

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :  
 :  
 vs. : NO. 96-11,111  
 :  
 JEFFREY MILLER, : CRIMINAL ACTION - LAW  
 : PETITION FOR POST CONVICTION  
 Defendant : RELIEF

*Date: December 10, 2002*

**OPINION AND ORDER**

Before the Court is Defendant's Petition for Post Conviction Relief filed July 30, 2002, pursuant to 42 Pa. C.S. §9501 *et seq.* Essentially the Petition asserts that prior PCRA counsel, appointed to pursue a *nunc pro tunc* direct appeal on behalf of Defendant, was ineffective because of failure to pursue seven matters on appeal enumerated in paragraph 11 at subparagraphs a) through g). Argument was held as to whether or not an evidentiary hearing should be held on the allegations of the Petition on October 1, 2002. Upon review of the matters raised in argument, the matters set forth in the Petition, and the transcripts that are available at this time (the Court noting that all the trial testimony has not been transcribed or else is not all available from the Prothonotary's Office at this time) the Court finds an evidentiary hearing is appropriate to allow Defendant to pursue the ineffectiveness of counsel claim as would relate to the following subparagraphs of paragraph 11 of the Petition:

a) – the appropriateness of Defendant waiving his right to testify at trial due to trial counsel pressure.

c) – trial counsel’s failure to use, or Commonwealth’s failure to reveal, evidence relating to the projectory of the bullet hole found through execution of the Search Warrant at the crime scene.

d) – handling of the evidence of Defendant’s “blood soaked shirt” which appeared to have been “first cleaned.”

e) – trial counsel’s failure to call the victim Richard Haines as a witness.

g) – trial counsel’s failure to timely object to the alleged sequestration order violations.

This Court does not believe that the assertions of paragraph 11, subparagraphs b)–referring to the victim, Richard Haines, as a “victim” nor subparagraph f) testimony regarding credibility of three Commonwealth’s witnesses, to be matters warranting an evidentiary hearing. The reference to Mr. Haines as a victim was not done in any inflammatory way nor would it affect the truth-determining process. The jury determined the credibility of the three witnesses at the time of trial and Defendant does not assert the availability of any new evidence, which would impact upon that credibility.

Accordingly, the following Order is entered.

**ORDER**

An evidentiary hearing shall be held on the 7<sup>th</sup> day of February 2003 at 2:30, p.m. in Courtroom No. 3 of the Lycoming County Courthouse, 48 West Third Street, Williamsport, Pennsylvania on Defendant’s Petition for Post Conviction Relief filed July 30, 2002 as would relate to the issues raised in the following subparagraphs of paragraph 11 of the Petition:

a), c), d), e), g). The allegations for the PCRA Relief set forth in paragraph 11, subparagraphs b) and f) is denied and will be dismissed at the completion of the PCRA proceeding before this Court.

The Sheriff of Lycoming County shall cause Defendant to be transported to Lycoming County Prison for purposes of attending such a hearing in a timely from such State Institution as to where he may be incarcerated at the time of the hearing and shall see that he is timely returned thereto.

BY THE COURT,

WILLIAM S. KIESER, JUDGE

cc: Kenneth Osokow, Esquire, ADA  
Eric Linhardt, Esquire  
Kyle Rude, Esquire  
William Miele, Esquire  
Sheriff (2) for service to SCI  
Lycoming County Prison