

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR- 681-2003 (03-10,681)
: CR-957-2003 (03-10,957)
:
vs. : CRIMINAL DIVISION
:
:
ADRIAN STAFFORD, :
Defendant : PCRA

ORDER

AND NOW, this ____ day of March 2007, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the Court intends to deny Defendant's Post Conviction Relief Act (PCRA) petition without holding an evidentiary hearing.

Defendant raises four allegations of ineffective assistance of trial counsel. Defendant alleges trial counsel was ineffective for failing to confront Shawna Rowe with letters she had written to Defendant acknowledging she was testifying against him because she was "threatened" by the Drug Task Force that her child would be taken from her and she would be incarcerated. Defendant also claims trial counsel was ineffective for failing to obtain transcripts of recorded telephone conversations between Shawna Rowe and Defendant because the contents of these conversations were exculpatory. The Court intends to dismiss the petition with respect to these issues for several reasons. First, the letters from Shawna Rowe and the transcripts of the telephone conversations are not attached to Defendant's petition and there isn't any explanation given in the petition why these items are not attached. See Pa.R.Cr.P. 902(D). The Court ordered defense counsel to file an amended petition to address this requirement in the Order docketed October 11, 2006, which

scheduled this matter for a court conference. Despite being made aware of Rule 902(D), no amended petition was filed. Second, the petition does not even give a summary of the phone conversations; it simply makes a conclusory allegation that they were exculpatory. Third, assuming for the sake of argument that the police told Ms. Rowe that she would be charged or her child would be taken from her if she did not testify, that does not mean that she testified falsely. Fourth, Ms. Rowe's trial testimony was not helpful to the Commonwealth. Ms. Rowe testified that she did not see anything after Yvonne (the confidential informant) got into the car. N.T., June 8-9, 2004, at 160-164. Although the taped statement Ms. Rowe gave to the police prior to trial was admitted into evidence and played for the jury, that statement was admissible as substantive evidence under the rules of evidence and Pennsylvania common law. Pa.R.E. 803.1(1); Commonwealth v. Lively, 610 A.2d 7 (Pa. 1992); Commonwealth v. Brady, 507 A.2d 66 (Pa. 1986). Fifth, the Court does not believe Defendant was prejudiced by any of these alleged errors. Prejudice in this context means but for counsel's omission the outcome of the trial likely would have been different. Ms. Rowe was a tangential witness who was not especially helpful to the Commonwealth. The main witnesses in this case were the confidential informant Yvonne Lamb, and the police officers who handled the confidential informant, took surveillance videotapes and arrested Defendant.

Defendant also asserted trial counsel was ineffective for failing to object to Lieutenant Ungard's testimony. Specifically, Defendant contended Lt. Ungard was allowed to testify about things which allegedly were occurring on the videotape when those things could not actually be seen occurring on the video. The Court cannot agree. First,

Defendant's allegations are not entirely correct. Although Lt. Ungard admitted he could not identify Defendant 100% from the tape alone because the tape was not as clear as he would have liked due to him being too close to the vehicle in which the transaction occurred, Lt. Ungard stated that everything he testified to could be seen. N.T., at 82-84. Lt. Ungard also specifically stated one could clearly see on the tape that the male (i.e., Defendant) was the one who threw something into the back seat where the confidential informant was seated. N.T., at 84. Second, Lt. Ungard could testify to his personal observations of the transaction even if there wasn't a videotape at all. Therefore, the Court finds this issue lacks merit. Even assuming for the sake of argument that there would be any merit to Defendant's contention, Defendant has not alleged how he was prejudiced. The confidential informant Yvonne Lamb testified consistent with Lt. Ungard's testimony regarding how the transaction occurred. Ms. Lamb also specifically identified Defendant as the person in the vehicle who threw the stuff (drugs) back to her. N.T., at 106-111.

Defendant's final assertion is that trial counsel was ineffective for failing to object to Lt. Ungard's statement that Defendant uses an alias "Johnny" because he's a drug dealer. Again, the Court cannot agree. Lt. Ungard testified it was common for drug dealers to use nicknames instead of their real names, because they are trying to throw off the police. N.T., at 24. This was proper testimony based on his experience arresting drug dealers. He also testified that he did not know why Defendant used the name "Johnny." N.T., at 24, lines 21-22. If counsel had objected to this testimony, the Court would have overruled the objection. Furthermore, the Court does not believe Defendant was prejudiced by this testimony. Yvonne Lamb testified that "Johnny" gave her the drugs and she

repeatedly stated Johnny was Defendant Adrian Stafford. N.T., at 89-90, 94, 101, 111.

As no purpose would be served by conducting any further hearing, none will be scheduled and the parties are hereby notified of this Court's intention to deny the Petition. Defendant may respond to this proposed dismissal within twenty (20) days. If no response is received within that time period, the Court will enter an order dismissing the petition.

By The Court,

Kenneth D. Brown, P.J.

cc: Kenneth Osokow, Esquire (ADA)
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