

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

<b>COMMONWEALTH OF PENNSYLVANIA,</b>	:	
	:	
<b>v.</b>	:	<b>No. 99-10,182</b>
	:	<b>CRIMINAL DIVISION</b>
<b>BRIAN WILLIAMS,</b>	:	<b>PCRA</b>
<b>Defendant</b>	:	

**OPINION AND ORDER**

**AND NOW**, this \_\_\_\_ day of November 2008, the Court, having received a response from the Defense counsel to this Court's proposed dismissal of his client's Post Conviction Relief Act (PCRA) Petition which does not set forth any grounds to delay the disposal of this matter, the Defendant's PCRA petition is hereby **DISMISSED**.

This Court will respond to the additional matters presented in the Defendant's Response to Court's Intention to Deny PCRA filed on October 24, 2008, Defendant challenges the Court's decision on six grounds: (1) that the testimony of Sandra Kolfleich was important in supporting Defendant's claim that he acted in self defense; (2) that the evidence of the victim's prior criminal history was incomplete and lacking in detail; (3) that hearsay evidence was improperly admitted into evidence; (4) that trial counsel was ineffective for failing to request a missing witness instruction; (5) that the loss of the opening and closing arguments by the court reporter render meaningful appellate review of the Defendant's trial an impossibility and therefore, he should be granted a new trial; and (6) that contrary to the Court's assertion he addressed Attorney Wiley's ineffectiveness in the Amended PCRA Petition filed February 17, 2006.<sup>1</sup>

---

<sup>1</sup> The Court notes that in its August 8, 2008 Opinion this particular PCRA Petition was incorrectly referenced as having been filed on February 22, 2006.

As to the Defendant's issues one, three and four, the Court will rely on its previous Opinion and Order filed August 8, 2008. The Court will address each of the remaining issues seriatim.

First, the Defendant asserts the presentation of the victim's, Glenroy Marks ("Marks") prior criminal history at trial was incomplete and lacking in detail. Defendant relies on Commonwealth v. Grove, 324 A.2d 405 (Pa. Super. Ct. 1974), to support his contention. The Court finds the Defendant's reliance on Grove misplaced. In Grove, the Defendant told his trial counsel that the bartender, who was the only eyewitness and appeared as a witness against Defendant had a prior criminal record. Id. at 406. Defense Counsel told the Defendant he checked and the witness had no prior record and therefore refused to cross examine the witness on his prior record. However, it was determined that the witness had a significant prior record. Id. The Court noted the witness was the sole individual who could testify as to what had occurred and it was "readily apparent that the jury's estimation of the bartender's credibility was crucial to their final determination of guilt." Id. The Court found the jury may not have reached the same conclusion had the witness' "credibility been impeached by cross-examination as to his own prior criminal record." Id.

In the instant case, Defense Counsel stipulated that Marks had two prior convictions for Simple Assault. While Counsel did not mention a third conviction for Simple Assault and Felony Trespass, the Court finds no prejudice to the Defendant. The Court finds there is no reasonable probability that the outcome of the proceeding would have been different had Defense Counsel presented the third conviction. All three of the convictions for Simple Assault involved the same basic facts and the same victim. Furthermore, had Defense Counsel presented the third conviction, he would not have been able to go into the specific details of the conviction, just

share the basic facts of the conviction, such as the date and the victim. Therefore, the Court finds the Defendant's assertion without merit.

Next, the Defendant contends he is entitled to a new trial because of the loss of the opening statements and closing arguments by the court reporter. To support his contention, the Defendant relies on Commonwealth v. Shields, 383 A.2d 884 (Pa. 1978). In Shields, the Defendant asserted the prosecutor made prejudicial statements during closing argument and therefore, the Defendant was entitled to a new trial due to the missing transcripts. Id. at 886. The Pennsylvania Supreme Court held that

In order to assure that a defendant's right to appeal will not be an empty, illusory right, we require that he or she be furnished a full transcript or other equivalent picture of the trial proceedings. Meaningful appellate review is otherwise an impossibility, and fairness dictates that a new trial be granted.

Id. However, in Commonwealth v. Hughes, the Pennsylvania Supreme Court found that in contrast to Shields the Defendant was not entitled to a new trial due to missing transcripts because he did not delineate any specific errors from the transcripts for review. 865 A.2d 761, 785 (Pa. 2004). Like Hughes, the Defendant here has not defined any specific errors from the opening or closing arguments for review. Since the Defendant cannot point to any specific errors which may have occurred during the openings or closings, their non-existence has no impact on the Court's determination of Defendant's PCRA Petition. Therefore, the Court finds the Defendant's assertion that he is entitled to a new trial because the opening statements and closing arguments from his trial are missing without merit.

The Court committed a glaring error in its August 8, 2008 Opinion, when it stated Attorney Stillman did not allege Attorney Wiley's ineffectiveness. Attorney Stillman in fact did allege Attorney Wiley's ineffectiveness in Defendant's Amended PCRA Petition which was filed

February 17, 2006. Therefore, this Court acknowledges its mistake and requests that any references in this Court's August 8, 2008 Opinion to Attorney Stillman's ineffectiveness should be completely disregarded. This Court notes the long and arduous path this case has taken since the Defendant's initial conviction in 1999, and did not wish for the Superior Court to return this case yet again for an obvious error. This Court regrets the error, now corrected by this supplemental opinion.

Ultimately, after consideration of the Defendant's response to this Court's intention to dismiss his PCRA Petition, the Court still finds the Defendant's contentions without merit. The Court also finds that if another direct appeal would be granted, Defendant's claims would still fail for lack of merit.

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 of 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 after the entry of the order from which the appeal is taken. 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 order shall be mailed to the Defendant by certified mail, return receipt requested.**

By The Court,

Nancy L. Butts, Judge

xc: DA (KO)  
Jay Stillman, Esq.  
1901 Kennedy Blvd.  
Apt. 1913  
Philadelphia, PA 19103  
Brian Williams  
EB9400  
P.O. Box 1000  
Houtzdale, PA 16698  
Trisha D. Hoover, Esq. (Law Clerk)  
Gary L. Weber, Esq. (LLA)