

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

**COMMONWEALTH OF PENNSYLVANIA**

**v.**

**DEBORAH MERRILL,  
Defendant**

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**No. 64-2008  
CRIMINAL DIVISION  
PCRA**

**OPINION AND ORDER**

On March 6, 2009, Defendant filed a *Pro Se* Petition for Relief under the Post Conviction Relief Act (PCRA). Conflicts Counsel, Andrea Pulizzi, Esq. was appointed on March 9, 2009 to represent the Defendant. On April 24, 2009, this Court granted Defense Counsel additional time in which to file an amended PCRA petition or a Turner-Finley letter indicating no meritorious issues were raised in Defendant's Petition. On June 30, 2009, Defense Counsel filed an Amended PCRA Petition requesting a new trial or the right to file an appeal *nunc pro tunc*.

***Background***

On August 15, 2008, Defendant entered a plea of guilty to Retail Theft. On November 13, 2009, the Court sentenced Defendant to twenty-four (24) months under the Intermediate Punishment Program with the first eight (8) months to be served at the Pre-Release Center. Defendant's appeal period expired on December 13, 2008, thirty (30) days from the date of sentencing. No direct appeal was filed. The Defendant's sentence then became final on December 13, 2008. Therefore, Defendant's PCRA Petition was timely filed.

## ***Discussion***

Defendant alleges in her PCRA Petition that her trial counsel was ineffective for failing to file an appeal after sentencing. Specifically, Defendant alleges she sent several requests to her attorney, Robert Cronin, Esquire to file an appeal, but he failed to do so.

In order to make a claim for ineffective assistance of counsel, the Defendant must demonstrate:

1) an underlying claim of arguable merit; 2) no reasonable basis for counsel's act or omission; and 3) prejudice as a result, that is, a reasonable probability that but for counsel's act or omission, the outcome of the proceeding would have been different. Counsel is presumed to have been effective. A failure to satisfy any prong of this test is fatal to the ineffectiveness claim.

Commonwealth v. Cooper, 941 A.2d 655, 664 (Pa. 2007) (and cases cited therein).

The Pennsylvania Constitution guarantees a direct appeal as of right. See Article V, Section 9 of the Pennsylvania Constitution. As such the “failure to file or perfect such an appeal results in a denial so fundamental as to constitute prejudice per se.” Commonwealth v. Lantzy, 736 A.2d 564, 571 (Pa. 1999). Where counsel has failed to file a direct appeal and “where the remaining requirements of the PCRA are satisfied, the petitioner is not required to establish his innocence or demonstrate the merits of the issue or issues which would have been raised on appeal.” Id. at 572.

In this case, the Defendant alleges that after receiving her sentence she specifically requested that her attorney file a direct appeal. As her attorney failed to file an appeal, he was per se ineffective. The Commonwealth also concedes that the Defendant’s prior counsel’s failure to file a direct appeal is per se ineffective and agrees that his appellate rights should be reinstated *nunc pro tunc*. Therefore, the Court finds the Defendant is entitled to reinstatement of her appellate rights *nunc pro tunc*.

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of July 2009, it is ORDERED and DIRECTED that the Defendant's PCRA Petition is GRANTED thereby reinstating her appellate rights, *nunc pro tunc*, solely as to the issues raised in her June 30, 2009, Amended PCRA Petition. It is further ORDERED and DIRECTED that the Defendant file her Notice of Appeal no later than thirty days (30) from the date of this Order.

By The Court,

Nancy L. Butts, Judge

xc: DA (KO)  
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