

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. 98-11,374
:
:
vs. : CRIMINAL DIVISION
:
:
CLARENCE PHIPPEN, :
Defendant : 1925(a) Opinion

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

This opinion is written in support of this Court's order dated September 30, 2004 and docketed October 1, 2004, which denied the defendant's "Motion for Emergency Bail."

A jury found the defendant guilty of aggravated assault, simple assault, terroristic threats and recklessly endangering. On or about October 7, 1999, the Court sentenced the defendant to incarceration in a state correctional institution for a minimum of 42 months and a maximum of 15 years. The Pennsylvania Superior Court affirmed the defendant's judgment of sentence in a memorandum opinion filed August 20, 2001. The defendant did not file a petition for allowance of appeal to the Pennsylvania Supreme Court. The defendant filed a Post Conviction Relief Act (PCRA) petition on March 23, 2003, but the Court dismissed it as untimely.

Except for capital offense or offenses for which the maximum sentence is life imprisonment, a defendant is entitled to bail before verdict. Pa.Const. Art. I, §14; Pa.R.Cr.P. 520. After a finding of guilt, when the sentence imposed includes imprisonment of 2 years

or more, the defendant does not have the same right to bail as before verdict, but bail may be allowed in the discretion of the trial judge while the defendant's case is on direct appeal.

Pa.R.Cr.P. 521. Once there has been a final disposition of his direct appeal, bail ceases.

Pa.R.Cr.P. 524. A defendant is not entitled to bail in anticipation or during the pendency of a Post Conviction Relief Act (PCRA) petition or any other collateral attack. Pa.R.Cr.P. 524 comment; 42 Pa.C.S.A. §9545(a). The only way the court can issue an order as to bail after the final disposition of a defendant's direct appeal is if the defendant successfully challenges his conviction through the PCRA. See 42 Pa.C.S.A. §9546(a).

The final disposition of the defendant's direct appeal occurred more than three years ago. The defendant's PCRA was not successful; it was untimely. The defendant is not entitled to bail.

DATE: _____

By The Court,

Kenneth D. Brown, P. J.

cc: Kenneth Osokow, Esquire (ADA)
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Work file
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Superior Court (original & 1)