

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

COMMONWEALTH

v.

**ROBERT CONNIFF,
Defendant**

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No.: 01-10,835

OPINION AND ORDER

Before the Court is Defendant's Petition under the Post Conviction Relief Act (PCRA). Defendant alleges ineffective assistance of counsel, which, in the circumstances of this particular case, "so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place," as required for relief under 42 Pa.C.S. § 9543(a). Defendant has also alleged improper obstruction by government officials of his right of appeal. Defendant's claims stem from this Court's finding that he violated the conditions of the Intermediate Punishment program pursuant to a hearing held February 4, 2004 and resentenced him to 1-1/2-to-5 years in state prison. Defendant was represented by Mary Morris, Esq., at the time of the hearing in question. Defendant timely filed a pro se PCRA petition on February 9, 2005 and was assigned James Protasio, Esq., as conflicts counsel on February 23, 2005. Two conferences with counsel were held in the matter, and defense counsel was given an opportunity to file an amended petition. No amended petition was filed.

"[W]here there is an unjustified failure to file a requested direct appeal, the conduct of counsel falls beneath the range of competence demanded of attorneys in criminal cases, denies the accused the assistance of counsel guaranteed by the Sixth Amendment to the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution, as well as the right to

direct appeal under Article V, Section 9, and constitutes prejudice for purposes of Section 9543(a)(2)(ii). Therefore, in such circumstances, and where the remaining requirements of the PCRA are satisfied, the petitioner is not required to establish his innocence or demonstrate the merits of the issue or issues which would have been raised on appeal. *Commonwealth v. Lantzy* 558 Pa. 214, 226, 736 A.2d 564, 572 (1999).

Recognizing the concerns expressed by the *Lantzy* Court, and considering Defendant's pro se petition as well as the conferences held in this matter, this Court finds the circumstances surrounding Defendant's request to file a direct appeal uncertain to the extent that in the interest of justice, Defendant's right to direct appeal shall be reinstated nunc pro tunc.

ORDER

AND NOW, this ____ day of July 2005, the Court hereby reinstates Defendant's right to a direct appeal nunc pro tunc.

By The Court,

Nancy L. Butts, Judge

xc: DA
J. Protasio, Esq.
Law Clerk
Gary Weber, Esq.