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

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## COMMONWEALTH OF PENNSYLVANIA

v.

ADAM K. ZEIGLER, Defendant No. 212-2009 CRIMINAL DIVISION APPEAL

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

The Defendant appeals the Order of the Honorable Nancy L. Butts dated March 29, 2011, which dismissed the Defendant's Post Conviction Relief Act (PCRA) Petition. The Defendant filed a Notice of Appeal on April 11, 2011, and on April 15, 2011, the 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 6, 2011.

The Defendant raises two (2) issues on appeal: 1) the Court erred in failing to take mitigating circumstances into consideration when sentencing Defendant; and 2) Trial Counsel was ineffective in failing to thoroughly explain the concept of mitigating circumstances and the sentencing procedure to Defendant before allowing allow him to enter a plea of guilty.

As the Court noted in its Order of September 30, 2010, the consideration of mitigating circumstances was not relevant in the Defendant's case<sup>1</sup>. In this case, the Defendant pled guilty to Count 1 Criminal Conspiracy to commit Robbery, a felony of the first degree, Count 2 Criminal Conspiracy to commit the offense of Burglary, and Count 3 Criminal Conspiracy to commit the offense of Burglary. The first degree. The plea agreement was that the sentence imposed on Counts 1 and 2 be an aggregate sentence of three

<sup>&</sup>lt;sup>1</sup> The Court's Order of September 30, 2010 states that mitigating circumstances were relevant in the Defendant's case. This statement was made in error. The Order should state that the consideration of mitigating circumstances were not relevant in the Defendant's case

(3) to six (6) years in a State Correctional Institution and that the sentence imposed for Count 3 Conspiracy be a concurrent sentence. The sentence imposed by this Court on February 22, 2010 was in compliance with the plea agreement.

As to the Defendant's ineffective assistance of counsel argument, where an allegation of ineffective assistance of counsel is made in connection to the entry of a plea agreement, such allegation will only serve as a basis for relief if the ineffectiveness caused the accused to enter an unknowing or involuntary plea. See Commonwealth v. Fluharty, 632 A.2d 312 (Pa.Super.1993). In determining whether a plea is entered knowingly, voluntarily, and intelligently, the court must at a minimum address the following six (6) areas: 1) whether the Defendant understands the nature of the charges to which he is pleading; 2) whether there is a factual basis for the plea; 3) whether the defendant understands that he has a right to a jury trial; 4) whether the defendant is aware that he is presumed innocent until proven guilty; 5) whether the defendant is aware of the permissible range of sentences for the offenses charged; and 6) whether the defendant understands that the judge is not bound by the terms of the plea agreement unless he or she accepts the agreement. Fluharty at 313. Therefore, whether or not the Defendant's attorney thoroughly explained the concept of mitigating circumstances or the sentencing procedure to him before he entered his plea is irrelevant in determining whether the Defendant entered a knowing, voluntary, and intelligent plea. A review of the transcripts of the guilty plea hearing held before the Honorable Kenneth D. Brown on December 14, 2009, establishes that Judge Brown did review all of the necessary information with the Defendant, with the exception of informing the Defendant that the judge is not bound by the terms of the plea agreement; however, at the sentencing hearing before the Honorable Nancy L. Butts on February 23, 2010, the Defendant was made aware that Judge Butts was not required to sentence in accordance with the plea agreement.

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## Conclusion

As the Defendant's arguments are without merit, it is respectfully suggested that this Court's Order of March 29, 2011, which dismissed the Defendant's PCRA Petition, be affirmed.

DATE: \_\_\_\_\_

By the Court,

Nancy L. Butts, President Judge

xc: DA Todd Leta, Esq. Gary L. Weber (LLA)