

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

<b>COMMONWEALTH OF PENNSYLVANIA,</b>	:	
	:	
<b>v.</b>	:	<b>No. 1634-2007</b>
	:	<b>CRIMINAL DIVISION</b>
<b>RICHARD ROGERS,</b>	:	
<b>Defendant</b>	:	<b>PCRA</b>

**ORDER**

**AND NOW**, this 11<sup>th</sup> day of October, 2010, after a conference with Counsel, and upon review of the Defendant's PCRA Petition, it is clear that the Defendant is challenging the failure of trial counsel to request that the trial court clarify to the jury that they had to find that the Defendant **knew** he was not allowed on the property in order to find him guilty of Criminal Trespass.

Upon review of the Jury Charge Transcripts from April 1, 2008, it is clear that the trial court ineffaceably instructed the jury on the proper elements of the charge of Criminal Trespass:

THE COURT: The next offense is criminal trespass. . . . To find the Defendant guilty of this offense you must find all of the following elements have been proven beyond a reasonable doubt. Number one . . . he entered or broke into that address. Broke into includes entrance by force, breaking, intimidation, unauthorized opening of locks or through an opening not designed for human access. Two, that the Defendant knew he did not have permission or lawful authority to enter or break into that location. Three, that that location of Newberry Street, Williamsport, was a building or occupied structure. . . .

N.T. 6-7. Since it is clear that the trial court did in fact inform the jury that they had to find that the Defendant **knew** he was not allowed on the property in order to find him guilty of Criminal Trespass, the Court finds the Defendant's ineffective assistance of counsel claim to be without merit.

Based upon the foregoing, the Court finds no basis upon which to grant the Defendant's PCRA Petition. Additionally, as the Court finds that no purpose would be served by conducting any further hearing, none will be scheduled. Pursuant to Pennsylvania Rule of Criminal Procedure 907(1), the parties are hereby notified of the Court's intention to deny the Petition. The 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 and granting Joel M. McDermott leave to withdraw.

**ORDER**

**AND NOW**, this 11<sup>th</sup> day of October, 2010, the Defendant and his attorney are notified that it is the intention of the Court to dismiss the Defendant's PCRA petition unless he files an objection to that dismissal within twenty days (20) of today's date.

By the Court,

Nancy L. Butts, President Judge

xc: Ken Osokow, Esq.  
Joel M. McDermott, Esq.  
Richard Rogers, #HP8507  
SCI Greensburg  
165 SCI Lane  
Greensburg, PA 15601-9103