

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

COMMONWEALTH OF
PENNSYLVANIA

vs.

RONALD A. RICHARDSON

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NO: CR- 216-2010

OPINION
Issued Pursuant to Pa.R.A.P. 1925(a)

On August 26, 2010 this Court entered an Order granting the Defendant's Motion to Quash a Subpoena which sought testimony from Assistant Public Defender Nicole Spring. On August 30, 2010 the Commonwealth appealed the Order asserting that this Court erred because the testimony sought to be elicited was not "legal advice" which should be afforded the protection under the attorney-client privilege.

As set forth in this Court's opinion of August 26, 2010, the purpose of the attorney/client privilege is to safeguard and promote full, uninhibited discourse between a client and his attorney. Slater v. Rimar, Inc., 338 A.2d 584 (Pa. 1975).

In the present action, the testimony sought to be elicited from Attorney Spring included testimony regarding a telephone conversation between the Defendant and Ms. Spring in which Ms. Spring informed the Defendant that he had 72 hours in which to turn himself back into prison. This communication is intended to be used against Mr. Richardson for an escape charge filed against Mr. Richardson by the Commonwealth. Certainly evidence regarding a telephone conversation in which the Defendant is informed to present himself to prison would adversely affect the Defendant's interests in a trial in which he has been charged with escape.

Moreover, requiring Ms. Spring to provide the limited testimony requested, without explanation as to the remainder of the conversation could distort the facts. As clarification would require further disclosure, Mr. Richardson's right against self-incrimination could be further implicated. In upholding a lower court's ruling that invoking the attorney/client privilege was proper, the Supreme Court in Commonwealth v. Scott, 470 A.2d 91 (Pa. 1983), held as follows:

Under 42 Pa.C.S.A. § 5916, the right to waive the attorney-client privilege belongs to the client. **Only in the limited situation when the client's rights or interest can not be possibly affected adversely can his attorney waive it.** Kramer v. Kister, 40 A. 1008 (Pa. 1898)...Mr. Green's own testimony revealed that if he repeated his client's statement he would be acting against his client's interest and would subject him to a charge of perjury. Since the only interest that would be served would be that of appellant's and not Mr. Green's client, Mr. Green was not in a position to waive his client's privilege.

Id. at 94.

Accordingly, this Court relies upon its original opinion set forth in its Order of August 26, 2010, and respectfully urges affirmance of its Order granting Assistant Public Defender Nicole Spring's Motion to Quash Subpoena.

BY THE COURT,

Richard A. Gray, J.

cc: District Attorney (AMK)
William J. Miele, Esquire
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