

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

COMMONWEALTH OF PENNSYLVANIA	: NO. 00-10,685
	:
	:
vs.	: CRIMINAL DIVISION
	: Post Conviction Collateral Relief
TYRONE DUNN,	:
Defendant	:

OPINION

Before the Court is Defendant’s Motion for Post Conviction Collateral Relief, filed July 29, 2002. A conference on the Petition was held November 25, 2002. Following the conference and upon review of the record, the Court finds there are no genuine issues concerning any material fact and Defendant is thus not entitled to post conviction collateral relief.

After a trial on September 29, 2000, Defendant was found guilty by a jury of aggravated assault and simple assault. By Order of that date, the Court entered the verdict of the jury and also adjudicated Defendant guilty of the summary offense of harassment. On December 4, 2000, Defendant was sentenced to 21 to 48 months incarceration on the charge of aggravated assault and the simple assault and harassment were found to merge with aggravated assault for purposes of sentencing. A Motion for Post Sentence Relief was denied by Order dated January 4, 2001. Defendant appealed to Superior Court but that Court affirmed his judgment of sentence by Order entered July 26, 2001.

Upon filing of the Motion for Post Conviction Collateral Relief, counsel was appointed to review the petition. At the conference on November 25, 2002, counsel presented the issues raised by Defendant after orally amending the petition in an attempt to rectify errors in form

raised by the Commonwealth.<sup>1</sup> The Court believes the issues raised in the petition are meritless.

Defendant contends first that he was denied his right to a jury trial on the charge of harassment inasmuch as the Court adjudicated him on that charge without allowing the jury to do so. Defendant is not entitled to a jury trial on a summary offense, however, and in any event, the charge of harassment merged with the aggravated assault for sentencing purposes.

Defendant also contends his Sixth Amendment Right to trial by a fair and impartial jury was violated due to what he alleges is the systematic exclusion of minorities from jury panels in Lycoming County. It appears that Lycoming County pulls potential jurors from the voter registration rolls as well as the tax rolls. This method has been held constitutional by the Courts of this Commonwealth.

As the Court finds there is no genuine issue concerning any material fact and that Defendant is not entitled to Post Conviction Collateral Relief, no purpose would be served by any further proceedings. The parties are hereby notified of this Court's intention to dismiss the petition. Defendant is further notified he may respond to the proposed dismissal within twenty (20) days of the date of this notice. If no response is received within that time period, the Court will enter an Order dismissing the petition.

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<sup>1</sup> The Commonwealth continues to maintain that even as amended the petition is defective. The Court will address the issues on the merits nevertheless inasmuch as the alleged defects do not affect the Court's ability to reach those issues.

By the Court,

Dudley N. Anderson, Judge

DATE: November 26, 2002

cc: DA

Eric Linhardt, Esq.

Tyrone Dunn, #EM-0840, Box 244, Graterford PA 19426-0246

Gary Weber, Esq.

Hon. Dudley N. Anderson