

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

On October, 25 2006, Nathaniel Clark (Defendant) was found guilty following a jury trial of Possession with Intent to Deliver a Controlled Substance and Criminal Use of a Communication Facility. On December 19, 2006, a non-jury trial was held on the severed charge of Possession of a Firearm by a Prohibited Person before Judge William S. Kieser.¹ The non-jury trial resulted in a guilty verdict. The Defendant was sentenced initially on January 5, 2007 and then resentenced on January 26, 2007 following Post Sentence Motions to an aggregate sentence of a minimum of seven (7) years and nine (9) months to twenty (20) years of incarceration in a state correctional institution. The conviction for the Possession of a Firearm by a Prohibited Person charge imposed no further penalty because the Commonwealth agreed for the sentence to run concurrently with the prior jury trial sentence. The Defendant's attorney at the time, Guy Sciolla, Esquire, subsequently filed an appeal to the Superior Court of Pennsylvania on the Defendant's behalf, which was denied by memorandum opinion on April 6, 2009.

On June 18, 2010, Defendant filed a *pro se* Post Conviction Relief Act (PCRA) petition. Attorney Andrea Pulizzi, Esquire was appointed by this Court to represent Defendant and filed a

¹ Judge Kieser retired from active service on December 31, 2008.

Motion to Withdraw as counsel on August, 20 2010 alleging that Defendant's petition was untimely. The Defendant filed objections to this Court's Order indicating its intention to dismiss his Petition and this Court dismissed Defendant's petition on December 1, 2010 and granted Attorney Pulizzi's request to withdraw. Defendant filed a *pro se* appeal to the Superior Court of Pennsylvania on December 20, 2010 and his case was remanded for the appointment of new counsel on October 12, 2011. The Court appointed Counsel Donald F. Martino, Esquire, on December 13, 2011 and Attorney Martino thereafter filed a Motion to Withdraw as Counsel as he determined that the PCRA Petition lacked merit. The Court granted Attorney Martino's Motion to Withdraw on April 4, 2012. On April 30, 2012, the Court dismissed the Defendant's PCRA Petition after allowing the Defendant twenty (20) days to respond to its proposed dismissal.

The Defendant filed a Notice of Appeal on May 15, 2012. The Defendant has raised two (2) issues in his concise statement of matters complained of on appeal: 1) all prior counsel were ineffective for failing to object when the Commonwealth, for the purpose of establishing the heart of the Commonwealth's case, repeatedly solicited testimony regarding the nonconfidential informant's statements to the effect that a defendant had the intent to distribute drugs, when the defendant didn't have the opportunity to cross-examine the informant and when the government was put on notice of a potential Sixth Amendment problem and 2) all prior counsel ineffective for failing to object when the Commonwealth relied extensively on the non-confidential informant's statements to prove key elements of its case without providing the defendant an opportunity to cross-examine the known informant, the admission of the statements violated the defendant's right to confront witnesses against him.

For purposes of this Opinion, the Court will rely on Judge Butts' Opinion and Order dated April 4, 2012, which determined that the Defendant's allegations are without merit because the informant's statements were suppressed by the Court as hearsay. Statements that were admitted during trial were allowed for a limited purpose which was not for the truth of the matter asserted.

DATE: _____

By the Court,

Nancy L. Butts, President Judge

xc: DA
Nathaniel Clark #JK6021
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Somerset, PA 15510-0001