

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

COMMONWEALTH	:	
Plaintiff	:	
	:	
v.	:	CR 2033-2005
	:	
JUSTIN JACOB KINNEY,	:	
Defendant	:	

OPINION AND ORDER

This matter is before the court on the defendant's request to reinstate his appellate rights. The defendant was convicted in a jury trial held on June 20, 2006 and was sentenced on October 24, 2006. No appeal was filed. The defendant filed a petition on April 5, 2007, which this court deemed to be a PCRA petition. *See Commonwealth v. Lantzy*, 736 A.3d 564 (Pa. 1998) (holding that the PCRA provides the exclusive remedy for post-conviction claims seeking restoration of appellate rights due to counsel's failure to perfect a direct appeal).

Caselaw on reinstatement of appellate rights clearly states that to obtain relief, the burden is on the defendant to prove that he requested an appeal and that counsel disregarded this request. *Commonwealth v. Champney*, 783 A.2d 837 (Pa. Super. 2001); *Commonwealth v. Touw*, 781 A.2d 1250 (Pa. Super. 2001); *Commonwealth v. Knighten*, 742 A.2d 679 (Pa. Super. 1999); *Commonwealth v. Harman* (738 A.2d 1023 (Pa. Super 1999).

The defendant was appointed new counsel and a hearing was held on July 27, 2007. The defendant testified he had sent trial counsel a letter requesting an appeal after the trial and before sentencing. He further testified he told trial counsel after

sentencing that he wished to appeal. Trial counsel acknowledged he had received the letter from the defendant prior to sentencing requesting an appeal, and that he had consulted with the defendant about an appeal at that time. Trial counsel testified, however, that after sentencing the defendant was well satisfied with the result and did not request an appeal.

Like many of such cases, this matter rests on a credibility finding. The court found trial counsel's testimony to be credible, and found the defendant's testimony to be not credible. Therefore, we deny the defendant's request to reinstate his appellate rights. Knighen, supra; Harmon, supra.

ORDER

AND NOW, this _____ day of August, 2007, for the reasons stated in the foregoing opinion, the defendant's PCRA petition requesting reinstatement of appellate rights, filed on April 5, 2007, is dismissed.

The defendant is hereby notified that he has the right to appeal from this order to the Pennsylvania Superior Court. The appeal is initiated by the filing of a Notice to Appeal with the Clerk of Courts at the county courthouse, with notice to the trial judge, the court reporter, and the prosecutor. The Notice of Appeal shall be in the form and contents as set forth in Rule 904 of the Rules of Appellate Procedure. The Notice of Appeal shall be filed within thirty (30) days of this date. Pa.R.App. P. 903. If the Notice of Appeal is not filed in the Clerk of Courts' office within the thirty (30) day time period, the defendant may lose forever his right to raise these issues.

A copy of this opinion and order shall be mailed to the defendant by certified mail, return receipt requested.

BY THE COURT,

Richard A. Gray, J.

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