

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 97-10,190

VS :

MICHAEL JOSEPH DOUGHERTY :

OPINION AND ORDER

Before the Court is Defendant's Motion, filed *pro se*, for Post Conviction Collateral Relief. Counsel was appointed for the Defendant and a conference on the Motion was held February 12, 2002. Defendant alleges that his counsel was ineffective for failing to perfect his initial appeal by failing to submit a brief. By failing to submit a brief in accordance with the rules of appellate procedure, the appeal was dismissed.

42 Pa.C.S. § 9543(a) requires that to be eligible for relief, the Defendant must plead and prove by a preponderance of the evidence *all* of the following:

. . .

(2) That the conviction or sentence resulted from one or more of the following:

. . .

(ii) 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.

(3) That the allegation of error has not been previously litigated or waived.

(4) That the failure to litigate the issue prior to or during trial, during unitary review or on direct appeal could not have been the result of any rational, strategic or tactical decision by counsel.

In Commonwealth v Lantzy, 736 A.2d at 570 (Pa. 1999), the Pennsylvania Supreme Court held that an unjustified failure to file a requested direct appeal constitutes conduct of counsel falling beneath the range of competence demanded of attorneys in criminal cases. Under Lantzy, this Court finds that Defendant has established that his counsel was ineffective for failing to perfect his appeal. The Court finds that Defendant is entitled to the restoration of his appeal rights.

ORDER

AND NOW, this ____ day of February, 2002, it is ORDERED and DIRECTED that Defendant's Petition for Post Conviction Collateral Relief is Granted. Defendant has 30 days from today's date in which to file his appeal.

By The Court,

Nancy L. Butts, Judge

cc: DA
Matthew Zeigler
Honorable Nancy L. Butts
Law Clerk
Gary Weber, Esquire
Judges