

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	<b>No. 599-2005; 926-2006;</b>
<b>v.</b>	:	<b>1332-2006</b>
	:	<b>CRIMINAL DIVISION</b>
<b>ALEC CAJKA,</b>	:	<b>PCRA</b>
<b>Defendant</b>	:	

**OPINION AND ORDER**

On May 28, 2009, Defendant filed a *Pro Se* Petition for Relief under the Post Conviction Relief Act (PCRA). Conflicts Counsel, Edward J. Rymysza, Esq. was appointed on June 10, 2009, to represent the Defendant. On September 28, 2009, this Court granted Defense Counsel thirty (30) days in which to file an amended PCRA petition or a Turner-Finley letter indicating no meritorious issues were raised in Defendant's Petition. On November 2, 2009, Defense Counsel was granted an additional sixty (60) days in which to file said Petition. Then, on December 29, 2009, Defense Counsel filed an Unopposed Amended PCRA Petition requesting the Court reinstate Defendant's direct appeal rights and/or grant such other relief that may be just and proper.

***Background***

On October 4, 2005, under docket number 599-2005, Defendant pled guilty before the Honorable Judge William S. Kieser, to one consolidated count of Simple Assault, one consolidated count of Corruption of Minors, one count of Possession of an Instrument of Crime, and one count of Criminal Mischief. Defendant received an aggregate sentence of seven (7) to eighteen (18) months in the Lycoming County Prison with three (3) years consecutive probation. On August 14, 2006, Defendant pled guilty under docket number 929-2006 before Judge Kieser,

to one count of Theft and was sentenced to fourteen (14) months Intermediate Punishment under the supervision of the Adult Probation Office of Lycoming County with the first twenty (20) days to be served at the Lycoming County Prison/Pre-Release Center and with this sentence to run consecutive to any other sentence he was presently serving. On September 18, 2006, under docket number 1332-2006, before Judge Kieser, Defendant entered a plea of guilty to False Identification to Law Enforcement and received a sentence of one to two months in the Lycoming County Prison, with this sentence to also run consecutive to any sentence he was presently serving.

On July 17, 2007, a final Probation Revocation Hearing was held before Judge Kieser. After a counseled admission that he violated his probation supervision, Defendant was resentenced on the Corruption of Minors charges to six (6) months to five (5) years in a State Correctional Institution. On July 18, 2007, then counsel, Jeana Longo, Esq., filed a Motion for Reconsideration, which was denied by Judge Kieser on August 17, 2007.

On September 13, 2007, a notice of appeal was filed. The Pennsylvania Superior Court dismissed the appeal on June 30, 2008, as untimely. The Defendant's sentence then became final on July 30, 2008. Therefore, Defendant's PCRA Petition was timely filed.

### ***Discussion***

Defendant alleges in his PCRA Petition that his trial counsel was ineffective for failing to file a timely direct appeal.

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). Counsel is ineffective when he has failed to file a timely appeal. See Commonwealth v. Ritchie, 444 A.2d 712, 714 (Pa. Sup. Ct. 1982).

The Pennsylvania Superior Court dismissed Defendant’s appeal as untimely. As his attorney failed to file a timely notice of appeal, she was ineffective. The Commonwealth is also unopposed to the reinstatement of Defendant’s appeal rights. Therefore, the Court finds the Defendant is entitled to reinstatement of his appellate rights *nunc pro tunc*.

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of January 2010, it is ORDERED and DIRECTED that the Defendant's PCRA Petition is GRANTED thereby reinstating his appellate rights, *nunc pro tunc*. It is further ORDERED and DIRECTED that the Defendant file his Notice of Appeal no later than thirty days (30) from the date of this Order.

By The Court,

Nancy L. Butts, President Judge

xc: DA (KO)  
Edward J. Rymysz, Esq.  
Trisha D. Hoover, Esq. (Law Clerk)  
Gary L. Weber, Esq. (LLA)