

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	No. 342-2006
	:	CRIMINAL DIVISION
NATHANIEL CLARK	:	APPEAL
Defendant	:	

OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a)
OF THE RULES OF APPELLATE PROCEDURE

The Defendant appeals the Order of Court dated December 1, 2010, which decisively dismissed the Defendant's PCRA Petition. The Defendant filed a Notice of Appeal on December 20, 2010, and on December 22, 2010, this Court directed the Defendant, in accordance with Pa.R.A.P. No. 1925(b), to file within thirty days a concise statement of matters complained of on appeal. The Defendant filed his concise statement on January 14, 2011.

The Defendant enumerates eight issues on appeal relating to the dismissal of his PCRA Petition: 1) Did the lower court err by allowing PCRA Counsel to withdraw without compliance with Turner-Finley; 2) Did court err by dismissing PCRA motion without a hearing when defendant pro-se presented issues of merit overlooked by the court and PCRA counsel; 3) Brady violation from information not turned over to defense regarding informant criminal history; 4) informant who had been convicted of numerous offenses could have been impeached with evidence of these crimes; 5) the Honorable Court erred in allowing hearsay; 6) trial counsel ineffective for not getting informant statement suppressed at suppression hearing; 7) confrontational clause violation when informant never testified at any hearing, preliminary, suppression or trial; and 8) ineffective assistance for my appeal lawyer not appealing that the criminal defendant has a right to cross examine under both state and federal Constitutions.

The Defendant alleges that a Brady violation occurred when he was not given information pertaining to the informant's criminal history. The Defendant further alleges that evidence of the informant's criminal history could have been used for impeachment purposes. The Court in Brady v. Maryland, 373 U.S. 83 (1963) held that the suppression of evidence which is favorable either to the guilt or punishment of the accused is a violation of due process. In this case, at the time of the jury trial before the Honorable Williams S. Kieser on October 24, 2006, Judge Kieser only allowed into evidence the informant's statements for the limited purpose of "[e]xplaining the officers' acts in connection with their investigation." N.T. 29-30. Therefore, this Court fails to see how whether or not the Defendant was given information pertaining to the informant's criminal history is a Brady violation, or how such evidence could have been used to impeach the informant.

As to the remaining allegations raised on appeal, this Court will rely on the Opinion and Order of this Court dated October 12, 2010, which dismissed the Defendant's PCRA Petition.

It is respectfully suggested that this Court's Order dated December 1, 2010, be affirmed.

DATE: _____

By the Court,

Nancy L. Butts, President Judge

xc: DA
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Amanda Browning, Esq. (Law Clerk)
Gary L. Weber (LLA)

