

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

<b>COMMONWEALTH</b>	:	
	:	
<b>v.</b>	:	<b>No.: 02-11,512</b>
	:	
<b>JOSEPH JENNINGS,</b>	:	
<b>Defendant</b>	:	

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

Defendant appeals from this Court’s Judgment of Sentence and Entry of Verdict in the above-captioned matter. Defendant was found guilty of one count Corruption of Minors and two counts Selling or Furnishing Liquor or Malt or Brewed Beverages to Minors. He was sentenced to one to five years state incarceration for Corruption of Minors and consecutive two years probation supervision for the two counts of Selling or Furnishing Liquor or Malt or Brewed Beverages to Minors. Specifically, Defendant alleges that this Court: (a) entered the Verdict illegally and despite insufficient evidence [Defendant’s concise statements nos. I, II and IV]; (b) failed to suppress evidence illegally obtained; (c) allowed an improper personal involvement with the District Attorney; (d) incorrectly denied Defendant’s motion based on lack of jurisdiction and failed to honor Defendant’s rights under the Post Conviction Relief Act (PCRA) [Defendant’s concise statements nos. VI, VII, VIII and

IX]; (e) failed to properly consider the recent Supreme Court decision, *Blakely v. Washington*, 124 S.Ct. 2531 (2004); (f) improperly entered the Verdict and sentenced Defendant despite ineffective assistance of counsel; (g) improperly entered Verdict and ordered sentence despite prosecutorial misconduct by the District Attorney.

**a) The Court did not err in entering the jury's Verdict based on sufficiency of the evidence.**

Defendant first alleges that the evidence was insufficient to support the jury's finding of guilty with respect to the charge of Corruption of Minors. "The test of the sufficiency of the evidence in a criminal case is whether, viewing the evidence admitted at trial in the light most favorable to the Commonwealth and drawing all reasonable inferences in the Commonwealth's favor, there is sufficient evidence to enable the trier of fact to find every element of the [crime] charged beyond a reasonable doubt." *Commonwealth v. Jones*, 449 Pa. Super. 58, 672 A.2d 1353, 1354, (Pa. Super. 1996), citing, *Commonwealth v. Carter*, 329 Pa. Super. 490, 495-96, 478 A.2d 1286, 1288 (1984); *Commonwealth v. Peduzzi*, 338 Pa. Super. 551, 555, 488 A.2d 29, 31-32 (1985).

The crime of Corruption of minors is found at 18 Pa.C.S. §6301 and states in relevant part:

§ 6301. Corruption of minors

(a) OFFENSE DEFINED.--

(1) Whoever, being of the age of 18 years and upwards, by any act corrupts or tends to corrupt the morals of any minor less than 18 years of age, or who aids, abets, entices or encourages any such minor in the commission of any crime,

or who knowingly assists or encourages such minor in violating his or her parole or any order of court, commits a misdemeanor of the first degree.

Defendant was found guilty of Corruption of Minors with regard to a 15 year-old victim. Both the victim and another minor present at the time of the incident testified that they had been drinking alcohol with Defendant. The jury was entitled to accept this testimony as true and to find that Defendant aided, abetted, enticed or encouraged the victim in the commission of the crime of underage drinking.

**b) The Trial Court properly handled and considered evidence.**

The Defendant next contends that this Court erred in failing to suppress illegally obtained evidence. The Court cannot locate any motion to suppress filed in this case and relies on the transcript of proceedings to justify decisions related to admission of evidence at trial.

**c) The Court finds no inappropriate personal involvement of the District Attorney's Office.**

Defendant next alleges that the Court mishandled an inappropriate "personal involvement" of the District Attorney's Office. (Defendant's Concise Statement of Matters Complained of on Appeal, no. V). However, the Court can find no indication of any such improper personal involvement.

**d) Defendant's rights were not violated by the Court's dismissal of his post-sentence motions.**

Defendant asserts that the Court illegitimately dismissed his Motion to Reduce Sentence based on an incorrect finding of lack of jurisdiction. The Court

erroneously stated that the case was on direct appeal and as such lacked jurisdiction. However this error was harmless because the post-sentence motion was untimely filed. The Court filed Defendant's amended sentence on December 18, 2003. Defendant's subsequent Motion to Reconsider Sentence was not filed until October 1, 2004. To facilitate the process and in the interest of justice, this Court will reinstate Defendant's right to file a direct appeal nunc pro tunc.

e) **The Court's Sentence was proper considering the Supreme Court decision of *Blakely v. Washington***

Blakely is inapplicable in the present case. This Commonwealth employs an indeterminate sentencing scheme, which the Supreme Court specifically addressed. The Court noted that indeterminate sentencing schemes,

Increase judicial discretion, to be sure, but not at the expense of the jury's traditional function of finding the fact essential to lawful imposition of the penalty. Of course indeterminate schemes involve judicial factfinding, in that the judge (like a parole board) may implicitly rule on those facts he deems important to the exercise of this sentencing discretion. But the facts do not pertain to whether the defendant has a legal right to a lesser sentence--and that makes all the difference insofar as judicial impingement upon the traditional role of the jury is concerned. In a system that says that judge may punish burglary with 10 to 40 years, every burglar knows he is risking 40 years in jail. In a system that punishes burglary with a 10-year sentence, with another 30 added for use of a gun, the burglar who enters a home unarmed is entitled to no more than a 10-year sentence --and by reason of the Sixth Amendment the facts bearing upon that entitlement must be found by a jury.

*Blakely*, 124 S.Ct. at 2540; as quoted in *Bromley*, 2004 PA Super 422, 862 A.2d 598, 602 (2004).

*Blakely* applies to sentencing schemes that mandate a particular sentence that can be exceeded only pursuant to specific findings of fact. However, under this Commonwealth's indeterminate sentencing scheme, there is no promise of a specific sentence, and the judge exercises discretion within the statutory limits. See *Bromley*, 862 A.2d at 603.

**f) The Court did not err in failing to find ineffective assistance of counsel.**

“[T]he mere allegation that trial counsel pursued a wrong course of action will not make out a finding of ineffectiveness.” *Commonwealth v. Savage*, 529 Pa. 108, 112, 602 A.2d 309, 311 (1992). In order to make a claim for ineffective assistance of counsel, the Defendant must demonstrate that: (1) the underlying claim is of arguable merit; (2) counsel's performance was unreasonable; and (3) counsel's ineffectiveness prejudiced defendant. *Commonwealth v. Beasley*, 544 Pa. 554, 678 A.2d 773, 778, (1996). Counsel's effectiveness is presumed, so the burden of establishing ineffectiveness rests squarely with the Defendant. Generalized ineffectiveness claims raised in a vacuum must be rejected. Appellant bears the burden of proving his allegation of ineffectiveness. *Commonwealth v. Lilliock*, 740 A.2d 237, (Pa.Super 1999) citing *Commonwealth v. Baker*, 531 Pa. 541, 561, 614 A.2d 663, 673 (1992). In the present case, Defendant's bare and general allegations that counsel was ineffective are insufficient to establish a claim.

**G. The Court finds no evidence of prosecutorial misconduct**

The Court relies on the transcript that it did not err in failing to protect Defendant from “prosecutorial misconduct.” In the absence of specific allegations in

Defendant's concise statements, the Court has reviewed the transcript and can find no basis for the claim of misconduct.

By the Court,

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Nancy L. Butts, Judge J.

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