

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

<b>COMMONWEALTH OF PENNSYLVANIA,</b>	:	
	:	
<b>v.</b>	:	<b>No. 1012-2008</b>
	:	<b>CRIMINAL DIVISION</b>
<b>GREGORY RICKS,</b>	:	
<b>Defendant</b>	:	<b>PCRA</b>

**ORDER**

On January 10, 2011, the Defendant filed his second Post Conviction Relief Action (PCRA) Petition to date. On January 24, 2011, James Protasio, Esquire, was appointed to represent the Defendant. On March 18, 2011, the Court received a letter from Mr. Protasio indicating that the PCRA Petition is without merit. After a review of the Petition, the Court agrees with Counsel that there are no issues of merit raised.

In his PCRA Petition, the Defendant contends that he never received copies of the criminal complaint against him, the Bill of Particulars, or a copy of discovery. None of these contentions appear to fall under the purview of the PCRA, which according to 42 Pa.C.S. §9543 only affords relief in the following circumstances:

- (i) A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
- (ii) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
- (iii) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.

(iv) The improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.

(v) Deleted.

(vi) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.

(vii) The imposition of a sentence greater than the lawful maximum.

(viii) A proceeding in a tribunal without jurisdiction.

As such, it appears that these issues are without merit under the PCRA. Furthermore, even if it were possible for the Defendant to demonstrate that these issues are valid PCRA issues, the Defendant has waived his right to raise these issues now, as he failed to do so previously. See 18 Pa.C.S. §9544(b).

The Defendant contends that since the rifle used as evidence against him did not have a serial number on it, it easily could have belonged to someone else. Whether or not the firearm was in the Defendant's possession was a matter for the jury to decide, and not a valid PCRA issue for the Court to now address. As stated above, 42 Pa.C.S. §9543 only allows PCRA relief for specific issues. The Defendant further contends that the rifle was illegal as a matter of law and could not be used as evidence against him. Although not clearly stated in his PCRA, it appears as though the Defendant is attempting to allege that trial counsel was ineffective for failing to file a motion to suppress the rifle since the rifle was illegal evidence. It is true that the firearm used as evidence did not have a serial number on it, which is a violation of 18 Pa.C.S. §6117, Altering or Obliterating Marks or Identification. However, it does not follow that the firearm was then ineligible to be used as evidence against the Defendant. As such, the Defendant

has failed to establish how counsel was ineffective for failing to file a motion to suppress the firearm.

Finally, the Defendant contends that the evidence against him was obtained without a search warrant. The Court finds that this issue was previously addressed and disposed of by the Court through the Defendant's first PCRA Petition. As the Court stated in its Order of June 30, 2010:

Upon review of the trial transcript, it is clear from the testimony taken at trial that in April 2007, Harold Manley, who was the landlord of the Defendant at his residence on 1132 Park Ave, went to the Defendant's apartment to clean it after the Defendant vacated the premises. When Mr. Manley arrived at the Defendant's apartment to clean, he found a 32 caliber rifle on the premises. Mr. Manley then called the police and turned the rifle over to the police the same evening. Case law is clear that evidence obtained by a private citizen and later turned over to a government authority is not subject to suppression on Fourth or Fifth Amendment grounds. See Commonwealth v. Glaza, 48 Pa. D. & C.2d 369, 371 (Pa.D. & C.2d 1970); See also Burdeau v. McDowell, 256 U.S. 465 (1921).

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 James Protasio, Esq., leave to withdraw.

**ORDER**

**AND NOW**, this 30<sup>th</sup> day of March, 2011, 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

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