

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

COMMONWEALTH	:	
	:	
v.	:	No.: 03-10,358
	:	
LINDA STAHL,	:	
Defendant	:	

**OPINION IN SUPPORT OF ORDER
IN COMPLIANCE WITH RULE 1925(A)
OF THE RULES OF APPELLATE PROCEDURE**

Defendant appeals this Court's Order of May 14, 2004, dismissing her "Motion to Reconsider Sentence Nunc Pro Tunc or Allow the Defendant to Withdraw Guilty Plea" because, by operation of law, the Court no longer had jurisdiction to entertain the Defendant's motion.

Defendant's counsel filed a timely notice of appeal on June 14, 2004. On June 15, 2004, this Court ordered that the Defendant provide the Court with a Concise Statement of Matters Complained of on Appeal within fourteen days. No Concise Statement in compliance with Pennsylvania Rule of Appellate Procedure 1925(b) has been filed on behalf of the Defendant.

Under Commonwealth v. Lord, 553 Pa. 415, 719 A.2d 30 (Pa. 1998), any issue not raised in a Defendant's 1925(b) concise statement is waived and cannot be considered on appeal. Here, because the Defendant has failed to file any 1925(b) statement, there are no issues for the Court to address. However, given the fact that the failure of the Defendant's attorney

to file a 1925(b) statement would likely result in a successful PCRA petition to reinstate the Defendant's appeal rights, the Court will attempt to address the issues which it believes the Defendant might have raised.

The facts of the case show that on March 22, 2004 the Defendant was sentenced in the above captioned matter to an aggregate period of state incarceration of seven years to fourteen years, followed by fourteen years of state probation supervision. This sentence exceeded the sentence offered by the Commonwealth as part of a negotiated plea agreement. The Defendant was told at the time of the sentencing that because the Court did not go along with the plea agreement, she, the Defendant, had a right to withdraw her plea and proceed to trial. N.T., Sentencing Hearing, March 22, 2004, p. 19. She was further informed that to withdraw her plea she "would have to contact (her) attorney and file that request in writing". Id. Additionally, the Defendant was told at the sentencing hearing that if she wished to appeal her sentence to the Superior Court that she must do so within thirty days of the date of sentencing and that if she did not, she would lose her right to "challenge this Court's sentencing or anything that happened throughout the course of (her) case forever." Id. at p. 20.

Under Pennsylvania Rule of Criminal Procedure Rule 720, a post-sentence motion "shall be filed no later than 10 days after the imposition of sentence," Pa. Rule Crim. Pro. Rule 720 (A)(1), or, if no post-sentence motion is filed, then "the Defendant's notice of appeal shall be filed within 30 days of the imposition of sentence." Pa. Rule Crim. Pro. Rule 720 (A)(3).

Defendant's Motion to Reconsider Sentence Nunc Pro Tunc or Allow the Defendant to Withdraw Plea was filed on April 8, 2004, or seventeen days after her sentencing. The motion was heard on May 14, 2004, fifty-three days after the Defendant was sentenced. In the May 14, order, the Court explained that the deadlines for filing for relief had passed, but that it appeared that an issue for Post-Conviction Relief might exist. The Court "requested that a conflicts attorney be appointed to review the matter to determine if a petition should be filed on the Defendant's behalf." Order of the Court, May 14, 2004. New counsel was appointed to represent the Defendant on May 17, 2004. However, no Post-Conviction Relief Act petition was filed and the Defendant's attorney instead filed a Notice of Appeal on June 14, 2004.

As stated in the Court's Order of May 14, 2004, this Court no longer has jurisdiction to act in the Defendant's case, having lost jurisdiction by operation of law. The Court acknowledges, however, that this Defendant should have been permitted to withdraw her guilty plea because the Court, in the exercise of its discretion, failed to honor the negotiated plea agreement,

and such a withdrawal would have been permitted had the motion requesting this relief been filed in a timely manner.

By the Court,

Nancy L. Butts, Judge J.

xc: DA
Jay Stillman, Esquire
Honorable Nancy L. Butts
Gary Weber, Esquire
Law Clerk