

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 01-12,163
:
:
vs. :
:
GREGORY SIMMS, :
Defendant :

OPINION IN SUPPORT OF ORDER OF AUGUST 3, 2004
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Defendant has appealed this Court’s Order of August 3, 2004, which denied his Petition for Post-Conviction Collateral Relief.¹ The petition was denied on the basis that the only claim raised therein was that the sentence was unfair, but the sentence had been entered pursuant to a negotiated plea. After a review of the file, the Court was convinced Defendant was not entitled to relief: although Defendant maintained he pled guilty because he feared the District Attorney’s Office might pursue a lengthier sentence than that negotiated, such fear does not invalidate a plea agreement. See Commonwealth v. Reagen, 290 A.2d 241 (Pa. 1972)(that a defendant would not have pleaded except for the opportunity to limit the possible penalty does not necessarily demonstrate that the plea of guilty was not the product of a free and rational choice).

By Order dated October 8, 2004, this Court directed Defendant to file a concise statement of the matters complained of on appeal within fourteen (14) days. Upon receiving a Corrected Docketing Statement from the Superior Court on October 14, 2004, indicating prior counsel continued to represent Defendant,² the Court sent a copy of the October 8, 2004, Order, which had previously been sent only to Defendant, to counsel, allowing fourteen days from that

1 Although in his Notice of Appeal Defendant states he is appealing the Sentencing Order, that Order was entered April 21, 2003, and the time for an appeal therefrom has expired.

date for the filing of the Statement of Matters Complained of on Appeal. As of this date, November 17, 2004, no statement has been filed. As Defendant has not complied with the Order of October 8, 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 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.

Dated: November 16, 2004

By The Court,

Dudley N. Anderson, Judge

cc: District Attorney
William A. Kovalcik, Esq.
Gregory Simms, FJ1728, 1120 Pike Street, Huntingdon, PA 16652
Gary L. Weber, Esq.
Hon. Dudley N. Anderson

2 The appeal was filed pro se.