

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	No. 1322-2002
	:	CRIMINAL DIVISION
MARK TANNER,	:	APPEAL
Defendant	:	

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

The Defendant appeals the Opinion and Order of the Honorable Dudley N. Anderson, dated September 22, 2008, which found that the Defendant was competent to stand trial in August of 2003.

On February 8, 2010, this Court granted the Appellant's PCRA Petition and reinstated his appellate rights *nunc pro tunc*. However, the Defendant's appeal was subsequently dismissed by the Superior Court for failure of Counsel, Ryan Gardner, Esquire, to file a docking statement. Thereafter, Joel McDermott, Esquire, was appointed to represent the Defendant. Attorney McDermott filed a PCRA Petition which this Court granted on June 14, 2011, thereby again reinstating the Defendant's appellate rights *nunc pro tunc*. However, Attorney McDermott was subsequently removed as a Conflicts Attorney in Lycoming County and Lori Rexroth, Esquire, now represents the Defendant in this case. Attorney Rexroth filed her concise statements of matters complained of on appeal on September 28, 2011.

The Defendant raises two issues on appeal; 1) the Defendant's judgment of sentence should be vacated and a new trial ordered because the trial court, per its Opinion and Order dated September 22, 2008, said Opinion and Order being adopted by this Court in its Order of May 12,

2010, erroneously found the Defendant competent to stand trial in August of 2003; and 2) the trial court erred in relying on the determination of competency from an expert who performed his examination of the Defendant in excess of five (5) years after the trial occurred and the testimony of the police officer who has no training in psychiatric determinations and who had a vested interest in the Defendant being found competent because if the Defendant was not legally competent, the waiver of his Miranda Warnings could not be knowing or voluntary and his statements would be subject to suppression.

For the purposes of this Opinion, this Court will rely on the Opinion and Order of the Honorable Dudley N. Anderson, dated September 22, 2008.

DATE: _____

By the Court,

Nancy L. Butts, President Judge

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