

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,

vs.

RICHARD MARR,

Respondent

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: NO. 97-11,261

: 1925(a) OPINION

Date: December 28, 2001

**OPINION IN SUPPORT OF THE ORDER OF JULY 27, 1999 IN COMPLIANCE
WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

In this Appeal Defendant challenges this Court's July 27, 1999, Order of the dismissal of his first Post-Conviction Collateral Relief Petition without a hearing. Procedurally, Defendant was given *nunc pro tunc* permission to file this Appeal by an Order dated August 31, 2001 (filed September 11, 2001). The transcript of the proceeding of August 31, 2001, presents a convoluted statement of the history of this case; therefore, a more detailed chronological history is necessary to understand the issues now raised on appeal.

On December 4, 1997, Defendant represented by G. Scott Gardner, Esquire, entered a guilty plea to charges of theft, forgery and receiving stolen property, all felonies. The charges arose out of one incident in which Defendant stole a Buick from a car dealer by paying for it with a check forged on his Mother's bank account. There was a plea agreement Defendant would receive a standard range sentence, a minimum of 24-36 months, and that all sentences would be concurrent. On December 19, 1997, Defendant was sentenced to state prison for a term of 36 months to seven years, in conformance to the plea agreement, as to the theft charge. No sentence was imposed as to the remaining charges. No appeal was filed.

The transcript of this sentencing procedure filed June 14, 1999, is incomplete as prior to the beginning of the transcribed portion Defendant and others were advised of their appeal rights. This has not yet been transcribed.

On May 5, 1998, as amended on May 28, 1998, Defendant filed a *pro se* motion for post-conviction relief. On May 21, 1998, the sentence order was amended by stipulation to provide Defendant with credit for time served. James Protasio, Esquire, was appointed in this pleading. The PCRA Petition asserted Defendant's counsel, at the guilty plea, was not effective because he did not get a good plea agreement and was sentenced outside the appropriate guideline ranges. Secondly, Defendant asserted he should have a new trial based upon counsel's failure to move to withdraw his guilty plea because the victim (his mother) would choose not to testify. Third, Defendant stated counsel had failed to file a motion for reconsideration of sentence based upon Defendant's plea agreement and the correct guidelines. After a conference this Court entered an Order on June 29, 1999, finding the PCRA Petition should be dismissed without a hearing. The Court's reasons therefore are set forth in that Order, pursuant to the notice given therein, the PCRA Petition was dismissed by Order of July 27, 1999. At a proceeding held August 31, 2001, this Court found Defendant had timely filed an appeal of the July 29, 1999 Order on or about August 16, 1999, by a *pro se* filing which the Prothonotary wrongfully rejected on August 30, 1999, pursuant to Pa. R.C.P. 9022(c), believing Defendant to be represented by counsel. Inasmuch as Defendant was seeking to question the effectiveness of both guilty plea and PCRA counsel, it was appropriate for him to appeal *pro se*. Therefore, the Order of August 31, 2001, gave him the right to appeal *nunc pro tunc* at this time.

However, this Court believes Defendant has raised no valid appellate issues either as to his freedom from guilt nor that counsel was in any way ineffective.

Therefore, this Court recommends the Appeal be dismissed.

BY THE COURT,

William S. Kieser, Judge

cc: Superior Court (Original + 1)
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Judges
Suzanne R. Lovecchio, Law Clerk
Gary L. Weber, Esquire (Lycoming Reporter)