

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF  
: PENNSYLVANIA

v.

DARRIN LEE,

Appellant

No. 176 WDA 2018

Appeal from the PCRA Order January 22, 2018  
in the Court of Common Pleas of Allegheny County  
Criminal Division at No(s): CP-02-CR-0011682-2015

BEFORE: GANTMAN, P.J.E., McLAUGHLIN, J., and MUSMANNNO, J.

MEMORANDUM BY MUSMANNNO, J.:

FILED JUNE 20, 2019

Darrin Lee ("Lee") appeals from the Order denying his first Petition for relief filed pursuant to the Post Conviction Relief Act ("PCRA"). See 42 Pa.C.S.A. §§ 9541-9546. We affirm.

On October 17, 2016, Lee entered a negotiated guilty plea to three counts of possession of a firearm prohibited. See 18 Pa.C.S.A. § 6105. Pursuant to the plea agreement, the trial court imposed concurrent sentences of 3 to 6 years in prison, followed by 4 years of probation, plus fees and costs. Relevant to this appeal, the plea agreement did not include a recommendation regarding Lee's eligibility for a boot camp program. During the guilty plea hearing, Lee's counsel requested boot camp. The trial court responded that it had no objection to Lee entering a boot camp program, if he was otherwise eligible, but clarified that the court had no control over whether Lee would be

accepted into the program.<sup>1</sup> Lee did not file a post-sentence motion or a direct appeal.

On June 28, 2017, Lee, pro se, filed the instant timely PCRA Petition. The PCRA court appointed Lee counsel, who subsequently filed an Amended Petition on Lee's behalf. Following a hearing on January 22, 2018, the PCRA court denied Lee's Petition. Lee filed a timely Notice of Appeal and a Pa.R.A.P. 1925(b) Concise Statement of matters complained of on appeal.

On appeal, Lee argues that the Department of Corrections misplaced the March 10, 2017 Corrected Order of Sentence, and therefore, never informed the proper prison personnel that Lee was eligible for boot camp. Brief for Appellant at 9, 12. Lee acknowledges that a boot camp recommendation was not part of his plea agreement, but alleges that it was nonetheless part of his sentence. *Id.* at 9, 13. Lee claims that because his minimum sentence date was May 21, 2018, a 6-9 month boot camp program would keep him incarcerated well beyond his eligibility for parole. *Id.* at 13. Lee therefore asserts that "principles of equity and fairness demand" that the trial court re-sentence him to a 2-year minimum sentence to account for the error. *Id.*

Our standard of review of an order denying PCRA relief is whether the record supports the PCRA court's determination and whether the PCRA court's decision is free of legal error. The PCRA

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<sup>1</sup> The trial court's original Order of Sentence, filed on October 17, 2016, did not specify that Lee would be eligible for boot camp. On March 10, 2017, the trial court filed a Corrected Order of Sentence, designating Lee as boot camp-eligible, and granting Lee credit for time served.

court's findings will not be disturbed unless there is no support for the findings in the certified record.

Commonwealth v. Lawson, 90 A.3d 1, 4 (Pa. Super. 2014) (citations omitted).

Lee's claim is not cognizable under the PCRA. See 42 Pa.C.S.A. § 9543(a)(2) (setting forth the bases for obtaining relief under the PCRA). Further, boot camp eligibility was not expressly made a part of Lee's plea agreement. See N.T., 10/17/16, at 10 (wherein the assistant district attorney stated that boot camp eligibility was not part of the negotiated plea); see also *id.* at 9-10 (wherein the trial court confirmed that Lee understood that while the court did not object the boot camp program, it had no control over whether Lee would be accepted).

Moreover, even if Lee had raised a cognizable claim under the PCRA, we would conclude that he is not entitled to relief. Lee's sole claim on appeal challenges only his minimum prison sentence. Although Lee is still serving his sentence, see 42 Pa.C.S.A. § 9543(a)(1)(i), the docket reflects that Lee was accepted for state supervision on August 24, 2018. Thus, Lee is no longer serving his sentence in prison, and the PCRA court would be unable to grant him the relief he seeks.

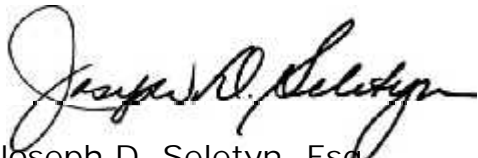
Based upon the foregoing, we affirm the PCRA court's Order denying Lee's Petition.

Order affirmed.

Judge McLaughlin joins the memorandum.

P.J.E. Gantman concurs in the result.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive, flowing style with a large initial "J".

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 6/20/2019