

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : No. 99-10,955  
:   
:   
vs. : CRIMINAL DIVISION  
:   
:   
JAMAL BENNETT, :   
Defendant : 1925(a) Opinion

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 Order issued November 22, 2002, which denied Defendant's Post Conviction Relief Act (PCRA) petition. The facts, as summarized in the Superior Court memorandum opinion filed August 2, 2001, are as follows:

On April 9, 1999, paramours Gordon Hill and Danielle Brinkley went to a house owned by Brinkley's brother, who had been incarcerated for the past several months. Upon arriving, Hill and Brinkley encountered [Defendant], who rented a room in the house, gathered with several men on the front porch. Hill and Brinkley explained to [Defendant] that Brinkley's brother wanted them to remove some of his belongings from the house, and then commenced their project.

Soon thereafter, [Defendant] and Hill began arguing. According to the testimony of Hill and Brinkley, [Defendant] then retrieved a shotgun from the basement, and aimed it at Hill's head. Hill testified he managed to run out of the house and call police on his cell phone. Officers arrived on the scene approximately ten minutes later, and took statements form Hill and Brinkley that were consistent with the above-described testimony. [Defendant]

denied producing a firearm during the incident. At that point, [Defendant] consented to a request by the officers to search the house for a shotgun. However, while the officers were conducting the search [Defendant] fled the premises on foot. Officers pursued him, and found him hiding in a nearby dumpster. When apprehended, Defendant had a cell phone, pager and \$91 in his possession.

Although the consensual search of the house did not yield a shotgun, officers did observe cocaine residue on a plate that was concealed in a hollow kitchen bench. Based on this observation, the officers obtained a warrant to search the house for drugs. In the search that followed, they found three grams of cocaine, plastic baggies, lighters, razor blades, two cell phones, two pagers and a photograph of Defendant holding a shotgun identical to the one described by Hill and Brinkley. No paraphernalia for personal use was found.

Thereafter, [Defendant] was charged with possessing a controlled substance with intent to deliver, reckless endangerment and simple assault. The Court conducted a jury trial and Defendant was convicted of all charges.

Commonwealth v. Jamal Bennett, 536 MDA 2000, pp. 1-3.

When the Court sentenced Defendant, it applied the deadly weapon enhancement to the sentencing guideline ranges on the simple assault conviction. In his PCRA petition, the sole issue raised by Defendant is that the Constitution required a jury to determine whether he possessed a weapon.

Since the Court made that determination, Defendant asserted his sentence was unconstitutional. Defendant relied on Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348 (2000) and Jones v. United States, 526 U.S. 227, 119 S.Ct. 227 (1999). The Court denied Defendant's PCRA petition without

an evidentiary hearing, because he was not entitled to relief as a matter of law based on Harris v. United States, 122 S.Ct. 2406 (2002). In Harris, the Supreme Court found the jury requirement of Apprendi and Jones applied only when a factual finding would increase the **maximum** sentence imposed; it did not apply to fact-finding that would increase the minimum sentence. Pennsylvania's deadly weapon enhancement increases the sentencing guidelines for the minimum sentence. 204 Pa.Code §§303.9(b), 303.9(e). Therefore, under Harris, Defendant's claim was devoid of merit and the Court properly denied his PCRA petition.

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

By The Court,

\_\_\_\_\_  
Kenneth D. Brown, Judge

cc: Kenneth Osokow, Esquire  
Eric Linhardt, Esquire  
Law Clerk  
Gary Weber, Esquire (Lycoming Reporter)