

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 00-11,502
 :
 vs. : CRIMINAL DIVISION
 :
 GERALD BARTLETT, :
 Defendant :

OPINION IN SUPPORT OF ORDER OF MARCH 15, 2004
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Defendant appeals this Court's Order of March 15, 2004, which proposed dismissal of his Petition for Post-Conviction Collateral Relief, the Court having conducted an independent review of the record but having found no genuine issue which would entitle Defendant to relief.¹ We note the Petition followed a direct appeal in which the Superior Court dismissed Defendant's claims of ineffective assistance of counsel pursuant to Commonwealth v. Grant, 813 A.2d 726 (Pa. 2002), without prejudice to Defendant's right to raise such claims in a collateral proceeding. His claims of trial court error were addressed by Superior Court on the merits; the judgment of sentence was affirmed.

By Order dated April 1, 2004, this Court directed Defendant to file a concise statement of the matters complained of on appeal within fourteen (14) days. This Order was inadvertently copied to the Public Defender's Office rather than defense counsel. Upon discovery of this error, a copy was sent, on April 26, 2004, to defense counsel, who acknowledged receipt on April 27, 2004, by way of an inquiry regarding any deadline. Defense counsel was given fourteen (14) days from April 27 to file the statement of matters complained of. Defendant has failed to file such a statement as of this date, May 13, 2004. As Defendant has not complied with the Order of April 1, 2004, pursuant to Commonwealth v. Lord, 719 A.2d 306 (Pa. 1998), it appears that any issues Defendant raises to Superior Court will be deemed waived. In any event, the Court chooses not to bind the Superior Court to

1 . It is noted defense counsel was provided an opportunity to supplement Defendant's pro se petition,

address an issue which Defendant may or may not wish to raise. See Commonwealth v. Perez, 664 A.2d 582 (Pa. Super. 1995). The Court will therefore address nothing further in this Opinion. It is noted this Court did address those claims of ineffective assistance of counsel which were raised in Defendant's direct appeal, in its Opinion and Order issued May 17, 2002. The Court found no merit in any of Defendant's claims.

Dated: May 14, 2004

By The Court,

Dudley N. Anderson, Judge

cc: District Attorney
Donald Martino, Esquire
Gary L. Weber, Esq.
Hon. Dudley N. Anderson

but failed to do so.