



defendant's home while the defendant was present. Following the purchase, other police officers entered the home and additional cocaine was discovered in a closet. Defendant was found guilty of possession with intent to deliver and criminal conspiracy. Sentenced was deferred pending a presentence investigation. On July 21, 1995, the defendant failed to appear for sentencing and a bench warrant was issued. The defendant was not before this court again until May 9, 1998. In the interim, the defendant had been convicted of other charges and transferred to a state correctional institution. After several administrative delays, this court sentenced him on February 18, 1999, to incarceration of twelve to twenty-four months, to be served consecutively to his then-current sentence and to be followed by twelve months probation.

Within ten days of the sentencing hearing, defense counsel timely filed a motion to modify sentence. Said motion was denied on March 8, 1999. No appeal followed at that time. On March 29, 2000, defendant filed a petition under the Post Conviction Relief Act, 42 Pa.C.S.A. § 9541 *et seq*, asserting, *inter alia*, that his counsel had been ineffective, incompetent, and lacked the proper experience to properly try the case. Although many broad allegations were made in defendant's petition, the only specific ground was that defense counsel was ineffective because she failed to file an appeal even though requested to do so by the defendant. On January 10, 2001, at the time of argument on the PCRA petition, the Commonwealth agreed to reinstate defendant's appeal rights *nunc pro tunc*. This appeal followed.

In his statement of matters complained of defendant raises four grounds as the bases for his appeal. The first two grounds are based on alleged ineffective assistance of counsel. In order to prevail on a claim of ineffective assistance of counsel, a defendant must first demonstrate that the issue, argument or tactic which counsel has foregone and which is the basis

of the ineffectiveness claim, is of arguable merit. If so, then it must be shown that counsel had no reasonable basis for the course of action taken. Finally, if the first two tests are met, the defendant must show that counsel's course of action resulted in actual prejudice. Commonwealth v. Paolello, 542 Pa. 47, 665 A.2d 439, 454 (1995). If it is apparent that the prejudice prong has not been met, the first two prongs of the test need not be determined. Commonwealth v. Jones, 546 Pa. 161, 683 A.2d 1181, 1188 (1996). The burden is on the defendant because counsel's actions are presumptively effective. Commonwealth v. Speight, 544 Pa. 451, 677 A.2d 317,321 (1996).

Defendant has not supported his ineffectiveness claim. Specifically, defendant alleges that counsel was ineffective in failing to call witnesses, including the defendant, and failing to investigate potential witnesses on the defendant's behalf. No specific witness, other than the defendant, is mentioned, nor is the substance of any "missing" testimony elaborated upon. Hence, defendant's ineffectiveness claim must fail.

Defendant next argues that the verdict was against the weight of the evidence. Defendant has missed the difference between claims of "insufficiency" and lack of "weight" of evidence. The distinction was explained by the Superior Court in Commonwealth v. Whiteman, 336 Pa. Super. 120, 485 A.2d 459, 461-62 (1984):

A motion for a new trial on the grounds that the verdict is against the weight of the evidence concedes that there is sufficient evidence to sustain the verdict but contends, nevertheless, that the verdict is against the weight of the evidence...The test is...whether the verdict is so contrary to the evidence as to make a new trial imperative so that right may be given another opportunity to prevail.

The issue of weight of evidence goes to the quality, not quantity of the evidence presented. The fact finder must consider the inconsistencies contained in the testimony of the witnesses, as well

as the credibility attributed to this evidence after observations of the witness's demeanor.

Thereafter, a fact finder must base the verdict on the weight of the credible evidence presented.

Here, the court found that there was sufficient credible testimony to support the verdict.

Consequently, a new trial is not warranted.

Finally, defendant argues that the sentence imposed was excessive. This argument, too, must fail. Defendant was convicted of two felonies, each with a possible maximum penalty of seven years incarceration. 18 Pa.C.S.A. § 1103. Under the sentencing guidelines applicable at the time, the drug charge had an offense gravity score of six and defendant's prior record score was four. Hence, the guidelines range was twelve to twenty-four months incarceration, i.e. the sentence imposed herein. Additionally, under the same guidelines, an additional confinement could have been imposed on the conspiracy charge, which was not done. Clearly, the sentence was not excessive.

For all of the above reasons, the conviction was proper and Judgment of Sentence as entered on February 18, 1999, imposing the sentence of twelve to twenty-four months incarceration, followed by twelve months probation, should be affirmed.

By the Court:

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Myrna Field, J.