

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
v.	:	No. 1775-2009
	:	
TYREE M. GATES,	:	CRIMINAL DIVISION
Defendant	:	APPEAL

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

Following a jury trial, Tyree Gates (Defendant) was found guilty of one (1) count of Aggravated Assault, two (2) counts of Simple Assault, and one (1) count of Recklessly Endangering Another person. On January 24, 2011, the Defendant was sentenced to an aggregate period of incarceration for a minimum of six (6) years and a maximum of twelve (12) years with a consecutive five (5) year period of probation. On February 2, 2011, Defendant filed a Post-Sentence Motion. In an Order and Opinion dated June 30, 2011, this Court denied the Motion due to operation of law pursuant to Pa.R.Crim.P. 720(B)(3)(a). In addition, the Court addressed the issues raised in the Motion.

Following the reinstatement of his appellate rights on September 9, 2011, the Defendant filed a Notice of Appeal on October 3, 2011 and an Amended Notice of Appeal on October 26, 2011. On October 19, 2011, this Court directed the Defendant, in accordance with Pa.R.A.P. 1925(b), to file a concise statement, which was received by the Court on November 18, 2011. The Defendant raised four (4) issues in his concise statement: 1) the trial court erred in failing to permit the Defendant to cross examine the alleged victim as to her statement that the Defendant accidentally shot her; 2) the trial court erred in failing to grant a mistrial as a result of the prosecutor arguing in summation about statistics relating to victims of domestic violence when no such evidence was presented during the trial nor would such evidence have been admissible;

3) the trial court erred in failing to grant the Defendant's Post Conviction Relief Act (PCRA) Petition requesting relief based upon the illegal sentence imposed by this Court; and 4) the trial court erred by sentencing the Defendant to an excessive term of incarceration when facts and circumstances of the case did not warrant such a sentence. This Court filed an Opinion in compliance with Pa.R.A.P. 1925(a) on December 5, 2011.

On April 5, 2012, the Superior Court of Pennsylvania dismissed the Defendant's appeal due to counsel failing to file a brief. On June 4, 2012, the Defendant file a PCRA Petition requesting his appellate rights reinstated. With no objection by the Commonwealth, the Defendant's appellate rights were reinstated *nunc pro tunc* on July 5, 2012. Counsel for the Defendant was also re-assigned to Kyle Rude Esq. and Amy Boring Esq. On August 1, 2012, the Defendant once again filed a Notice of Appeal. This Court requested a concise statement on August 8, 2012, and it was received on September 4, 2012. The Defendant alleges the exact same four (4) issues he raised in his previous appeal.

Therefore, for purposes of this Opinion, the Court will rely on its Opinion and Order of June 30, 2011, which analyzed the issues raised in the Defendant's Post-Sentence Motion despite the fact that the Motion was denied by operation of law.

DATE: _____

By the Court,

Nancy L. Butts, President Judge

xc: DA
Amy Boring, Esq.
Gary L. Weber (LLA)