

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

DAVID E. SIMMS,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 961 EDA 2017

Appeal from the PCRA Order February 22, 2017
in the Court of Common Pleas of Chester County
Criminal Division at Nos.: CP-15-CR-0004169-2009
CP-15-CR-0004328-2009

BEFORE: LAZARUS, J., RANSOM, J., and PLATT, J.*

JUDGMENT ORDER BY PLATT, J.:

FILED NOVEMBER 28, 2017

Appellant, David E. Simms, appeals *pro se* from the order dismissing his petition for relief pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546. We affirm.

Appellant asserts PCRA court error in dismissing his petition, which claimed that he received a constitutionally invalid mandatory minimum sentence. (**See** Appellant's Brief, at 9-20).

We review the grant or denial of PCRA relief to determine whether the court's decision is supported by the record and free of legal error. For legal questions, our standard of review is *de novo*, and our scope of review is

* Retired Senior Judge assigned to the Superior Court.

plenary. **See Commonwealth v. Burton**, 158 A.3d 618, 627 n.13 (Pa. 2017).

This case returns to us after remand for the PCRA court to appoint counsel.¹ (**See** PCRA Court Opinion, 5/12/17, at unnumbered page 2; **see also Commonwealth v. Simms**, No. 89 EDA 2016, 2016 WL 5845389, at *1 (Pa. Super. filed Aug. 30, 2016) (unpublished judgment order)).²

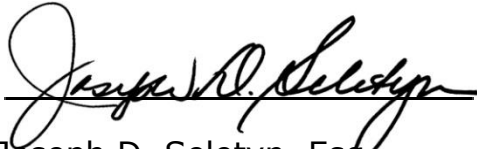
Briefly, Appellant entered a negotiated plea to two counts of robbery and one count of fleeing or attempting to elude, receiving the agreed aggregate sentence of not less than twelve nor more than thirty years' incarceration in a state correctional institution. (**See** N.T. Sentencing, 8/02/10, at 9-10, 12; **see also** Guilty Plea Colloquy, 8/02/10, at unnumbered page 3). Appellant received the negotiated sentence, **not** a mandatory minimum sentence. (**See** PCRA Ct. Op., at unnumbered page 3). The record is devoid of any indication to the contrary. The PCRA court's decision is supported by the record and free of legal error. Moreover, on review, we find no other claims which would merit PCRA relief.

Order affirmed.

¹ The court appointed counsel but subsequently granted his petition to withdraw after he filed a "no merit" letter. **See Commonwealth v. Turner**, 544 A.2d 927 (Pa. 1988); **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988) (*en banc*).

² We respectfully refer the reader to that order for more history of this case.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 11/28/2017