing ... did not render the adjudication unreliable as to the ultimate guilt or innocence of the petitioner." Commonwealth v. Wolfe, 398 Pa. Super. 94, 580 A.2d 857 (1990).

In the instant case, the Court finds that Defendant's argument concerns an issue of the discretionary aspects of his sentence. The Court clearly desired to have the Defendant eligible for the Boot Camp program. Defendant's counsel noted, and the guidelines confirm, that those with less than

a 12 month minimum sentence may not be considered eligible for the Boot Camp program.¹

Additionally, Defense counsel's request, along with this Court's subsequent sentence was not illegal or imposed as a mandatory. Since the challenge to this Court's sentence would be to the use of its discretion, Defendant's claim does not qualify for PCRA relief.

ORDER

AND NOW, this ____ day of September, 2000 the Court finds that the Defendant's Petition does not state a claim for relief under the Post Conviction Collateral Relief Act. 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. 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

Nancy L. Butts, Judge

xc: D.A.
C.A.
Demetrius W. Fannick, Esquire
Law Clerk
Judges
Honorable Nancy L. Butts
Gary Weber, Esquire

1

The Commentary to §303.12(b) of the Sentencing Guidelines provides that the commission "strongly recommends against the court identifying persons with less than a 12-month minimum as being eligible for boot camp." Sentencing Guidelines 5th Edition, 6/13/97 pp. 224-225.