

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	<b>: No. 89-11,062</b>
	<b>:</b>
	<b>:</b>
<b>vs.</b>	<b>: CRIMINAL DIVISION</b>
	<b>:</b>
	<b>:</b>
<b>DONALD KENNETH SHAFFER, JR.,</b>	<b>:</b>
<b>Defendant</b>	<b>: 1925(a) Opinion</b>

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

This opinion is written in support of this Court's Orders issued on or about November 8, 2001 and November 30, 2001. The relevant facts are as follows: On or about August 25, 1989, Donald Kenneth Shaffer, Jr. (hereinafter Shaffer) was charged with various counts of rape, statutory rape and corruption of minors. In April 1990, a jury found Shaffer guilty of these charges. On or about September 13, 1990, the Court sentenced Shaffer to incarceration in a state correctional institution for a minimum of ten (10) years and a maximum of twenty (20) years. Shaffer filed a timely appeal, but the Appellate Court affirmed his sentence.

Shaffer applied for parole in 2000. The Pennsylvania Board of Probation and Parole (hereinafter Board) refused to parole Shaffer and indicated that he should participate in a treatment program for sexual offenders.

On October 30, 2001, Shaffer filed a Petition for Writ of Habeas Corpus. In his petition, Shaffer alleges that requiring him to participate in a sexual offender program

and/or the Board's utilization of guidelines for violent offenders including the federal Truth in Sentencing law violated the ex post facto clause of the United States Constitution. Shaffer requested that the Court parole him or modify his sentence so he would be released from prison. The Court denied Shaffer's petition without a hearing, indicating parole is with the exclusive authority of the Board and that jurisdiction for this case would either be in the Commonwealth Court or in the Court of Common Pleas of Centre County.

The Court relies on the rationale set forth in its Order of November 8, 2001 and November 30, 2001. The Court also notes the means for examining whether statutory requirements for parole have been altered in a manner that violates the ex post facto clause is through an action in mandamus. Coady v. Vaughn, 564 Pa. 604, 608-09, 770 A.2d 287, 290 (2001). Such an action would be within the original jurisdiction of the Commonwealth Court. Id.; 42 Pa.C.S. §761(a)(1). Such a challenge cannot be raised in a habeas corpus proceeding. Weaver v. Pennsylvania Board of Probation and Parole, 688 A.2d 766, 775 n.17 (Pa.Cmwlth. 1997). Although the wisdom of Weaver is questioned by Justice Castille in his concurring Opinion in Coady, supra. At 615, 770 A.2d at 294, this Court is bound to follow Weaver until this issue is squarely addressed by a majority of the Pennsylvania Supreme Court.

DATE: \_\_\_\_\_

By The Court,

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Kenneth D. Brown