

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	No. 1012-2008
	:	CRIMINAL DIVISION
GREGORY RICKS,	:	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 May 3, 2011, which dismissed the Defendant's Second PCRA Petition. The Defendant filed a Notice of Appeal on May 13, 2011, and on May 16, 2011, 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 Court received the Defendant's concise statement on May 31, 2011.

The Defendant raises several issues on appeal relating to his PCRA Counsel, James Protasio, Esq. The Defendant contends that Mr. Protasio was ineffective in failing to raise the issue that the evidence was insufficient to sustain a guilty verdict, and for failing to raise the issue of whether the verdict was against the weight of the evidence.

As neither of these issues are valid PCRA issues under 42 Pa.C.S. §9543, the Court finds the Defendant's contentions to be without merit.¹

The Defendant also raises the issues that PCRA Counsel committed a legal error by filing a no-merit letter and by failing to grant him a Grazier Hearing. As counsel is permitted, pursuant to Commonwealth v. Turner, 544 A.2d 927 (Pa. 1988) and Commonwealth v. Finley, 550 A.2d

¹ The Court notes that trial counsel did file a Post-Sentence Motion on March 18, 2009, which raised both the issue that the evidence was insufficient to sustain a guilty verdict, and the issue that the verdict was against the weight of the evidence. By way of an opinion dated April 3, 2009, the Honorable Kenneth D. Brown denied the Defendant's Post-Sentence Motion for a new trial, finding that sufficient evidence was presented on all counts. After the Defendant filed his first appeal in this case, Judge Brown addressed both of these issues at length in his Opinion of October 9, 2009. However, as the Defendant failed to argue the issues in his appellate brief to the Superior Court, the Superior Court found in its Opinion of March 4, 2010 that these issues were waived.

213 (Pa. Super. 1988), to file a motion to withdraw from a PCRA case in which they find no meritorious issues, the Defendant's argument that PCRA Counsel committed a legal error by doing so is without merit. Additionally, as to the Defendant's argument that PCRA Counsel committed a legal error by failing to grant him a hearing under Commonwealth v. Grazier, 713 A.2d 81 (Pa. 1998), the Court notes that **counsel** is never legally able to grant a client a hearing. The **Court**, however, could grant a Grazier hearing to determine a knowing, intelligent, and voluntary waiver of the right to counsel at the appellate stage. In this case, the Defendant never requested to waive his right to counsel; therefore, a Grazier hearing was not required.

The Defendant also alleges that the Court committed a legal error in failing to appoint new counsel for the Defendant's appeal. The Defendant did request in his Response to Court Appointed Counsel's Petition to Withdraw that the Court appoint him new PCRA Counsel. However, the Defendant's current Petition is his second PCRA Petition to date. Pursuant to Pa.R.Crim.P. 904(D), a defendant is only entitled to representation on a second or subsequent PCRA Petition when an evidentiary hearing is required as provided in Rule 908. Therefore, while the Defendant was initially appointed counsel for his second PCRA Petition, he is not now entitled to such representation as the Petition was dismissed without an evidentiary hearing. See Commonwealth v. Jackson, 965 A.2d 280, 284 (Pa. Super. 2009) where the appointment of counsel for the appeal of a defendant's second PCRA Petition was only required where the appointment of counsel was deemed necessary for purposes of conducting an evidentiary hearing.

It is respectfully suggested that this Court's Order dated May 3, 2011, be affirmed.

DATE: _____

By the Court,

Nancy L. Butts, President Judge

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