

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 01-12,161  
 :  
 vs. : CRIMINAL DIVISION  
 :  
 RICHARD JAMES, :  
 Defendant : :

OPINION IN SUPPORT OF ORDER OF MARCH 13, 2003  
IN COMPLIANCE WITH RULE 1925(A) OF  
THE RULES OF APPELLATE PROCEDURE

Defendant appeals this Court’s Sentencing Order of March 13, 2003, following reinstatement of his direct appeal rights nunc pro tunc. Such right to direct appeal was granted by Order of February 22, 2005, in response to a petition for post-conviction collateral relief. By Opinion and Order of that date, Defendant’s allegations of trial counsel ineffectiveness were addressed to facilitate appellate review; discussion of the claim of trial court error underlying his proposed direct appeal was reserved for the instant Opinion.

After a bench trial, Defendant was convicted of one count of possession of cocaine with intent to deliver and one count of conspiracy. Defendant contends the Court erred in allowing the Commonwealth to cross-examine Defendant about whether he had ever previously been involved in the sale of drugs. Specifically, Defendant had testified that he had been using cocaine on the date in question, but had not been involved in its sale. When the Commonwealth inquired whether he had ever sold drugs, Defendant testified that he had in the past purchased drugs on someone else’s behalf and then resold to that person in the course of using with that person, but that he had never “sold drugs for a profit.” N.T. January 14, 2003 at p. 254. When confronted with the specific dates of January 14 and February 7, 2002, Defendant admitted to possessing cocaine with intent to deliver, and delivering cocaine, but indicated the sales were to a friend with whom he thought he was using, and was not “for a profit.” Id. at p. 254-55. Without addressing whether such evidence was properly admitted,

the Court notes such was not considered in reaching a verdict.<sup>1</sup> A review of the explanation of the thought process of the Court shows that the verdict was based on the evidence that Defendant resided in the residence and was not simply an overnight guest, that he had been seen packaging cocaine by a confidential informant on a previous occasion, and that he had control over a safe in which drugs were found. *Id.* at p. 259-63. The Court did not consider that he may have been involved in other sales in the past. Therefore, even if admitting the evidence of those sales was improper, the Court believes such to be harmless error.

As noted above, the Court addressed Defendant's claims of trial counsel ineffectiveness in the Opinion and Order dated February 22, 2005. Thus, the Court will simply rely on that Opinion with respect to those issues, which are again raised in Defendant's Statement of Matters Complained of on Appeal.

Dated: April 4, 2005

By The Court,

Dudley N. Anderson, Judge

cc: District Attorney  
Eric Linhardt, Esquire  
Gary L. Weber, Esq.  
Hon. Dudley N. Anderson

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<sup>1</sup> Inasmuch as the matter was tried without a jury, the potential prejudicial effect of the evidence is not an issue.