

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

**COMMONWEALTH**

**v.**

**KURTIS NIXON,  
Defendant**

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**NO: 00-11, 870**

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

The Defendant appeals this Court's April 13, 2004 decision on his Post Sentencing Motion. The Defendant filed his initial Notice of Appeal on May 11, 2004. On May 13, 2004, this Court requested that the Defendant file a Statement of Matters Complained of on Appeal in accordance with Pa.R.A.P. 1925(b); on June 16, 2004, the Defendant filed said Statement. In the Statement of Matters Complained of on Appeal, Defendant asserted three issues for review. First, the Defendant asserted that this Court erred in failing to find that the Defendant's conviction was in violation of Pa.R.Crim.P. 600. Next, the Defendant asserted that this Court erred in holding that the Commonwealth met its burden of proof and showed that the police exercised due diligence in trying to find and arrest the Defendant after the Criminal Complaint was filed. Lastly, the Defendant asserted that this Court erred in failing to find the Defendant's prior counsel ineffective. This Court, relying on its April 13, 2004 Opinion, rejected the Defendant's assertions.

On December 17, 2004, the Superior Court of Pennsylvania dismissed the Defendant's appeal for failure to file an appellant brief. On September 13, 2005, this Court reinstated the

Defendant's right to file a direct appeal nunc pro tunc based solely on ineffective assistance of counsel for failure to file an appellant brief. The Defendant's new counsel filed his Notice of Appeal on October 14, 2005 and, pursuant to this Court's October 5, 2005 Order, filed a Concise Statement of Matters Complained of on Appeal on November 15, 2005.

In the Defendant's current Statement of Matters Complained of on Appeal, he raises three issues for review: counsel was ineffective for failing to pursue a Rule 600 Motion; the Commonwealth failed to use due diligence in locating and bringing the Appellant to trial; and counsel was ineffective for agreeing to or requesting continuances. Relying on this Court's Opinion and Order filed April 13, 2004, this Court rejects the Defendant's assertions.

Additionally, the Court notes that, despite its September 13, 2005 Order reinstating the Defendant's right to appeal nunc pro tunc based solely on ineffective assistance of counsel for failure to file an appellant brief, the Defendant has failed to raise this issue in his current appeal thereby waiving the matter for appellate review. *Commonwealth v. Lord*, 553 Pa. 415, 719 A.2d 306 (1998) (held that in order to preserve a claim for appellate review, appellants must comply with the trial court's order to file a Statement of Matters Complained of on Appeal pursuant to Pa. R. App. P. 1925 and, any issue not raised in that Statement, is deemed waived).

By the Court

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Nancy L. Butts, Judge

cc: DA  
James R. Protasio, Esq.  
Honorable Nancy L. Butts  
Law Clerk