

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

COMMONWEALTH OF	:	
PENNSYLVANIA,	:	
Plaintiff	:	
	:	
v:	:	No. 94-10,548
	:	
MICHAEL HAMPTON,	:	
Defendant	:	

**OPINION**  
**Issued Pursuant to Pa. R.A.P. 1925(a)**

The petitioner has appealed this court’s decision to dismiss his Second Amended PCRA petition. The background of this case is that the petitioner’s first PCRA petition was dismissed by this court but upon appeal the case was remanded back because the Superior Court determined that the petitioner’s PCRA counsel was ineffective for failing to modify the defendant’s pro se submission or file a brief with the court, failing to submit witness certifications from perspective witnesses the defendant alleged would provide exculpatory testimony, and failing to file a no-merit letter.

Upon remand, Kyle Rude, Esq., was appointed as counsel. Mr. Rude filed a First Amended PCRA Petition. After leave from the court and further communication with the petitioner, counsel filed a Second Amended Petition for Post Conviction Collateral Relief. The Second Amended Petition contained allegations which fit into two categories: trial counsel failed to investigate and call alibi witnesses, and trial counsel failed to argue on appeal that the petitioner was not present during the omnibus pretrial motion.

Later, Mr. Rude submitted a Finley letter stating that regarding the witnesses, counsel had attempted to contact all the witnesses provided to him by the petitioner, and sent them each an affidavit to fill out and return. Counsel also spoke with petitioner's chief witness Martin Miller by telephone. None of the affidavits were returned to counsel. Regarding the Omnibus Pretrial Motion Hearing, counsel stated in his letter that he believed the issue had already been addressed in a previous PCRA petition but if not, that issue should be addressed.

New counsel was then appointed, as previous counsel was no longer hired as a Conflicts Attorney. New counsel also eventually filed a Finley letter, stating that regarding the Omnibus Pretrial Hearing, there is no way to verify whether or not the petitioner was present, and even if the petitioner was not present, his absence did not affect the truth-determining process. Regarding alibi witnesses, new counsel stated that petitioner failed to assist in locating his potential witnesses, that new counsel attempted to locate the witnesses but was unsuccessful, and that new counsel requested funds to hire a private investigator to locate the witnesses, but the request was denied.

The petitioner now claims Mr. Zeigler's Finley letter is inadequate because it does not address all the petitioner's claims. The Finley letter addresses the claims raised in the Second Amended Petition, which counsel filed after consulting with the petitioner. It was counsel's job to ferret out the arguable claims and include those in the petition.

Attorney Rude found the claims raised in the petition to be without merit, Attorney Zeigler found them to be without merit, and the court finds them to be without merit. First, the alleged alibi witnesses have not materialized, despite the court giving petitioner and his

attorneys every opportunity to contact them and obtain affidavits. And secondly, even if the petitioner was not present at his Omnibus Pretrial Motion hearing, that issue is not cognizable under the PCRA.

BY THE COURT,

Date: \_\_\_\_\_

Clinton W. Smith, P.J.

cc: Matthew Zeigler, Esq.  
Michael Hampton, CQ-9867  
301 Morea Rd.  
Frackville, PA 17932  
Gary Weber, Esq.  
District Attorney